

EXECUTIVE BRIEF REGULAR MEETING

AGENDA DATE: June 16, 2020

DEPARTMENT: Commission

TITLE:

Rent deferral amendment to the Casino tenants' leases for COVID-19 closures and authorization to City Manager to sign the Amendments

SUMMARY:

The proposed rent deferral amendment provides assistance to the Casino building tenants as a result of the COVID-19 ordered closures by the Governor. If approved, City Manager will be authorized to sign the amendments with each tenant.

BACKGROUND AND JUSTIFICATION:

Due to the COVID-19 pandemic, Casino building tenants were forced to close their leased premises on March 20, 2020. On May 11, 2020, the Governor began relaxing the COVID-19 restrictions with current restrictions limited to 50 percent of the tenants' indoor seating capacity or building occupancy. It is anticipated (but not known) that the Governor or Palm Beach County will continue to ease the COVID-19 restrictions and allow for further indoor premise service by the tenants.

In the interest of providing continued quality food and retail services for the visitors of the beach and encouraging re-establishing employment, the City is providing assistance in the form of base rent deferrals based on the percentage governmental closures due to COVID-19 pandemic.

The deferral assistance is calculated by applying the percentage of the ordered closure for interior capacity or building occupancy to the base rent payment prorated over the days of the closure. If patio rent is applicable, it too is deferred in the same fashion. The deferred amount will be due on or before the one year anniversary of the original due date of the deferred amount. The additional rent due under the lease if any (Common Area Maintenance, utilities, all taxes, etc.) shall remain due and payable. The timeframe for allowing the deferral of base rent starts March 20, 2020 and ends December 30, 2020 (unless all COVID-19 governmental restrictions are earlier removed). During the year pay-back timeframe for the deferred rent, the City will charge interest consistent with the interest charge for court judgments under Chapter 55, Florida Statutes (currently 6.33%).

The affected businesses are Kilwins, LW Tees and Mamma Mia's. A lease amendment will be provided to each tenant with the following rent deferral provision and related legal requirements:

RENT DEFERRAL. The Lease shall be amended to include a new subsection _____ to be entitled "COVID-19 Rent Deferral" as follows:

Due to the COVID-19 pandemic, on March 20, 2020, Florida Governor Ron DeSantis issued Executive Order 20-70, which closed indoor premise service by restaurants with seating of more than ten (10) people. This resulted in Tenant having to close the leased premises on March 20, 2020. On May 11, 2020, the Governor through Executive Order 20-120 (based on Executive Order 20-112) authorized the Tenant to re-open indoor premise service so long as the Tenant adopted appropriate social distancing measures and limited Tenant's indoor occupancy to no more than 25 percent of Tenant's building occupancy. This Executive Order also allowed Tenant to start serving its outdoor areas (subject to mandatory social distancing between tables and limited to groups of 10 or less people). On May 18, 2020, the Governor through Executive Order 20-123, authorized the tenants to increase their indoor premise service to 50 percent of their indoor seating capacity or building occupancy. It is anticipated (but not known) that the Governor or Palm Beach County will continue to ease the COVID-19 restrictions and allow for further indoor premise service by the tenants. Based on the foregoing, the following amendments are made to this Subsection:

For the time period of **March 20, 2020 through May 10, 2020**, the Tenant shall be provided a deferral of the Base Rent (including any patio rent) amount. For the time period of **May 11, 2020 through May 17, 2020**, the Tenant shall be provided a deferral of seventy-five percent (75%) of the Base Rent (including any patio rent) amount. For the time period of **May 18, 2020 to December 30, 2020**, the Tenant shall be provided a deferral of Base Rent (including any patio rent) amount with the deferred amount being the same as the percentage of the governmental ordered closure of the Tenant's interior capacity or building occupancy due to the COVID-19 pandemic (prorated over the days of the closure). If all COVID-19 Pandemic governmental closures are lifted prior to December 30, 2020, the deferral of Base Rent (including patio rent) shall end on that date prior to December 30, 2020. No further deferral of Base Rent shall be authorized after December 30, 2020.

The Base Rent (including any patio rent) amount that is authorized to be deferred under this provision ("Deferred Rent") shall be paid to the Landlord on or before the one year anniversary of the original due date for the Deferred Rent. By way of example only, the Tenant's Deferred Rent for March 2020 shall be paid on or before the due date for Tenant's Rent payment for March 2021. If Tenant fails to pay the Deferred Rent when due, the Landlord, in addition to all other rights and remedies under this Lease and under applicable law, shall have the right to declare all Rent due under the then existing Lease term, including the Deferred Rent plus interest, as immediately due and payable. Failure to pay the Deferred Rent shall also be considered a Monetary Default under section ___ of the Lease. The Deferred Rent shall accrue interest from the first full month after the date of deferral until paid in full at the rate set forth in section 55.03, Florida Statutes, regarding interest on judgments. By way of example only, for the March 2020 Deferred Rent, interest will begin to accrue as of April 1, 2020 until the March 2020 Deferred Rent is paid in full.

Tenant and Landlord agree that despite the COVID-19 restrictions, Tenant shall pay all other Rent and all other monetary obligations of the Tenant that are due under the Lease without any abatement or deferral.

If the above amendment is approved to the Casino building tenants' leases, authorization for the City Manager to sign the Lease amendments is requested.

MOTION:

Move to approve/deny the rent deferral amendment to the Casino tenants' leases for COVID-19 closures and authorization to the City Manager to sign the Amendments.

ATTACHMENT(S):

Fiscal Impact Analysis (unknown until after December 30, 2020)
Tenant Rent Payments Spreadsheet