



Legislation Details (With Text)

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Title: CONSIDERATION OF AGREEMENT FOR LEASE OF
AIRSPACE WITH PIERSIDE PROPERTIES, LLC FOR
AIRSPACE OVER 51 PIER PLAZA (LORETO PLAZA)
(City Manager Suja Lowenthal and
City Attorney Michael Jenkins)

Sponsors:

Indexes:

Code sections:

Attachments: 1. Airspace Lease

Date	Ver.	Action By	Action	Result
5/14/2019	1	City Council		

**Honorable Mayor and Members of the Hermosa Beach City Council
Regular Meeting of May 14, 2019**

**CONSIDERATION OF AGREEMENT FOR LEASE OF
AIRSPACE WITH PIERSIDE PROPERTIES, LLC FOR
AIRSPACE OVER 51 PIER PLAZA (LORETO PLAZA)**

(City Manager Suja Lowenthal and
City Attorney Michael Jenkins)

Recommended Action:

Staff recommends that the City Council approve an Agreement for Lease of Airspace with Pierside Properties, LLC.

Background:

The City owns the parcel of property known as Loreto Plaza, which is an unimproved (except for planters and a statue), rectangular shaped (30' by 95' feet) parcel of land between 49 and 53 Pier Avenue (and informally known as 51 Pier Avenue). In 1975, the City granted an easement to Jack Wise, then owner of the properties adjoining Loreto Plaza to the east and west (49 and 53 Pier Avenue), for "pedestrian ingress and egress," over and across the property "together with the right to construct and maintain certain improvements on said property, including air-rights." Pursuant to this easement, Wise constructed walkways on the easterly and westerly sides of the buildings providing access to second story doorways and two open-air bridges across Loreto Plaza connecting 49 and 53 Pier Avenue at the second story.

In 1977, the City allowed outdoor dining on the northerly bridge by way of a conditional use permit. At that time, the bridge was not yet enclosed. In 1991, Jerry and Leslie Newton (Jack Wise's successors in interest) sought to enclose the bridge and the City accommodated that request by way of a CUP amendment and execution of a lease. The lease term was 10 years; the airspace rent was \$162.55 per month subject to annual CPI adjustments.

In 1999, the restaurant operator of Fat Face Fenner's Fishshack ("FFFF") sought permission to use the southerly unenclosed bridge for outdoor dining. The City required amendment to the existing CUP and issuance of an encroachment permit for the use and exacted an encroachment permit fee equal to that being charged for ground level outdoor dining on lower Pier Plaza. Initially, the encroachment fee was \$2/sq. ft., but in August, 2007, the Council increased the fee for businesses open after midnight to \$3/sq. ft. and after increases of \$1/yr. each for two successive years, to \$5/sq. ft., which is the current rate.

Jerry Newton approached the City in 2003, seeking an extension of the 1991 lease, which had expired in 2001. The Newtons had been continuing to pay rent under the lease from 2001 forward, but it was not until 2003 that the parties discussed extending the lease term. After some period of negotiation, the 1991 Newton lease was extended for five years from 2004 through 2009 and the monthly rental for the northerly bridge increased to \$2/sq. ft. or \$700/month. It is now \$763.45/month inclusive of CPI adjustments since 2004. The parties have been operating under the lease on a month-to-month basis since 2009.

Pierside Properties, Inc. acquired the 49 and 53 Pier Avenue buildings from the Newtons in August 2005. After 2008, Pierside and FFFF initiated efforts to negotiate a lease that would include both bridges. A draft lease was presented to the City Council on September 28, 2010, for rent of \$1,525/month. but the item was tabled due to objections from the owner of Fat Face Fenners. Subsequent lease negotiations were delayed due to litigation between Pierside and its tenant.

Analysis:

Negotiations over execution of a new lease have been on and off for several years, during which time the parties have been unable to agree on terms. Pierside has occupied the northerly bridge on a month-to-month basis during this time and its new tenant, Tower 12, has used the southerly bridge for outdoor dining pursuant to an encroachment permit, under which it has paid the standard encroachment fee. Negotiations renewed in mid-2018 and the parties have now come to terms.

The principal terms of the lease are as follows:

Lease payment: 50% of the base rental amount paid by Tower 12 to Pierside for a total square footage of 884 square feet, consisting of the two bridges, the eastern walkway and the small overhang over Pier Plaza, all as shown in the graphic attached to the airspace lease attached to this staff report. The current lease amount of \$2,439.84/month compares favorably to the appraisal of the airspace previously obtained by the City.

Lease term: Term is through December 31, 2019, with three optional 5-year terms at Tenant's election.

Encroachment permit: The lease replaces entirely the encroachment permit for the southerly bridge.

Improvements: Pierside is responsible for repair and maintenance of all improvements and for providing insurance coverage for its operations.

General Plan Consistency:

The subject City property is located within the Downtown District Character Area, the primary social and commercial activity center in Hermosa Beach. The Downtown District is a pedestrian-oriented area and provides a variety of services and commercial uses to serve the residents and visitors to Hermosa Beach.

Approval of a lease for the airspace associated with this property will ensure the property owner and tenant of the second-story improvements maintain and repair the airspace, and provide residents and visitors with dining spaces, while continuing allow public egress through Loreto Plaza consistent with the City's Vision for the Downtown District of Hermosa Beach of an attractive and pedestrian-oriented public realm.

Land Use Element Policies

3.1 Unique districts. Encourage the development of local and city-wide districts and centers that address different community needs and market sectors and complement surrounding neighborhoods.

5.6 Eclectic and diverse architecture. Seek to maintain and enhance neighborhood character through eclectic and diverse architectural styles.

6.7 Pedestrian oriented design. Eliminate urban form conditions that reduce walkability by discouraging surface parking and parking structures along walkways, long blank walls along walkways, and garage-dominated building facades.

Fiscal Impact:

The City will receive \$29,278.08 in rent for 2019; thereafter, the rent will increase as the rent of the underlying lease between Pierside and Tower 12 increases.

Attachments:

Airspace Lease

Respectfully Submitted by: Suja Lowenthal, City Manager,

Noted for Fiscal Impact: Viki Copeland, Finance Director

Legal Review: Michael Jenkins, City Attorney