



CITY MANAGER

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TO: City Council

FROM: Steve Lemmon, Rialto Theater Manager and Justine Bruno, Assistant to the City Manager

VIA: Steve Adams, City Manager and Rod Wensing, Deputy City Manager

DATE: June 12, 2018

SUBJECT: Rez Church Rental of the Rialto Theater

Overview

In response to the questions, concerns, and comments from the community and City Council regarding the negotiations for the rental of the Rialto Theater by Rez Church (Rez), staff has prepared this memo. In the week following this memo, a brief fact sheet will be created for City Council, staff, and the Cultural Services Board to use when responding to any subsequent inquiries from the public.

History

Rez Church approached City of Loveland staff on January 2, 2018, to discuss a potential long-term rental agreement of the Rialto Theater; conversations began in January and are still underway. To-date, five meetings between Rez and the City have occurred regarding the rental of the Rialto. The rental agreement is still being negotiated and is subject to changes.

The mission of the Rialto Theater is to serve as a center for the cultural arts, enriching the community by offering the opportunity for all ages and backgrounds to experience high quality, diverse, affordable performing arts, films and educational activities. It is the viewpoint of the Rialto staff that the proposed rental agreement with Rez Church is not incompatible with the Rialto Theater's mission.

Rental Agreement

The draft rental agreement proposes times for rentals, fees, insurance requirements, black-out dates, cleaning and janitorial needs, waste disposal, signage, security, donation of a sound system, staff training, parking, responsible parties, outreach to the downtown business owners, and so forth. The rental agreement was drafted by the Cultural Services Department and has been reviewed by the City Manager's Office, the City Attorney's Office, and Cultural Services Department staff.

The term of the rental is proposed for one-year and allows for annual renewals. The proposed rental is to occur on Sundays, from 6:00 am to 2:00 pm. One Loveland Police Officer will provide security each Sunday as well as two Cultural Services staff members will be present to oversee and assist as needed; all Officers and Cultural Services staff will be paid for by Rez.

Standard contract language regarding comprehensive general liability insurance is included as well as worker's compensation insurance. Termination provisions have been included that allow the City to terminate without cause, providing Rez with 30-days' notice. Termination for cause whereas Rez does not fulfill obligations specified within the agreement allows the City to pursue immediate termination upon written notice.

Financial Impact

Under the current fee structure for facility rentals, Rez's rental of the Rialto is expected to generate revenue totaling \$54,725. In addition to the direct rental revenue, Rez has committed to upgrading the Rialto's sound system and donating it to the City, with an estimated value of up to \$30,000. From 2015-2017, the average annual cost recovery rate for the Rialto Theater is slightly over 40%, with the annual General Fund subsidy averaging around 60%. Revenue generated from the Rez rental would have reduced the General Fund subsidy by about 11% in 2017.

Existing Policy – Setting Precedent

There is no formal policy governing the rental of the Rialto Theater. Additionally, there is no universal, city-wide policy regarding rentable City facilities. The rental of City facilities available to the public and the related regulations is delegated to the City Manager and applicable Department Director. Individual Departments with rental agreements include Cultural Services (Rialto and Museum), Parks and Recreation, the Library, and the Facilities Department.

The Rialto Theater uses a standard rental agreement to facilitate the use of the Theater. Every executed rental agreement and renter is bound to the terms outlined in the established 'Rialto Theater Center Rental Agreement – Theater' (see attached). This agreement outlines fees, deposits, ticketing, promotions, merchandise, concessions, insurance, liability, damage, cancellation/termination, and explicit parameters for use of the theatre (noise, recording, storage, etc.), amongst other conditions.

No provision in the rental agreement language limits or prescribes a maximum number of rental periods by one entity or renter. No provision in the rental agreement language limits consecutive rentals by one entity. Historically, consecutive rentals and length of rentals have not presented a challenge, so there has been no need to address this through the rental agreement. Any singular rental agreement does not constitute or set a precedent, as in the instance of case law in common law legal systems.

Public Outreach

The Cultural Services Board held its regularly scheduled meeting on May 22, 2018, and included in that meeting discussion of the potential rental agreement. Assistant City Attorney, Claire Havelda was present at this meeting to establish appropriate discussion guidelines in

regards to the Rialto's proposed rental to the Rez. The Assistant City Attorney emphasized that the City must remain neutral and respectful in its contract negotiations with all groups.

The Cultural Services Board is an advisory body to the City Council and provided their opinions, questions, and general sentiments on the rentals. This meeting had roughly 40- 50 community members in attendance and resulted in sentiments in both support and against Resurrection Church's rental of the Rialto. While the input of those present is valuable, all contracts the City makes are in compliance with applicable laws regarding neutrality.

Outreach has been conducted to major renters of the Rialto, especially those that have historically requested Sunday rentals. These groups include the Loveland Choral Society, the Loveland Opera Theatre, Berthoud Dance, and Moon Theatre. The potential 8 'blackout' dates in the draft agreement with Rez are being proposed to accommodate the rental needs of all the groups above (except Moon Theatre who agrees to move their rental start time to 4 pm to allow the Rez also to rent the Rialto on their performance date.)

Utilization and Timeframe

Rez is proposing to rent the Rialto for eight (8) hours each Sunday, for 44 Sundays' out of the year. The rental periods requested by Rez results in a Theater utilization rate of approximately 9%. Based on Theater data, rentals typically occur from the hours of 12:00 pm to 12:00 am. It should be noted that the Rialto Theater does not rent on Mondays, so there is no impact on the day following the Sunday rentals.

Historically, there have been eight (8) renters that have sought to use the Rialto on Sundays within the past three years; those groups include Loveland Choral Society, Loveland Opera Theatre, Berthoud Dance, Moon Theatre, Colorado Jazz Repertory Orchestra, Kiwanis, Sandstone Entertainment, and George Gray. Of these groups, four typically pursue multi-day rentals.

It is anticipated that Rez will occupy the Rialto for rehearsals on August 19th and August 26th, with the first rental period and contracted term beginning September 9, 2018.

Legal Review

It is permissible for the Rialto to be leased to religious groups so long as all groups are given equal opportunity to request and receive access to the Theater. Exclusion of Rez from leasing the Rialto based on its religious character could potentially raise legal concerns.

Developing, negotiating, and executing a rental agreement for City facilities is an administrative item. The City is always receptive and accepting of public comment on any City activity; however, in the absence of any legal concern, staff will pursue agreements as allowed under their rental contracts.

Next Steps

The Rialto Theater has historically been in a position where rental capacity has far exceeded demand. As those demands shift, staff recognizes that more clarity with the existing Rental

Agreement for the Rialto Theater is needed and staff will begin working to create further specifications, which will provide more clarity around how rentals are processed.

Based on a statement made by one of the pastors regarding the rental of the Rialto, a reporter from the Reporter-Herald has asked the City the following question. So that City Council is fully aware of both the question and Cultural Services staff's answer, we have set them forth below.

Has the Rialto declined long-term rentals by Churches or other organizations in the past?

The Rialto has an open door policy of licensing use of its building to all interested parties as long as there is calendar availability, adequate staffing, and completed contracts with deposits. The Rialto has a history of multi-day rentals with various entities. For example, Loveland Choral Society does up to four rentals per year that includes approximately 21 days annually.

In 2008, Grace Place in Berthoud approached the Rialto Theater to propose an annual licensing use of the theater for Sunday services. After careful consideration, the City of Loveland and the Theater Manager declined the offer due to the Rialto's inability to add staffing and calendar availability at the time. The current Rez Church proposal includes payment for all costs associated with hiring additional staff and an agreement to vacate the Rialto on those Sundays rented by other entities. These two provisions make this rental possible. In addition, there have already been a number of single event rentals by local churches.

Regarding other organizations there have been potential renters who have not returned contracts or deposits, or who have bounced deposit checks which have resulted in no rental agreement being finalized. However, there are no records of these requests since no rental agreement was finalized. Additionally, there have been requests for dates that are already booked, which has resulted in our telling a potential renter their date is not available. In this scenario, we work to find additional dates that may work for all involved. We do everything in our power to rent the Rialto to all comers.

For any further clarification or questions, please don't hesitate to contact me at Steve.Lemmon@cityofloveland.org or 970-962-2421

Thank you,

Steve Lemmon
Rialto Theater Manager

Attachments:

Rialto Theater Center Rental Agreement – Theater