



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Katy Allen

**SUBJECT: APPROVAL OF A FIFTH
AMENDMENT TO THE LEASE
WITH HAWGS SEAFOOD BAR & GRILL**

DATE: 07-23-07

Approved

Paul Kuntz

Date

8/1/07

COUNCIL DISTRICT: 3

RECOMMENDATION

Approval of a fifth amendment to the lease with Hawg's Seafood Bar and Grill for space located at 150 Paseo de San Antonio to continue in effect a reduced rental rate from May 31, 2007 to the end of the term of the lease on May 31, 2010.

OUTCOME

By approving this amendment, Council authorizes the continuation of reduced monthly rent of \$4,000 per month plus 5% of gross revenues in excess of \$100,000 for Hawgs Seafood Bar and Grill for an additional three years, allowing the restaurant to continue to operate at its present location.

BACKGROUND

On December 17, 1999, the San José Redevelopment Agency (SJRA) entered into a 10-year lease with Hawg's Seafood Bar for the use of 5,070 sq. ft. of retail space located at 150 Paseo de San Antonio for the sole purpose of conducting the business of a restaurant and bar with on-site food and beverage sales and consumption, catering, and ancillary sales of retail products, with offices and storage related to the aforementioned use.

The lease agreement between the SJRA and Hawg's Seafood Bar was amended three times. The third amendment, which commenced in December 2002, removed the requirement for base rent during any month that gross revenues did not reach \$150,000 and reduced the amount of the percentage rent to 4% of gross revenues as defined in the lease. The reduction in rent provided by this amendment expired on May 31, 2004, and Hawg's was unable to pay the monthly base rent required under the current agreement.

In October 2003, the SJRA transferred the ownership of the leased premises to the City of San José, and the lease agreement was assigned to the City at that time. In June 2004 at the request of the tenant and in alignment with the Downtown Economic Strategy, General Services' staff negotiated a new rent structure that provided rent at a higher level than received during the

preceding 12-month period. The base rent for the space for the three year period from June 1, 2004 through May 31, 2007 was set at \$4,000 per month payable monthly. The percentage rent was increased from 4 % to 5% on all gross revenues in excess of \$100,000.

ANALYSIS

In May of this year, the owners of Hawg's approached Public Works Real Estate staff stating that the construction of the CIM project adjacent to their restaurant has negatively impacted their sales and asked that their reduced rent be continued for the remainder of their initial lease term to May 31, 2010. A review of Hawg's' books by the Office of Economic Development confirmed that Hawg's has experienced a reduction in gross revenues during the construction activity on the adjacent property.

Under the terms of the original lease the annual base rent for this space would be \$127,130.64. Under the current amendment the rents received from Hawg's during the past three years were \$58,517.00 in fiscal year 2004-2005; \$57,169.00 in fiscal year 2005-2006; and \$52,502.00 in fiscal year 2006-2007. The intent of this item is to extend the reduced rental rate for an additional 3 years to the end of the original lease term, May 31, 2010.

POLICY ALTERNATIVES

Alternative #1: Council does not approve amendment to lease.

Pros: The rent would revert to the current contract rent of \$10,594.22 per month plus 5% of the amount by which gross revenues exceeds annual base rent.

Reason for not recommending: A review of gross revenues by the Office of Economic Development indicated that gross sales have declined due to the construction on the adjacent property to the extent that the tenant is unable to pay the contract rent. For this reason, staff is recommending a continuation of the reduced rental in place for the past three years until the expiration of the lease on May 31, 2010.

EVALUATION AND FOLLOW-UP

Public Works staff will monitor and collect the rent. No additional follow up actions with the Council are expected at this time.

PUBLIC OUTREACH / INTEREST

- Criteria 1:** Requires Council action on the use of public funds equal to \$1 million or greater. **(Required: Website Posting)**
- Criteria 2:** Adoption of a new or revised policy that may have implications for public health, safety, quality of life, or financial/economic vitality of the City. **(Required: E-mail and Website Posting)**

- Criteria 3:** Consideration of proposed changes to service delivery, programs, staffing that may have impacts to community services and have been identified by staff, Council or a Community group that requires special outreach. **(Required: E-mail, Website Posting, Community Meetings, Notice in appropriate newspapers)**

This action does not meet any of the above listed criteria; however this memorandum will be posted on the City's website for the August 14, 2007 Council agenda.

COORDINATION

This item has been coordinated with SJRA, the Planning, Building and Code Enforcement Department, the City Manager's Budget Office and the Office of Economic Development. The City Attorney's Office has reviewed the agreement and approved it as to form.

FISCAL/POLICY ALIGNMENT

The amendment to Hawg's lease is consistent with the Council-approved Budget Strategy for Guiding Principals for Budget and Financial Management in that it helps to stimulate the local economy while respecting community and neighborhood priorities.

COST IMPLICATION

The funds from this lease go into the General Fund. Approval of this item reduces the amount of the base rent collected on this lease by \$6,594.22 per month, but the higher rate was not assumed in development of the 2007-2008 Proposed Budget.

CEQA

CEQA: Not a project.



KATY ALLEN
Director, Public Works Department

For questions please contact PHILIP PRINCE, DEPUTY DIRECTOR, at (408) 535-8300.

