

1. Requested Motion:

Meeting Date: May 3, 2010

Approve contract for use of the public sidewalk for restaurant outdoor seating at the requested location, as indicated on the drawings provided by the representative of the Harbour House at the Inn property.

Why the action is necessary:

LDC Section 34-678(f) allows restaurants to operate outdoor seating areas on public sidewalks and plazas in the Times Square pedestrian plaza "and other locations if explicitly approved by the town council".

What the action accomplishes:

Town Council considers approval for a restaurant to use the public sidewalk at the requested location along Old San Carlos for outdoor seating.

2. Agenda:

☐ Consent
☒ Administrative

3. Requirement/Purpose:

☐ Resolution
☐ Ordinance
☐ Other

4. Submitter of Information:

☐ Council
☒ Town Staff
☐ Town Attorney

5. Background:

Doug Speirn-Smith, developer of the Harbour House at the Inn project at the southeasterly corner of First Street and Old San Carlos Boulevard, has asked that Town Council grant permission for use of a limited area of the public sidewalk for restaurant outdoor seating. Outdoor seating on public sidewalks and plazas is authorized in the Times Square pedestrian plaza but elsewhere the Land Development Code provides for Council consideration on a case-by-case basis. In Times Square, the restaurant operators pay a small annual fee for the use of their respective public plaza areas for outdoor seating. Mr. Speirn-Smith has provided a letter and some drawing indicating the nature and extent of his request. The Harbour House building extends over the public sidewalk and currently has a right-of-way agreement with the town for this usage. It is suggested that a separate right-of-way agreement, tailored to tables, umbrellas and chairs, be executed, since these two uses are widely divergent. A sample agreement has been prepared for Council review and direction and is attached to this agenda item summary. Public Works staff may be able to indicate the rate charged to users of the Times Square plaza.

6. Alternative Action:

Do not grant approval for use of the sidewalk at this location.

7. Management Recommendations:

Approve the location and extent of the requested use of the sidewalk at the same rate as applied to Times Square.

8. Recommended Approval:

Town Manager	Town Attorney	Finance Director	Public Works Director	Community Development Director	Cultural Resources Director	Town Clerk
						

9. Council Action:

☐ Approved ☐ Denied ☐ Deferred ☐ Other

AGREEMENT FOR USE OF TOWN RIGHT- OF-WAY

OLD SAN CARLOS :UMBRELLAS, TABLES AND CHAIRS ANCILLARY TO RESTAURANT

The Town of Fort Myers Beach, a municipal corporation whose address is 2523 Estero Boulevard, Fort Myers Beach, FL 33931 ("Town") and _____ ("Licensee") a Florida *(Corporation, Partnership, Limited Liability Company, etc.)* whose address is _____ enter into this Agreement ("Agreement") on this ____ day of _____, 20__ for use of portions of Town Right-of-Way for placement of tables, chairs and umbrellas ancillary to a restaurant use, under the following terms and conditions:

1. Town Land Development Code Provisions. The Town Land Development Code (LDC) allows restaurants to extend their operations onto public sidewalks and plazas upon explicit approval of the Town Council, with such extension limited to the owner or the lessee of the restaurant property immediately adjacent to such sidewalk or plaza and with further requirements as set forth in LDC Section 34-678(f). Signs are not permitted with this usage.

2. Licensee's Property. Licensee owns a parcel of real property located at _____ Fort Myers Beach, FL, more particularly described as follows: _____, This property is utilized for the purpose of a restaurant.

3. Grant of License. The Town hereby grants, gives and conveys to Licensee, its successors, and assigns, a non-exclusive license to use the subject right-of way for purposes of placement of tables, chairs and umbrellas, limited to the area described in Exhibit "A, " for a period of one (1) year, commencing _____ and ending _____, with such license to be automatically renewed unless cancelled by either party. The cost for this is _____ and shall be payable _____.

4. Maintenance and Use. Licensee is responsible for all costs associated with the maintenance of the tables, chairs and umbrellas and shall keep them in good repair and shall keep the area around them clean and tidy.

5. Town Access To Subject Right-of-Way. From time to time, the Town may require access to a portion or all of the subject Right-of-Way. The Town will endeavor to minimize the impact of such access on Licensee's business if possible but Licensee accepts and agrees that (i) the Town has sole discretion as to whether partial or full access is required by the Town and (ii) the Town's judgment as to the need for and extent of such access shall be final. As soon as practicable, the Town will notify Licensee of the potential need for use of any or all of the portion of the subject Right-of-Way and/or the necessity of removal of the chairs, tables and umbrellas from the subject Right-of-Way. The Town will not be required to provide advance notice in the event of an emergency, as defined by the Town. In the event that this License is not renewed for any reason, Licensee shall remove any and all items from the Town Right-of-Way within seven (7) days of expiration hereof. The cost of Licensee's removing part or all of the items from the subject Right-of-Way promptly upon request shall be Licensee's sole responsibility; however in the event of an emergency, as defined by the Town, the Town may remove all or part of such Structure(s), in its sole discretion.

6. Indemnification and Hold Harmless. The Licensee, its successors, and assigns, agree to defend, indemnify and hold the Town, its employees, contractors and representatives harmless from and against any and all loss, liability, claim, damage and expense (including but

not limited to attorney fees and appellate attorney fees) that may result from, arise out of, or concern the subject matter of this Agreement.

7. Insurance. Licensee covenants and agrees to obtain and maintain general liability insurance, property damage insurance, and other insurance for the term of this Agreement in the amount of _____. The insurance type, amount, and deductible required herein are subject to reasonable amendment by the Town in the Town's sole discretion. Licensee shall designate the Town as an additional insured and shall deliver to the Town a Certificate of Insurance showing the Town as an additional insured upon mutual execution of this Agreement and provide annual updates of such Certificate of Insurance to the Town Finance Department on _____ (date) of each year this Agreement is in effect.

8. Notices. All notices which may be given or which are required to be given under this Agreement, shall be deemed effective when either: (i) personally delivered to the intended recipient; (ii) upon acknowledgment of receipt of certified or registered mail by the recipient or (iii) immediately if sent during regular business hours by facsimile, provided that receipt for such facsimile is verified by the sender and followed by a notice sent in accordance with one of the other provisions set forth above.

9. Entire Agreement; Modification. This Agreement, with all exhibits referenced herein, contains the entire understanding and agreement between the parties hereto and there are no promises, agreements, conditions, undertaking or warranties or representations, oral or written, expressed or implied, between them except as set forth herein. No change or modification hereto shall be effective unless it is in writing and signed by the parties hereto.

10. Dispute Resolution and Attorneys Fees. Venue for resolution of any disputes arising from this Agreement shall be in the Twentieth Judicial Circuit Court in and for Lee County, Florida. The prevailing party shall be entitled to an award of attorney's fees up through and including any appeal.

IN WITNESS WHEREOF, the parties have executed this Agreement effective the day and year set forth above.

Licensee: (name)

Witness for Licensee:

BY: _____

Print name: _____

Print name & title of person signing:

ATTEST:

TOWN OF FORT MYERS BEACH

Michelle D. Mayher, Town Clerk

_____, Town Manager

Approved as to Legal Form and Sufficiency:

By: _____
_____, Town Attorney

APR 14 2010
FORT MYERS BEACH

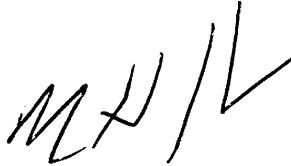
APR 14 2010

APR 14 2010

**Harbour House at the Inn
450 Old San Carlos Blvd
Fort Myers Beach, Florida 33931
303-818-0900**

April 13th 2010

To: Town of Fort Myers Beach
From: Douglas Speirn-Smith



RE: Commercial Tenant Seating in ROW- Harbour House at the Inn.

We ask approval to modify our ROW agreement to allow limited seating to support adjacent commercial uses including cafés and restaurant use. The specifics and suggested approach include:

1. Table size not to exceed 36 inches.
2. Table and seating shall not infringe on adjacent public/pedestrian use of the sidewalk. At no time shall the clear walking passage be less than ADA standards.
3. Final placement locations shall be approved by Town Staff prior to use.
4. Approved locations are along Old San Carlos Blvd and First Street subject to these conditions. Future flexibility based on actual uses- First Street sidewalk is narrower (about 78 inches) but same conditions shall apply but table size would be smaller due to ADA access (estimated seating limited to 24 inches wide)

This request is prompted by the addition of a small coffee/limited menu café fronting Old San Carlos Blvd, but the need may be more general as future tenants/uses are defined.

As Built Conditions:

1. Distance from building wall to edge of brick ROW – 9 feet 6 inches plus or minus. This is the walking portion of the sidewalk.
2. Brick to curb (parking) is an additional 64 inches- this is encumbered by parking support/poles etc. Total width of ROW to street—about 14 feet 10 inches.
3. Typical covered walkway width 64 inches
4. Minimum width between edge of column at entrances and wall of building 50 inches.
5. Proposed maximum seating in ROW—table 36 inches. (see drawings)
6. Typical First Street sidewalk to curb is 78 inches (six feet six inches)

Your consideration is appreciated.

HARRISON HOUSE
OLD SAN CARLOS BLVD

COLUMNS AT DOOR
ENTRANCES

NARROWEST
POINT

COLUMN TO
WALL 50"

MAXIMUM
TABLE
WIDTH
36"

PARKING

64"

WALL/BACK

9' 8"

WALL TO BACK (SIDEWALK)

WALL TO STREET 14' 10" +/-

BUILDING

Harbora House
Old San Carlos Section

BRICK PORTION OF R.O.W.

11' 6" + 1'

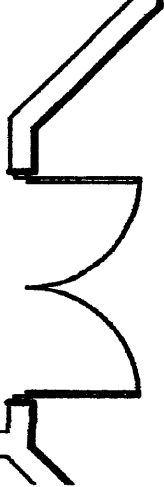
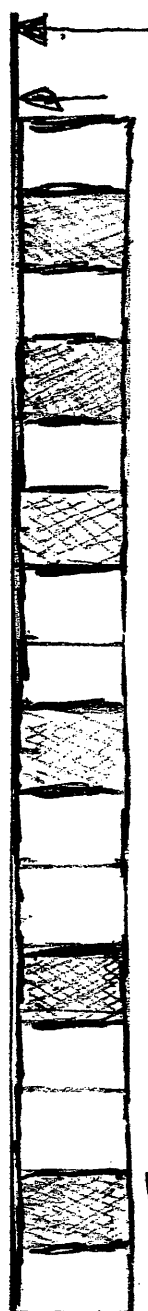
ROOF OVERHANG
(64")

EMERGENCY - 3 FOOT TACKLES - SIX FEET
BEFORE TRAIL

64"

TYPICAL SEATING

□ COLUMN
AT DOOR



RETAIL
26'2 x 14'10

RETAIL
30'6 x 14'10