



Legislation Text

File #: 22-0585, **Version:** 1

Recommendation to authorize City Manager, or designee, to execute all documents necessary for the Fourth Amendment to Lease No. 20968 with the C. and D. Hansen Revocable Trust to amend certain provisions of the Lease to reconcile rents deferred as a result of the directed temporary closure of the Leasehold due to the COVID-19 pandemic and subsequent Health Order for the Control of COVID-19 distancing directive. (District 3)

On August 8, 1989, the City Council authorized the execution of Lease No. 20968 (Lease) with James A. Brennan and Berton J. Simon (Original Tenant) and a sublease with Belmont Brewing Company, Inc. (Sublessee), for the use of approximately 1,600 square feet of City of Long Beach-owned (City) property located at the southern end of 39th Place (Attachment). The Lease allowed the Sublessee to use the City's property for outdoor seating (Patio) in connection with its adjacent brewpub operation, Belmont Brewing Company. Subsequent modifications to the Lease have included the expansion of the Patio area, term extensions, and various assignments of the leasehold interest. The current Lessee is C. and D. Hansen Revocable trust (Lessee), and the Patio currently totals 2,248 square feet, representing approximately 29.3 percent of Belmont Brewing Company's total restaurant operations, with the remainder comprised of indoor dining, kitchen, restrooms, etc.

The COVID-19 pandemic and the subsequent Health Order for the Control of COVID-19 distancing directive greatly impacted the restaurant and hospitality sectors in Long Beach. At the height of the COVID-19 surge in both March and November 2020, Long Beach restaurants were directed to close all indoor and outdoor dining for an extended period of time. This directive forced restaurants to pivot to take-out and delivery-only service models, which allowed them to continue to generate sales albeit at a significantly reduced capacity. During this time, the sales generated by the Lessee were directly attributed to their facilities and not the Patio portion leased from the City. The Patio, which generated no sales, was closed for 136 days in total.

The Lessee currently pays the City a Minimum Annual Rent (MAR) of \$42,692, which is comprised solely of a percentage of gross sales of food, beverages, and other items (Gross Sales) that accrue from June 1 through May 31 (MAR period), and is due and paid in 12 equal monthly installments of approximately \$3,558. In addition to MAR, on June 1 of each year, Lessee is required to make an additional Percentage Rent payment to account for any Gross Sales above the MAR (True Up). True Ups are due and typically collected in mid to late June for the preceding year and reconciled by City staff accordingly.

On March 24, 2020, the City Council adopted Ordinance No. 20-0010 (Ordinance), which allowed commercial tenants adversely impacted by COVID-19 to defer any rents due between March 4 and July 31, 2020. On May 31 and July 29, 2020, the City Council adopted

extensions to the Ordinance, and the deferment period was extended through September 30, 2020. On September 1, 2020, the County of Los Angeles Board of Supervisors expanded the County's own COVID-19 Tenant Protections Resolution (Resolution) to all incorporated cities, including Long Beach. The Resolution, which superseded the City's Ordinance, allows commercial tenants to continue any prior local rent deferment and defer any rents due between October 1, 2020, and January 30, 2022. In April of 2020, the Lessee was granted a deferral under the Ordinance, then under the Resolution, for rents due during the subsequent closures. To date, the Lessee has deferred MAR for the months of April, May, and December of 2020, and January of 2021, totaling \$14,231; and True Up payments for the MAR Periods ending in 2020 and 2021, totaling \$6,501.

The Lease is solely for the Lessee's Patio, which was closed for 136 days due to the COVID-19 pandemic. In addition, Lessee's MAR is predicated on 12 months of use of the Patio. Given that no Gross Sales were generated from the use of the Patio, adjustments to the MAR and Gross Sales for the months that the Patio was closed are appropriate in this instance. To that end, City staff have negotiated and recommends an Amendment to the Lease to facilitate a one-time proration of the MAR, an exclusion of Gross Sales for the periods during temporary closure of the Patio, and revised True Up payments for MAR Periods ending in 2020 and 2021.

The Fourth Amendment to the Lease will contain the following amended provisions:

- Landlord: City of Long Beach
- Tenant: C. and D. Hansen Revocable Trust
- Prorated Minimum Annual Rent ("MAR"): To account for the directed temporary closure of the Patio, MAR will be prorated to \$34,099 for the MAR Period ending on May 31, 2020, and \$35,541 for the MAR Period ending on May 31, 2021.
- Gross Sales Exclusions: Any Gross Sales generated during the directed temporary closure of the Lessee's Patio shall be excluded from True Up calculations for the MAR Periods ending on May 31, 2020, and May 31, 2021.

This matter was reviewed by Principal Deputy City Attorney Richard F. Anthony on April 29, 2022 and by Budget Operations and Development Officer Rhutu Amin Gharib on May 4, 2022.

City Council action is requested on May 24, 2022, to execute any necessary documents to facilitate the execution of the proposed Fourth Amendment to the Lease.

The recommended action will retroactively reduce the MAR for the periods ending May 31, 2020 and May 31, 2021 in a combined gross amount totalling \$15,744. However, these reductions to the MAR will be partially offset by True Up payments for the same periods

totaling \$6,501. The result is a net reduction to revenues in FY 22 in the Tidelands Fund Group in the Economic Development Department in an amount of \$9,243.

This recommendation has no staffing impact beyond the normal budgeted scope of duties and is consistent with existing City Council priorities. There is no local job impact associated with this recommendation.

Approve recommendation.

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JOHNNY M. VALLEJO
ACTING DIRECTOR OF
ECONOMIC DEVELOPMENT

APPROVED:

THOMAS B. MODICA
CITY MANAGER