

CITY OF AURORA, ILLINOIS  
RESOLUTION NO. R08-375  
DATE OF PASSAGE August 12, 2008

**RESOLUTION APPROVING A SALES TAX REVENUE  
SHARING AGREEMENT WITH MIKE AND DENISE'S PIZZERIA & PUB**

WHEREAS, the City of Aurora has a population of more than 25,000 persons and is, therefore, a home rule unit under subsection (a) of Section 6 of Article VII of the Illinois Constitution of 1970; and

WHEREAS, subject to said Section, a home rule unit may exercise any power and perform any function pertaining to its government and affairs for the protection of the public health, safety, morals and welfare; and

WHEREAS, the City of Aurora is desirous of stimulating investment in commercial property to enhance the City's revenue base and generate sales and property tax revenues to support city services; and

WHEREAS, Mike and Denise's Pizzeria & Pub has requested City assistance in the form of certain sales tax revenue sharing upon improvement of its business at 1760 North Farnsworth, in the City of Aurora; and

WHEREAS, it is necessary and desirable for the City to provide certain sales tax revenue sharing assistance for the improvement of Mike and Denise's Pizzeria & Pub at 1760 North Farnsworth in the City of Aurora; and

WHEREAS, the Sales Tax Revenue Sharing Agreement with Mike and Denise's, Pizzeria & Pub the subject hereof, is intended to encourage interior and exterior improvements to its business in the City of Aurora.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Aurora, Illinois, that the Sales Tax Revenue Sharing Agreement with Mike and Denise's Pizzeria & Pub a copy of which is attached hereto, be and is hereby approved, and that the Mayor and City Clerk be and are hereby authorized to execute same.

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**RESOLUTION APROVING A SALES TAX REVENUE  
SHARING AGREEMENT WITH MIKE AND DENISE'S PIZZERIA & PUB**

PASSED AND APPROVED by the City Council of the City of Aurora on

[Signature]  
Mary Donza  
Alderman

[Signature]  
Aldermen

[Signature]  
Michael B. Sautelle  
[Signature]  
[Signature]  
[Signature]  
[Signature]  
Aldermen

AYES 10 NAYS 0 ABSTENTIONS  
~~ABSENT~~ 1

ATTEST:

[Signature]  
City Clerk

[Signature]  
Mayor

City of Aurora  
Law Department  
44 East Downer Place  
Aurora, Illinois 60507  
(630) 844-4737 Phone  
(630) 844-4737 Fax

**SALES TAX REVENUE SHARING AGREEMENT**

This Agreement is entered into on this 12<sup>th</sup> day of August, 2008 by and between the City of Aurora, Illinois, an Illinois Municipal Corporation (hereinafter referred to as the "City"); and Attitudes Restaurant and Bar, an Illinois Corporation d/b/a Mike & Denise's Pizzeria & Pub (Business Owner), Demike, Inc., an Illinois Corporation (Property owner of the premises where the Business is operated) and Mike Siddon and Denise Siddon, Sole Stockholders of said Corporations (Collectively referred to as "MIKE & DENISE'S");

**RECITALS**

A. The City is a home rule municipality and hereby enters into this Agreement pursuant to its home rule powers; and pursuant to Section 6 (a) of Article VII of the Constitution of the State of Illinois of 1970, the City has determined that it has the authority to enter into this Agreement.

B. The City deems it to be of significant importance to encourage development and redevelopment within the City so as to maintain a viable real estate tax and sales tax base and employment opportunities.

C. MIKE & DENISE'S has operated the Business through the Corporate entity Attitudes for more than 15 years at 1760 N. Farnsworth Avenue, which property is owned by the corporate entity Demike, , which Business has demonstrated consistent growth and investment..

D. MIKE & DENISE'S is located within the City's development assistance targeted area and will employ between 16-20 full and part-time workers.

E. For purposes of this Agreement, the use of the terms "Food and Beverage Tax" and "Food and Beverage Taxes" shall be construed to refer to the net portion of Food and Beverage Taxes imposed by the City of Aurora on food and beverages sold within the City which are generated by MIKE & DENISE'S and paid to the City by MIKE & DENISE'S. The current city Food and Beverage Tax is (1.75%) of sales. In the event of an increase in the rate of this Tax, the amounts rebated shall remain at (1.75%) of sales.

G. Both MIKE & DENISE'S and the City acknowledge that MIKE & DENISE'S will require economic assistance from the City in order to re-invest in its current location.

NOW THEREFORE, in consideration of the foregoing Recitals and the mutual covenants and agreement herein made, the parties hereby agree as follows:

**ARTICLE I**  
**RECITALS AS PART OF AGREEMENT**

The Parties acknowledge that the statements and representations contained in the foregoing recitals are true and accurate and incorporate such recitals into this Agreement as if fully set forth in this Article I.

**ARTICLE II**  
**OBLIGATIONS OF MIKE & DENISE'S**  
**CONDITION PRECEDENT TO CITY UNDERTAKINGS**

2.01 Condition Precedent. Each of the obligations specified in this Article II shall be deemed as a condition precedent to all of the financial undertakings on the part of the City pursuant to this Agreement. Each of the obligations required to be performed hereunder may be the personal undertakings of either of the Corporate entities and/or the individual stockholders, all of whom agree that all said undertakings shall be the collective and personal undertakings of all signatories to this Agreement and each corporate entity and the individual stockholders agree to guarantee the full performance of all of the undertakings required by this agreement including the obligation of repayment in the event of defaults as set forth in this Agreement. The City shall have no financial obligation until the satisfaction by MIKE & DENISE'S of each and every requirement of this Article II, on or before any date which may be specified herein.

2.02 Redevelopment of Family Dining Area, expanded and improved main entry and waiting area. Expand dining area with a east patio. Improve roof, HVAC, and electrical. Improve the east and north side of the building including new windows and doors. and Upgrade of Outdoor Signage, landscaping, and drives. On or before December 31, 2008, MIKE & DENISE'S shall have acquired an occupancy permit evidenced by a certified copy of said permit being submitted to the City showing that MIKE & DENISE'S shall have built and opened for business an approximately 2,500 square foot dining area; completed its improvements all as approved by the City. (Said work to be referred to herein as the "Project."). In the event MIKE & DENISE'S fails to

Mike & Denise's Pizzeria & Pub  
SLJ/kb 8/3/07

complete the aforesaid requirements in the time as stated, this Agreement shall be null and void and the City shall have no obligation hereunder.

2.03 Build Out and Occupancy. In order to receive the financial benefits provided for in this Agreement, MIKE & DENISE'S must acquire a building permit for the property on or before October 1, 2008 and complete the Project by December 31, 2008 and receive an occupancy permit and approval of all work on the Project by the City of Aurora on or before said date, subject to the force majeure provisions of Paragraph 4.01. All redevelopment projects shall be completed and upgraded in accordance with all City approvals and all applicable ordinances, rules and regulations of the City. MIKE & DENISE'S shall not cause or permit the existence of any violation of City ordinances, including but not limited to, the Building Code, Zoning Ordinance, Fire Code and all rules and regulations thereunder on any of the Property which it owns and controls.

2.04 Sales Tax Information. MIKE & DENISE'S shall supply the City with copies of Sales Tax information to and at the request of the City's Director of Finance. MIKE & DENISE'S represents and warrants that all such information produced to the City pursuant to this provision and the further provisions of this Agreement are and will be at all times in the future true and accurate and agrees that the City may and for the purposes of this Agreement, does rely on the truth and accuracy of said information as a basis for its entering into this Agreement.

2.05 Tax Reporting and Confidentiality. MIKE & DENISE'S hereby agrees to provide the City a written report of the total City food and beverage taxes generated by MIKE & DENISE'S for each calendar year of the Revenue Sharing Term, as hereinafter defined. Such report shall be certified as true by an officer of MIKE & DENISE'S and shall have attached thereto certified copies of all City food and beverage tax returns filed by MIKE & DENISE'S for the previous calendar year. MIKE & DENISE'S will deliver said report on or before the first day of May following the calendar year for which MIKE & DENISE'S is reporting. The City shall issue payment to MIKE & DENISE'S within 45 days of receipt of the required documentation and after the City receives all taxes due the City from MIKE & DENISE'S. Upon request the City shall have the right to audit MIKE & DENISE'S business records, including sales information, from time to time.

2.06 MIKE & DENISES agrees to allow full access to all books and records, including copies of all State Sales Tax Returns and other documents requested by the CITY from time to time. The CITY may audit the records of each corporation and the individual stockholders at its discretion. The City acknowledges that any and all information regarding MIKE & DENISE'S sales taxes should be kept confidential and used only for the purpose of calculating any amounts due and owing to MIKE & DENISE'S pursuant to this Agreement. The City acknowledges that MIKE & DENISE'S sales and sales tax information is proprietary and competitive. The City will take reasonable steps to ensure that this information remains confidential. In the event that the City receives a request for disclosure pursuant to the Freedom of Information Act or otherwise, the City will notify MIKE & DENISE'S and if MIKE & DENISES'S objects to the City releasing said information, MIKE & DENISE'S agrees to indemnify

Mike & Denise's Pizzeria & Pub  
SLJ/kb 8/3/07

and hold the City harmless for, including paying the City's attorney fees and court costs, all costs incurred in defending any objection to releasing said information. .

2.07 MIKE & DENISE'S Guaranteed Term for Occupancy of the Property.

MIKE & DENISE'S agrees that if any more than one percent of the business at 1760 N. Farnsworth in the City is sold to another party within ten (10) years from commencement date as set forth in section 3.02, it shall be a violation of this Agreement and Mike and Denise will be subject to repayment to the City as set forth in Section 4.04 B hereto.

2.08 Real Estate Taxes and Other Charges. MIKE & DENISE'S hereby covenants and agrees to promptly pay or cause to be paid before becoming delinquent, subject to any appeal rights, any and all real estate taxes and governmental charges of general applicability that may at any time be lawfully finally assessed with respect to the Project and any portion of the Property which is owned and controlled.

**ARTICLE III**  
**CITY OBLIGATIONS AND UNDERTAKINGS**

3.01 Economic Assistance. Upon satisfaction by MIKE & DENISE'S of all of the conditions stated in Article II hereof, the City, relying on the representations and warranties of MIKE & DENISE'S, in order to make this Project economically viable, shall help to defray MIKE & DENISE'S Project costs by rebating certain payments to MIKE & DENISE'S, solely from the City's Food and Beverage Tax paid to the City by MIKE & DENISE'S less any prompt payment discounts allowed.. Said payments shall be made by the City to MIKE & DENISE'S for a period of seven (7) years or until the total of \$122,500.00 has been rebated, whichever event first occurs (the "Revenue Sharing Term"). Said payments to begin with the Commencement Date, as hereinafter



defined. The annual payments to MIKE & DENISE'S by the City shall be subject to all of the terms and conditions contained herein.

3.02 Commencement Date; Revenue Sharing Term. The commencement date shall be after MIKE & DENISE'S gives the City of Aurora a sixty (60) day notice stating that it has satisfied all of the conditions of Article II of this Agreement, and that it is electing to commence the Revenue Sharing Term. The notice shall specify the commencement date (the "Commencement Date") as the next following January 1.

#### **ARTICLE IV** **GENERAL PROVISIONS**

4.01 Delay and Force Majeure. For the purposes of any of the provisions of this Agreement, neither the City nor MIKE & DENISE'S, as the case may be, nor any successor in interest, shall be considered in breach of, or default in, its obligations under this Agreement in the event of any delay caused by damage or destruction by fire or other casualty, shortage of material, unusually adverse weather conditions such as, by way of illustration and not limitation, severe rain or storms or below freezing temperatures of abnormal degree or quantity for an abnormal duration, tornadoes and other events or conditions beyond the reasonable control of the Party affected which in fact interfere with the ability of such Party to discharge its respective obligations hereunder.

4.02 Assignment of Agreement. The right to receive payments from the City is personal to MIKE & DENISE'S in consideration of its' lease and build out and maintaining its business in the leased premises in the City for a period of at least fifteen (15) years from the commencement date. Any payments due to MIKE & DENISE'S from the City are not assignable.

4.03 MIKE & DENISE'S Authority. MIKE & DENISE'S hereby represents and warrants that it is and at all times that it receives payments from the City it will maintain the Corporate entities authorization to do business in and said corporate entities will be maintained in good standing with the State of Illinois. MIKE & DENISE'S further represents and warrants that all corporate action necessary to make MIKE & DENISE'S obligations hereunder enforceable against MIKE & DENISE'S have been taken, no further approvals or actions are required.

4.04 Defaults; Remedies.

- (A) In the event of any default under or violation of this Agreement, the party not in default or violation shall serve written notice upon the party in default or violation, which notice shall be in writing and shall specify the particular violation nor default. Each Party shall have the right to cure any violation of this Agreement or default within 30 days from written notice of such default. In the event of default by the City of its obligations to MIKE & DENISE'S provided for in Article III, MIKE & DENISE'S sole and exclusive remedy shall be to seek specific performance from a court of competent jurisdiction.
- (B) In the event that MIKE & DENISE'S fails to keep its business at 1760 North Farnsworth in the City of Aurora for a minimum of ten (10) years as provided in Section 2.07, the City shall have the following additional remedies:

Mike & Denise's Pizzeria & Pub  
SLJ/kb 8/3/07

If MIKE & DENISE'S fails to maintain its business within the City, at the current address the City shall be repaid any sums paid to Mike and Denise's pursuant to this agreement according to the following schedule;

Less than 5 years...one hundred (100%) percent  
Six (6) years...fifty (50%) percent  
Seven (7) years...forty (40%) percent  
Eight (8) years...thirty (30%) percent  
Nine (9) years...twenty (20%) percent  
Ten (10) years...ten (10%) percent

4.05 Notices. All notices and requests required pursuant to this Agreement shall be sent certified mail as follows:

To MIKE & DENISE'S: 1760 N. Farnsworth Avenue  
Aurora, Illinois 60505

To the City: City Clerk  
City of Aurora  
44 East Downer Place  
Aurora, Illinois 60507

with copies to: Corporation Counsel  
City of Aurora  
44 East Downer Place  
Aurora, Illinois 60507

or at such other addresses as the parties may indicate in writing to the other either by personal or overnight delivery or by certified or registered mail, return receipt requested, with proof of delivery thereof.

4.06 Law Governing. This Agreement shall be construed and enforced in accordance with the laws of the State of Illinois. Venue for any legal action brought by either party as a result of entering into the Agreement shall be in State Court in Kane County, Illinois.

4.07 Time. Time is of the essence under this Agreement and all time limits set forth mandatory and cannot be waived except by a lawfully authorized and executed written waiver by the party excusing such timely performance.

4.08 Limitation of Liability. Notwithstanding anything herein contained to the contrary by implication or otherwise, any obligations of the City created by or arising out of this Agreement shall not be a general debt of the City or a charge against its general credit or taxing powers, but shall be a limited obligation payable solely out of the MIKE & DENISE'S food and beverage taxes as set forth in Article III, and shall further be limited to the actual sum of money paid by MIKE & DENISE'S to the City on those taxes.

4.09 No Waiver or Relinquishment of Right to Enforce Agreement. Failure of any party to this Agreement to insist upon the strict and prompt performance of the terms covenants, agreements, and conditions herein contained, or any of them, upon any other party imposed, shall not constitute or be construed as a wavier or relinquishment of any party's right thereafter to enforce any such term, covenant, agreement or condition, but the same shall continue in full force and effect.

4.10 Paragraph Headings and Subheadings. All paragraph headings or other headings in this Agreement are for the general aid of the reader and shall not limit the plain meaning or application of any of the provisions thereunder whether covered or relevant to such heading or not.

4.11 Authorization to Execute. The Agents of MIKE & DENISE'S who have executed this Agreement warrant that they respectively have been lawfully authorized by MIKE & DENISE'S to execute this Agreement. The Mayor and City Clerk of the City hereby warrant that they have been lawfully authorized by the City Council to execute this Agreement.

4.12 Amendment. This Agreement sets forth all the promises, inducements, agreements, conditions and understandings between MIKE & DENISE'S and the City relative to the subject matter thereof. There are no promises, agreements, conditions or understandings, either oral or written, express or implied, between them, other than as herein set forth. No subsequent alternation, amendment, change or addition to this Agreement shall be binding upon the parties hereto unless authorized in accordance with law and reduced in writing and signed by them.

4.13 Counterparts. This Agreement may be executed in two or more counterparts each of which taken together, shall constitute one and the same instrument.

4.14 Severability. If any provision of this Agreement is held invalid by a court of competent jurisdiction, such provision shall be deemed to be excised herefrom and the invalidity thereof shall not affect any of the other provisions contained herein.

Mike & Denise's Pizzeria & Pub  
SLJ/kb 8/3/07

Dated this 12<sup>th</sup> day of August, 2008.

Mike & Denise's Pizzeria & Pub

By: \_\_\_\_\_  
Its \_\_\_\_\_

Attest: \_\_\_\_\_

City of Aurora, a municipal corporation

By: Robert Protem  
Mayor Pro Tem

Attest: Cheryl M. Vorhoff  
City Clerk

**City of Aurora Law Department  
Committee Meeting and Referral Schedule**

**Committee Referral Summary**

**To:** Mayor Thomas J. Weisner

**From:** Mike Turner, City of Aurora Retail Consultant  
Via Review by John Banbury, Assistant Corporation Counsel  
And Brian Caputo, Assistant Director Finance

**Subject:** Resolution Approving a Food and Beverage Tax Agreement with Mike and Denise's, Inc.

**Purpose:** Mike and Denise's Inc. has asked for economic assistance in improving the interior and exterior of their restaurant portion of their business. A few years ago they spent a lot of money improving the parking lot for the business. They have interest in keeping the business at it's current location after the improvements are complete. They have had some outside interest in purchasing their building and business. I think that as we continue to improve Farnsworth Ave. this type of quality operator is always valuable to the process. Much of the exterior and interior will be removed and improved. Large windows in the front and a new entrance will be focal points to the project. I have an architect working with them to ensure that all the improvements are planned and executed properly. I agreed to ask the city council for a short-term food and beverage tax rebate.

**Discussion:** We have agreed on a food and beverage tax rebate (1.75%) for 7 years. This is only a portion of the total tax which will be generated by the store for the City of Aurora. Mike and Denise's will gross around \$1M this year in total sales. Therefore the rebate portion will be about \$17,500 per year or \$122,500 total for the seven years. The budget for the improvements is around \$400,000. And of course real estate taxes will be increased on an improved building.

**Recommendations:**

Place on the Finance Committee Calendar (07/22/08Agenda) for approval to City Council.

BW 7-17-08

F08.220

## RECOMMENDATION

TO: THE COMMITTEE OF THE WHOLE

FROM: THE FINANCE COMMITTEE

The Finance Committee at their Regular Finance Meeting on Tuesday, July 22, 2008

Recommended **APPROVAL** of A Resolution Approving A Sales Tax Revenue Sharing Agreement

With Mike And Denise's Pizzeria & Pub

The Vote 3-0

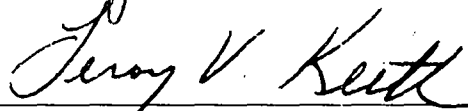
Alderman O'Connor (Excused Absent)

Submitted By

Alderman Robert O'Connor, Chairman



Alderman Abby Schuler, Acting Chairman



Alderman Leroy Keith



Alderman Scheketa Hart-Burns, Alternate,

Dated This 23rd Day Of July, 2008.





# City of Aurora

City Clerk's Office • 44 E. Downer Place • Aurora, Illinois 60507-2067 • (630) 844-3615  
FAX (630) 906-7431

Cheryl M. Vonhoff  
City Clerk

August 13, 2008

Attitudes Restaurant and Bar, Inc.  
d/b/a Mike & Denise's Pizzeria & Pub  
Attention: Mr. Michael Sidden  
1760 N. Farnsworth Avenue  
Aurora, IL 60505

RE: Sales Tax Revenue Sharing Agreement

Dear Mike:

I am forwarding you a copy of City of Aurora Resolution No. R08-375 that authorizes the above-referenced agreement for your restaurant. Also enclosed is the agreement that has been signed by Mayor Pro-tem O'Connor.

I would appreciate it if you would sign this agreement and return it to me for our files. If you have any questions, please give me a call.

Sincerely,

Cheryl M. Vonhoff  
City Clerk

Enclosure