



Community & Economic Development Department

3900 Main Street, Riverside, CA 92522 | Phone: (951) 826-5371 | RiversideCA.gov

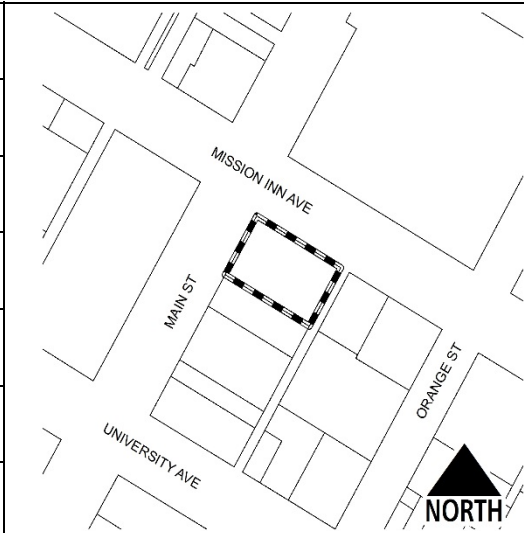
Planning Division

RiversideCA.gov

PLANNING COMMISSION HEARING DATE: JULY 14, 2016

AGENDA ITEM NO.: 4

OVERVIEW

<i>Case Numbers</i>	P16-0251 (Revocation or Modification of MCUP P15-0255)	
<i>Request</i>	To consider the Revocation or Modification of Minor Conditional Use Permit P15-0255 pursuant to section 19.730.090 – Review for Compliance and Revocation	
<i>Petitioner</i>	<ul style="list-style-type: none">Planning and Code Enforcement Divisions of the Community & Economic Development DepartmentPolice Department	
<i>Project Location</i>	3700-3720 Main Street	
<i>APN</i>	213-271-001	
<i>Ward</i>	1	
<i>Neighborhood</i>	Downtown	
<i>Specific Plan</i>	Downtown Specific Plan	
<i>General Plan Designation</i>	Downtown Specific Plan	
<i>Zoning Designation</i>	Downtown Specific Plan – Raincross District	
<i>Staff Planner</i>	Travis Randel, Principal Planner, 951-826-5932; trandel@riversideca.gov	

RECOMMENDATIONS

Pursuant to Chapter 19.730.090 of the Riverside Municipal Code, the Planning Commission shall hold a public hearing to consider the revocation of a Minor Conditional Use Permit granted in accordance with the provisions of this Chapter and over which such Commission has jurisdiction.

Specifically, Staff Recommends that the City Planning Commission:

1. **REVOKE** Minor Conditional Use Permit P15-0255 based on the following findings:
 - a. The permit granted is being exercised contrary to the conditions of such permit and in violation of applicable licenses, permits, regulations, laws, and ordinances; and,
 - b. The use for which the permit approval was granted is being and has been exercised to be detrimental to the public health and safety and so as to constitute a nuisance.

In the event that the Planning Commission chooses not to revoke the Minor Conditional Use Permit, staff recommends that the Commission modify the Conditions of Approval in their entirety, to those attached herein.

BACKGROUND

The restaurant has been operating as the Hideaway Café with a Type 41 (On-sale Beer and Wine – Eating Place) Alcoholic Beverage Control (ABC) license since May 2013. Prior to operation as the Hideaway Café, the restaurant operated as the Galleria Café Wine Gallery with a Type 41 ABC license since 2010. The current ABC License is held by Mr. Craig Johnston, property and business owner.

On September 11, 2015, following numerous Code Enforcement complaints that the Hideaway Café restaurant was operating with entertainment (DJ/dance floor) without proper land use permits, the Zoning Administrator considered and approved Minor Conditional Use Permit P15-0255, to permit entertainment in conjunction with the restaurant. The approval was contingent upon compliance with conditions of approval provided in the attached staff report (Exhibit 6).

Since the Zoning Administrator approval, staff has been working with the owner to bring the use into compliance with all conditions of approval as well as local, state and federal laws. On February 24, 2016, City staff from the Planning, Code Enforcement, Building and the Police Department met with the business owner, as required by a Condition of Approval requiring a “six month review”, to discuss the operation of the Hideaway Café. Staff expressed concerns regarding compliance with conditions of approval, as well as a lack of adequate management oversight and security operations at the business that were resulting in health and safety concerns for patrons and surrounding properties.

Since February 2016, additional violations of the Conditions of Approval, Municipal Code and accusations of illegal activity have occurred on, or as a direct result of activities at the Hideaway Café, as outlined below.

FINDINGS

Pursuant to Section 19.730.090 of the Riverside Municipal Code, a Minor Conditional Use permit may be revoked by the Planning Commission if the Planning Commission finds any one, or more, of the following grounds:

- a) That a permit approval was obtained by fraud; or,
- b) That the permit granted is being or has been exercised contrary to the conditions of such permit or in violation of any applicable licenses, permits, regulations, laws, or ordinances; or,
- c) That the use for which the permit approval was granted is being or has been exercised as to be detrimental to the public health or safety or so to constitute a nuisance.

ANALYSIS

The following is a summary of activities associated with the operation of the business, including violations of the Conditions of Approval, the Riverside Municipal Code, and State and Federal laws, as well as Police and Code Enforcement activities that support the findings of fact to justify the revocation of the MCUP.

The Hideaway Café has a long standing history of violations of the Riverside Municipal Code and as a result of poor management and security practices, has resulted in extraordinary calls for service.

Violations of the Municipal Code (In Chronological Order):

In October 2011, the Code Enforcement Division issued a Notice of Violation in response to a complaint about an unpermitted Night Club (CE-11-12856). In November 2011, the Fire Department issued a citation for exceeding the occupancy limits while Code Enforcement issued a citation for banners advertising a Live Murder Mystery Dinner Theater Show (entertainment) without a conditional use permit. By March 2012, the owner discontinued the nightclub activity and the Code Enforcement Case was closed.

In September 2013, a new Code Enforcement Case (CE-13-08746) was opened due to complaints received regarding unpermitted entertainment (DJ) and outdoor amplified speakers and a Notice of Violation was issued. In December 2013, a follow-up to the complaint resulted in a second Notice of Violation for construction of an unpermitted outdoor patio and entertainment. In January 2014, the Code Enforcement Case was closed as a permit was obtained to legalize the patio and the unpermitted entertainment had ceased.

In January 2015, a new Code Enforcement Case (CE-15-00477) was opened in response to unpermitted entertainment as well as a recent shooting in connection with the business. A Courtesy Notice of Violation was issued. In February 2015, the business owners met with City staff and confirmed that the entertainment has ended and the case was closed. Six months later, August 2015, a complaint was received about unpermitted entertainment and the case was reopened.

In September 2015, the Zoning Administrator reviewed and approved Planning Case P15-0255, a Minor Conditional Use Permit to legalize entertainment at the Hideaway Café. In conjunction

with this approval, 94 conditions of approval were added in an attempt to ensure future entertainment would not be detrimental to the general public.

In December 2015, the Code Enforcement Division issued a citation for failure to comply with several conditions of approval related to the offering and advertising of alcoholic drink specials (Conditions 12 and 56).

In February 2016, the Code Enforcement Division issued a Courtesy Notice of Violation for a number of fliers on the sidewalk advertising Hideaway including drink specials on Thursday (a night with entertainment in violation of conditions 29 and 67). The following week, an Administrative Citation was issued for offering drink specials and handing out fliers in adjacent parking garage in violation of Condition 29.

Extraordinary Calls for Service:

In addition to the violations to Title 19 – Zoning Code above, the Hideaway has resulted in an extraordinary call for police services. From January 1, 2014 through March 29, 2016, 97 calls for police services were requested for this location with 25 resulting in reports. A majority of the calls are related to public drunkenness and fights involving patrons of the Hideaway Café while several included the furnishing or discharge of a firearm. Some of the notable calls (in chronological order) include:

April 3, 2015 - The reporting party advised they witnessed a Hideaway security guard being very aggressive when throwing a patron out. As a result, the patron hit her head on the pavement. The reporting party and victim were gone prior to police arriving.

April 3, 2015 - During a bar check inside the location, officers observed a bar patron attempt to hide a bag. The suspect was determined to be under the influence and during a search of the bag, a hypodermic syringe, shaved ignition key and two bindles of methamphetamine were found.

April 26, 2015 - The victim, a former employee of the Hideaway, saw one of the Hideaway security guards flirting with a girl. Later, she walked up to the security guard and made fun of him for flirting with a girl while he is married. He grabbed her and pushed her to the ground and she kicked him in the leg. He placed her arms behind her and pushed her up the stairs and once outside the doors, pushed her hard enough that she fell face first on the concrete.

October 23, 2015 - Police responded to a call reference a large group fighting to the front of the Hideaway. The reporting party observed a male with a handgun in his waistband. The reporting party left the location and was not available for further details.

November 14, 2015 - A victim reported her cell phone was taken from her by force while she was in the Hideaway. During a search, one of the robbery suspects had a loaded handgun in her boot. Security footage revealed one of the Hideaway security guards approached the suspects after they committed the crime and left the location, and gave one of the suspects a hug.

November 15, 2015 - Officers were dispatched to a man with a gun call to the front of the Hideaway. Officers arrived and observed a group of 5-7 people standing around a vehicle. The officers told everyone to stay where they were and a suspect fled on foot. Officers detained the suspect a block away and found a loaded handgun in his waistband. When officers returned to the front of the Hideaway, they found two additional handguns under the vehicle the group was standing around.

January 21, 2016 - Police contacted an individual who told them he threw a bottle at a Hideaway security guard then fled the location. Two Hideaway security guards chased him around the corner on Orange Street between Mission Inn Avenue and University Avenue, striking him several times before taking a photo of him and telling him not to return. He refused to press charges. A witness watched both security guards grab him, throw him to the ground and kick him multiple times in the body and head.

February 5, 2016 - Lieutenant Bruce Blomdahl found 50-70 flyers on the sidewalk in front of the Hideaway advertising drink specials on Thursday nights.

February 12, 2016 - A female wearing a "Hideaway" shirt was standing on the sidewalk of Orange Street between Mission Inn Avenue and University Avenue passing out red tickets and informing people they could receive any drink at the Hideaway for \$2.

February 28, 2016 - Police responded in reference to several groups fighting each other to the front of the Hideaway. Officers observed a subject being dragged from the Hideaway by security staff. They told officers that the subject was "talking smack" before someone knocked him out.

March 19, 2016 - Two subjects walked past the Hideaway and one subject produced a handgun and fired toward the group to the front of the Hideaway. No security from the Hideaway called the police. When contacted by police, Hideaway Security said they heard the gunfire and ran inside the bar. Because no one was hurt, they thought the gunfire was from a "blank" gun. Detective follow-up revealed that city security cameras in the area showed several Hideaway security guards chasing the subject, who fired the gun shots, down the Main Street Mall.

May 29, 2016 - Officers responded to a "shots fired" call in the parking garage located at 3743 Orange St (Garage 1). Several subjects were detained and the investigation over the next few days revealed that two groups of subjects were inside the Hideaway bar during the evening. One group became involved in a physical altercation with a non-related group and left the location. Once in the parking garage, their vehicle struck another vehicle. That group of subjects had also just left the hideaway. A verbal altercation occurred and one subject produced a handgun and fired several shots towards the other vehicle. No one was struck with gunfire. Police have confirmed by Hideaway's video and CDL scanner that both groups of subjects were inside the location prior to the incident.

June 26, 2016 - Officers respond to a subject with a gun. After a felony stop was done, a consent search of the vehicle revealed a loaded revolver. The investigation revealed the occupants of the vehicle were attending the Hideaway Café where one of the occupants brandished a firearm at Hideaway Security.

Suspected Illegal Activity within or resulting from the Hideaway Café

Between March 17, 2016 and May 12, 2016, the City of Riverside Police Department conducted a long-term joint undercover operation between the Vice Unit and the Narcotics Unit of the Riverside Police Department in response to the alleged sale of illegal drugs inside the Hideaway Café using a confidential reliable informant (CRI) and police officer acting in an undercover capacity (UC). Below is a summary of the Memorandums received from the Police Department (Exhibit 2):

On March 17, 2016, the CRI and UC negotiate the purchase of 3.5 grams of methamphetamine from an employee working behind the bar (Hideaway Employee). However, the transaction was not completed as it extended beyond the predetermined end time of the operation.

On March 24, 2016, the CRI made contract with the Hideaway Employee who arranged for the CRI to meet with an associate (Seller) who negotiated and completed the sale of 3.5 grams of methamphetamine in the restroom of the Hideaway Café.

On April 7, 2016, the CRI and UC made contact with the Hideaway Employee who again arranged for the CRI and UC to meet with the Seller who negotiated and completed the sale of 3.5 grams of methamphetamine on the patio outside the Hideaway Café.

On April 21, 2016, the CRI and UC contacted the Hideaway Employee who attempted to arrange for the sale of methamphetamine; however, was unable to make contact with his supplier and no deal was done.

On May 11, 2016, the CRI and UC attempted to make contact with the Hideaway Employee; however, were informed that the Hideaway Employee was off that night. A separate subject, who was working as the DJ (Hideaway DJ), was contacted and the CRI was able to negotiate and complete the sale of 1 gram of marijuana. Around the same time, the Hideaway Employee arrived and contacted the CRI and UC. The Hideaway Employee make a phone call to his Seller who met the CRI and UC to negotiation and complete the sale of 3.5 grams of methamphetamine.

This case was presented to the Riverside County District Attorney's Office and both the Hideaway Employee and Seller, who has sold drugs on three separate occasions, will be charged for the sale of narcotics while the Hideaway DJ will be charges with the sale of marijuana.

This information is provided to show a pattern of activity within the Hideaway Café and is not intended to provide proof of guilt, as determined by the Courts.

Violation of Conditions of Approval: The following table provides a list of the conditions of approval have been violated by the business:

Condition Number	Reason for Non-Compliance
29. The posting of flyers and other propaganda within the outdoor areas of the project site and/or adjacent public and private property, including vehicles, shall be strictly prohibited.	In February 2016, the establishment was cited for passing out fliers for drink specials.
32. The owner and/or occupant shall be liable for the cost of excessive police service or response in accordance with Chapter 9.60 of the Riverside Municipal Code. Should there be three or more verified complaints or service calls related to the operations of indoor shooting range [restaurant] within any six month period, the use shall be automatically scheduled for a revocation hearing before the City Planning Commission.	Although the condition erroneously refers to a shooting range, the condition is applicable to the restaurant. From January 1, 2014 through March 19, 2016, there have been 97 calls for service with 25 reports taken.
35. The applicant shall comply with all federal, state and local laws and shall cooperate with the Riverside Police Department (RPD) in the enforcement of all laws relating to this permit. Material violation, as determined by the City Planning Commission, of any laws in connection with this use or failure to cooperate with RPD will be cause for revocation	As noted in this staff report, the entertainment use has been operated contrary to local laws and regulations.

of this permit.	
37. The applicant herein of the business subject to this conditional use permit acknowledges all of the conditions imposed and accepts this permit subject to those conditions and with the full awareness of the provisions of Title 19 of the Riverside Municipal Code. The applicant shall inform all its employees and future operators of the business subject to this permit of the restrictions and conditions of this permit as they apply to the business operations.	As noted in this staff report, the entertainment use has been operating contrary to the conditions of approval.
38. This project shall fully and continually comply with all applicable conditions of approval, State, Federal and local laws in effect at the time the permit is approved and exercised and which may become effective and applicable thereafter, and in accordance with the terms contained within the staff report and all testimony regarding this case. Failure to do so will be grounds for Code Enforcement action, revocation or further legal action.	As noted in this staff report, the entertainment use has been operated contrary to local laws and regulations.
55. "Happy Hour" in the restaurant shall not be made available past 7:00 p.m., and no alcohol sales shall be permitted after 1:30 am.	The establishment has been cited for passing out fliers for drink specials.
56. No alcohol specials shall be permitted, i.e. \$1 drink nights (or other reduced price drinks), or events allowing patrons under 21.	The establishment has been cited for passing out fliers for drink specials.
66. The licensee shall be responsible for maintaining the area adjacent to the premises of which they have control and ensuring it is free of litter and graffiti.	Drink fliers distributed throughout downtown, including the parking garages resulted in litter. Fights and altercations, as well as loitering, from patrons of restaurant result in an unsafe environment for surrounding properties.
77. Within 30 days of approval of this case by the City, the developer shall execute an agreement approved by the City Attorney's Office to defend, indemnify, including reimbursement, and hold harmless the City of Riverside, its agents, officers and employees from any claim, action, or proceeding against the City of Riverside, its agents, officers, or employees to attack, set aside, void, or annul, an approval by the City's advisory agency, appeal board, or legislative body concerning this approval, which action is brought within the time period provided for in Section 66499.37 of the Government Code. The City will promptly notify the developer of any such claim, action or proceeding and the City will cooperate in the defense of the proceeding.	The indemnification has not been executed and submitted to staff.

Based on the information provided in this report, staff believes there are adequate findings of fact to support the revocation of the MCUP due to the detrimental impacts this business has on the surrounding properties and Downtown neighborhood and a consistent record of violations of the municipal code, state and federal law, and conditions of approval. The Commission should note that this action would revoke the MCUP allowing "entertainment" associated with the restaurant. This would result in the prohibition of any live entertainment, DJ's, dance floor, or other "nightclub-like" operations. The revocation of this MCUP would not prohibit the sales of alcoholic beverages in association with a bona-fide eating place because a restaurant with sale of beer and wine is permitted by right in the Downtown Specific Plan, when no entertainment is associated with the use.

ENVIRONMENTAL REVIEW

This proposal is categorically exempt from California Environmental Quality Act (CEQA) review pursuant to Section 15321, Enforcement Actions by Regulatory Agencies.

PUBLIC NOTICE AND COMMENTS

Pursuant to Section 19.730.090 – Review for Compliance and Revocation, public hearing notices were mailed to property owners within 300 feet of the site. As of the writing of this report, no responses have been received by Planning Staff.

VOTE REQUIREMENT

Each decision by the Planning Commission to revoke a minor conditional use permit shall be by a formal and numbered resolution adopted by the affirmative votes of at least two-thirds of the membership of the Planning Commission, such membership being based upon membership present and voting. §19.730.090B4

TIME LIMITS ON REAPPLICATION AND APPEAL INFORMATION

No new application for the same or similar request may be accepted within one year of the date of the action to revoke the Minor Conditional Use Permit, unless the Community Development Director, his/her designee or Zoning Administrator as appropriate determines that a new application is warranted due to a substantial change in land use on properties in the vicinity, improved infrastructure in the vicinity, altered traffic patterns, or any such similar change resulting in a changed physical environment.

Actions by the City Planning Commission may be appealed to the City Council within ten calendar days after the decision. Appeal filing and processing information may be obtained from the Community Development Department, Planning Division, Public Information Section, 3rd Floor, City Hall.

EXHIBITS LIST

1. Riverside Police Department Memo Dated April 27, 2016
2. Riverside Police Department Memo Dated May 31, 2016
3. Riverside Police Department Memo Dated June 29, 2016
4. Code Enforcement Memo Dated May 11, 2016
5. Recommended Revised Conditions of Approval (P15-0255) should the Planning Commission choose not to Revoke Minor Conditional Use Permit P15-0255.
6. Minor Conditional Use Permit P15-0255 Staff Report and Conditions of Approval
7. February 10, 2016 letter from Planning Division to Owner to discuss 6-month review
8. June 16, 2016 letter from Planning Division to Owner regarding revocation or modification hearing
9. Aerial Photo
10. Planning Commission Resolution

Report and Recommendations Prepared by:
Report and Recommendations Reviewed by:
Report and Recommendations Approved by:

Travis Randel, Principal Planner
Ted White, City Planner
Rafael Guzman,
Community & Economic Development
Director