

**CITY OF SAN ANTONIO
INTERDEPARTMENTAL MEMORANDUM
PARKS AND RECREATION DEPARTMENT**

TO: Mayor and City Council

FROM: Malcolm Matthews, Director, Parks and Recreation Department

THROUGH: Terry M. Brechtel, City Manager

COPIES: Christopher J. Brady; Finance; Management and Budget; Legal; File

SUBJECT: Ordinance Authorizing a Probation Period for Tenant Lease and License Agreements in Market Square

DATE: July 22, 2004

SUMMARY AND RECOMMENDATIONS

This ordinance authorizes a new Probation Period for tenant lease and license agreements in the City of San Antonio's Market Square in City Council District 1, as requested by Councilman Roger Flores, and authorizes the Director of Parks and Recreation to execute amended agreements with tenants whose original agreements are pending termination.

Staff recommends approval of this ordinance.

BACKGROUND INFORMATION

The Parks and Recreation Department manages 92 lease and license agreements for tenants with retail or food businesses in Market Square. The existing contracts for Farmers Market and El Mercado leases will expire on August 31, 2009 and December 31, 2007, respectively. The agreements include contract delinquency and default procedures. Standard procedure is that tenants who are delinquent are sent a letter notifying them of the default with time to remedy the situation. Delinquencies include late payment, non-payment, not meeting required operating hours, not maintaining liability insurance, etc. Subsequently, tenants are sent Notices of Lease Agreement Termination if the contract default is not remedied. Also, if there are more than two occurrences within a twelve month period, this results in lease termination.

Previously, on two separate occasions and after tenants' requests, City Council has approved new, restrictive contracts for a total of ten tenants who had been terminated due to default. Eight contracts were approved in May 2002 and two contracts were approved in March 2004. The agreements established a one-year term with termination on the first event of default. If the tenant was successful in complying with the first year, a new two-year agreement could be approved. After the two-year agreement, then the original contract terms would be offered. City Councilman Roger Flores submitted a six signature memorandum on April 30, 2004 that directed

staff to amend all of the Farmers Market Plaza contract leases to include these provisions when tenants enter into default for late payment.

The memorandum was discussed in a Governance Committee Meeting on May 20, 2004. The provisions were described as a new Probation Period and included the above stipulations. Staff recommended modifying the stipulations as follows:

- create a one time, three-year Probation Period, to be automatically effective upon 3rd event of default within 12 month period
- upon entering Probation Period described above, establish waiver of legal rights if the agreement is terminated for one late rent payment (or any other delinquency) on the first event of default
- extend the Probation Period past the existing contract into any new agreement term
- apply the amendment to the El Mercado tenants, as well as the Farmers Market tenants
- add \$200.00 penalty fee payment required for processing

The Governance Committee referred the issue to the Quality of Life Committee, which discussed the item in its June 3, 2004 meeting. The Quality of Life Committee concurred with staff's recommendations and directed that the issue move forward to the City Council for consideration.

If the ordinance is approved, City staff will automatically initiate procedures to enter into a new amended agreement with any delinquent tenants who are pending termination. Tenants will be offered an amended agreement that includes the new Probationary Period and a penalty fee will be collected. Any tenants who decline to execute the new agreement will be terminated in accordance with their existing contract under existing terms (no probationary period).

POLICY ANALYSIS

It is the long-standing policy of the City of San Antonio to lease public property in Market Square for retail sales and restaurant purposes, under regulations established in Chapter 32, Article II of the City Code of the City of San Antonio. The amendment to the lease and license agreements requires passage of a City ordinance. The proposed action has been discussed in the Governance Committee Meeting on May 20, 2004 and the Quality of Life Committee on June 3, 2004.

FISCAL IMPACT

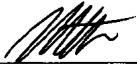
It is estimated that the revenue generated by the new penalty fee payment required for tenants who default their agreements and enter the Probationary Period will be approximately \$800.00 per year (four tenants per year). Fees are deposited into the City's General Fund.

COORDINATION

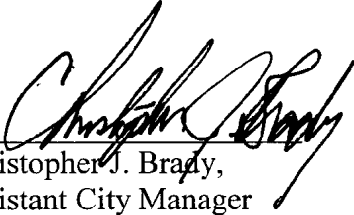
This action was coordinated with the City Attorney's Office and the District 1 City Council Office.

SUPPLEMENTARY COMMENTS

A Discretionary Contracts Disclosure Form is filed for each tenant in Market Square.

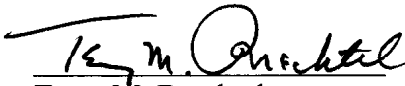


Malcolm Matthews,
Director of Parks and Recreation



Christopher J. Brady,
Assistant City Manager

Approved:



Terry M. Brechtel,
City Manager

CITY OF SAN ANTONIO
OFFICE OF THE CITY COUNCIL
INTERDEPARTMENTAL CORRESPONDENCE SHEET

TO: Mayor and Councilmembers
FROM: Councilman Roger O. Flores, District 1
COPIES TO: City Manager; Acting City Clerk; City Attorney; Director of Parks & Recreation; Assistant to City Council and Mayor; File
SUBJECT: Farmers Market Plaza Tenant Lease/License Agreement

RECEIVED
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2004 MAY -6 PM 3:14

DATE: April 30, 2004

I respectfully request your concurrence in directing staff to amend the Farmer's Market Plaza Square contract leases to include the following:

In instances where tenant leases go into default for late payment and are found in breach of contract, said tenants will enter into the probation period. The probation period is a new one-year agreement with reduced terms and more stringent default conditions. The agreement establishes the new lease term for one-year, adds a waiver of legal rights if the agreement is terminated for one late rent payment on the first event of default, and provides no guarantee for renewal after the completion of the initial one-year term. These terms are the same as other reinstated tenant agreements approved in June 2002 and March 2004.

If the tenants are successful in complying with the terms of the first year, they will receive a second agreement for a two-year period with the same restrictions. Upon successful completion of the second term of two years, then the City will offer each tenant who meets all of the requirements a third agreement. This will match the end term of the original terminated agreement and be without any restricted terms and conditions. As set forth in the original agreement, tenants will be required to pay utility costs, garbage fees, abide by use clauses and minimum hours of operation, provide for all improvements and maintenance of the leased space and provide insurance levels specified by the City's Risk Manager.

Your favorable consideration of this matter is requested.



ROGER O. FLORES, DISTRICT 1



EDWARD D. GARZA, MAYOR



JOEL WILLIAMS, DISTRICT 2



RON H. SEGOVIA, DISTRICT 3



RICHARD PEREZ, DISTRICT 4

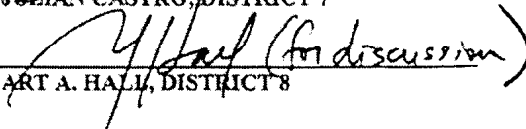


PATTI RADLE, DISTRICT 5

ENRIQUE BARRERA, DISTRICT 6



JULIAN CASTRO, DISTRICT 7



ART A. HALL, DISTRICT 8

CARROLL W. SCHUBERT, DISTRICT 9

CHIP HAASS, DISTRICT 10