
CITY OF PORT LAVACA

PORT COMMISSION REGULAR MEETING: September 20, 2022

Agenda item _____

DATE: 9.15.2022

TO: PORT COMMISSION

FROM: JODY WEAVER, INTERIM CITY MANAGER

SUBJECT: COUNCIL ACTION ON RENTAL RATES, TERMS AND LEASE AGREEMENT FOR SUITE 3
EDWARD JONES

At the Regular Council meeting on September 12, City Council considered the recommendation of the Port Commission in regards to a new lease agreement with Edward Jones. As you recall, I emailed to all Port Commissioners, a copy of the memo that was presented to Council in their packet. I have copied that below for your quick reference.

After discussing the nearly 20 year positive relationship with Edward Jones, the security of having a guaranteed known revenue source for 5 years, and the City Attorney's approval of the document language and format, Council took the following action:

Approved a 5-year lease as presented (no option for renewal) with a starting Year 1 rent of \$1,092.00 + \$135.00 in utilities, with the rent amount increasing by 4% in each of years 2 through 5. The utilities charges are subject to increase with the increase to the Kw/hr that the City pays for electricity or with an increase to the base water and/or sewer rates.

Copy of memo provided to City Council in their packet and emailed to all Port Commissioners on Friday, September 9.

- Edward Jones has leased Suite 3 from the City since September 1, 2003. As such they have been a long-time steady tenant and have always to my knowledge paid their rent on time without issue. The original 2003 lease was a standard Edward Jones lease document and had a term of 5 years with a 5-year option. There have been 5 amendments that extended the lease until it's current expiration date of August 31, 2022. The lease amount they contracted for in 2003 was \$765.00/month. The MCI in September 2003 was 166.8. The MCI in July 2022 (last date published) was 309.81, or an increase of 185.7%. So, \$765.00 in today's dollars per the MCI is \$1,420.89. Edward Jones currently pays a total of \$1,150/month comprised of \$1,035/month rent (0.98/sf) and \$115.00 for utilities.
- After much discussion with the real estate division of Edward Jones, the proposal that was initially offered by Edward Jones and presented to the Port Commission at the August meeting was for a 5-year lease with a starting rent of \$1,085.00 (4.8% increase) with a fixed 3.5% increase each year, plus an agreed upon \$135.00/month for utilities, subject to increase per actual KWHr costs and water rates borne by the City. The proposed lease agreement document is based upon Edward Jones' standard agreement with some edits on our part and not the City's standard lease document. Anne Marie has reviewed the proposed document and is satisfied with the lease language.
- After rejecting this proposal from Edward Jones, **Port Commission** unanimously voted to recommend to Council that the following lease agreement be made with Edward Jones: a two (2) -year lease with year 1 at \$1,095.50 + \$135 utilities = \$1,230.50 (7% overall increase) and Year 2 \$1,181.64 + \$135.00* utilities = \$1,316.64 (7% overall increase) AND the requirement that the City's standard lease document must be used.
- The opinion of the real estate division of **Edward Jones** was that a 7% increase was too great and has countered with the following: a 5-year lease with a starting rent of \$1,092.00 (5.5% incr) with a fixed 4% increase each year on the rent rate PLUS the \$135.00/month for utilities, which is subject to increase per actual KWHr costs and water/sewer base rates borne by the City.

- Being able to secure a 5-year lease would certainly simplify staff's workload for this lease over the next 5-years and to be able to show known future income is a POSITIVE when advocating our financial position as stable for bond ratings. Communication with Edward Jones this year has been sporadic, but based upon my conversations two years ago, they want upfront known increases and not the inconsistency of the MCI.
- If we have hope that the inflation rate will normalize, and we recognize that the MCI has in fact begun to drop after a peak in April, and we reflect back on "normal" inflation rates prior to 2021, I have no issue with a 4% guaranteed increase in the rental rate each year for the next 5 years. For consideration, the monthly Yr-Yr % change in the MCI in the following years ranged from:
 - 2020: -.086% to 1.77%
 - 2019: 0.5% to 2.01%
 - 2018: 2.63% to 4.47% (annual average was about 3%)
 - 2017: 2.05% to 3.63%
 - 2016: -0.87% to 2.74%
 - 2015: -1.1% to .43%
- If the Council requires that only the City's standard lease document be used, OR is unwilling to agree to a 5-year term, then I suggest that a one-year amendment to the existing lease be offered at the suggested Year 1 increase and we provide them written notice of these facts so they have a year to find a new location. (Note: the language of the original contract states that in the event that the Lessee should holdover or be permitted to holdover, the lessee shall be deemed a tenant wholly at will of the City).
- Note the following provisions in the edited Edward Jones agreement as presented:
 - An Early Termination clause is included but provides for a Four (4) month rent liquated Damages payment, which matches the original 2003 lease.
 - The scheduled payment for water/sewer and electrical are subject to increase with changes to the KW/hr cost and/or the Base Water and/or Sewer Rate.
 - Lessee is responsible for payment of any ad valorem taxes assessed on the leased property if any.
 - 2 parking spaces are provided in the front and 2 in the back
 - Edward Jones has included in the proposed lease the following restrictions on the City's rental of units in the building as follows. This list is the same as that included in the 2003 lease except with the addition of A(e) and A(f) :
 - 10. Restricted Use**
 - A. The Lessor shall not lease or sell any units within the Building, Shopping Center or Property to the following user(s):
 - a) Adult video/Adult entertainment stores;
 - b) Abortion offices/facilities;
 - c) Alcohol/Drug rehabilitation offices/facilities;
 - d) Off-track betting establishments;
 - e) Offices or entities that sell, barter, trade, buy, or dispenses marijuana, for medical use or otherwise; or
 - f) Probation/parole offices.
 - B. The Lessor shall not lease or sell the units within fifty (50) feet of Lessee's demising wall to the following users(s):
 - a) Bars, taverns, billiard halls;
 - b) Pawn shops;
 - c) Dance studios or Karate studios;
 - d) Beer or wine-making stores;
 - e) Psychological counseling offices/facilities;
 - f) Unemployment or Social Security offices;
 - g) Liquor stores; h) Nail Salons.

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- Port Commission Recommendation: a **two (2) -year lease** with year 1 at \$1,095.50 + \$135 utilities = \$1,230.50 (7% overall increase) and Year 2 \$1,181.64 + \$135.00* utilities = \$1,316.64 (7% overall increase) AND the requirement that the City's standard lease document must be used.
- Edward Jones proposal: a **five (5)-year lease** with a year 1 rent of \$1,092.00 (5.5% incr) with a **fixed 4% increase each year on the rent rate** PLUS the \$135.00*/month for utilities, *which is subject to increase per actual KWHr costs and water/sewer base rates borne by the City. (Note: If the utilities remain at \$135.00, the overall annual increase including the cost of utilities will be 3.6%)

EDWARD JONES LEASE OF SUITE 4 NAUTICAL LANDINGS OFFICE

Comparison of Rent options (N.I.C. allocation for utilities)

	Option 1: Port Commission Recommendation		Option 2: Edward Jones proposal		Difference
	Monthly	Annual	Monthly	Annual	
YR 1:	\$1,095.50	\$13,146.00	\$ 1,092.00	\$ 13,104.00	
YR 2:	\$ 1,181.64	\$ 14,179.68	\$ 1,135.68	\$ 13,628.16	
Sum:		\$ 27,325.68		\$ 26,732.16	\$ (593.52)
	Unknown Revenue for Year 3 thru 5; Assume find renter with 7% increase ea. Yr		known revenue for 3 thru 5 increase ea. Year		Yr 4%
YR 3:	\$ 1,264.35	\$ 15,172.26	1181.11	\$ 14,173.32	
YR 4:	\$ 1,352.86	\$ 16,234.32	1228.35	\$ 14,740.20	
YR 5:	\$ 1,447.56	\$ 17,370.72	1277.49	\$ 15,329.88	
		\$ 48,777.29		\$ 44,243.40	\$ (4,533.89)
					\$ (1,511.30) per year avg