



Legislation Text

File #: ID#18-244, **Version:** 1

AGENDA CAPTION:

Consider approval, by motion, of the following matters pertaining to the lease of property located at 201 South LBJ (the site of the former Dixie Cream Donut Shop):

- a) Approving the acceptance of an amount in settlement of rent due under an existing lease of real property located at 201 South LBJ.
- b) Approving the termination of the existing lease
- c) Approving a new Lease Agreement of the property with Suenos & Rezo, LLC for the operation of a frozen yogurt shop and authorizing the City Manager to execute the Lease Agreement.

Meeting date: May 1, 2018

Department: City Manager's Office, Steve Parker, Assistant City Manager

Amount & Source of Funding

Funds Required: N/A

Account Number: N/A

Funds Available: N/A

Account Name: N/A

Fiscal Note:

Prior Council Action: [Click or tap here to enter text.](#)

City Council Strategic Initiative: [Please select from the dropdown menu below]

Choose an item.

Choose an item.

Choose an item.

Comprehensive Plan Element (s): [Please select the Plan element(s) and Goal # from dropdown menu below]

- Economic Development - Choose an item.
- Environment & Resource Protection - Choose an item.
- Land Use - Choose an item.
- Neighborhoods & Housing - Choose an item.
- Parks, Public Spaces & Facilities - Choose an item.
- Transportation - Choose an item.

Not Applicable

Master Plan: *[Please select the corresponding Master Plan from the dropdown menu below (if applicable)]*

Choose an item.

Background Information:

At the end of 2013, the City of San Marcos acquired 9,817 square feet of land at the northeast corner of LBJ and MLK from Union Pacific Railroad (UPRR). The 9,817 square foot piece of land acquired was from an original parcel totaling 14,317. This made the City a 68.6% owner of the parcel along with UPRR who holds 31.4%. The building, which sits on top of the property, was formerly owned by Dan Anderson and was ultimately sold to Ruben Becerra in 2015. The City and UPRR have held a ground lease with Mr. Anderson since the City purchased the property from UPRR. At the point the property was acquired, it was not communicated to the Finance Department that an annual lease payment would be due from the ground lease. Due to this miscommunication, the annual ground lease was not billed to the owner of the building in 2015 or 2016. The leasing history for this piece of property is noted in the table below:

DIXIE CREAM LEASE HISTORY

| Year | Total Lease Escalated 3% per year | UPRR Square Footage Allocation | UPRR Lease | City Square Footage Allocation | City Lease | Total | |
|------|--|--------------------------------------|------------|---|-------------|------------|----------------------|
| | | 4,500 | | 9,817 | | 14,317 | |
| 2011 | \$ 5,500.00 | 100.0% | \$5,500.00 | 0.0% | \$ - | \$5,500.00 | Anderson |
| 2012 | \$ 5,665.00 | 100.0% | \$5,665.00 | 0.0% | \$ - | \$5,665.00 | Anderson |
| | | | | | | | Anderson (Assigned) |
| 2013 | \$ 5,834.95 | 100.0% | \$5,834.95 | 0.0% | \$ - | \$5,834.95 | City at end of year) |
| 2014 | \$ 6,010.00 | 31.4% | \$1,889.01 | 68.6% | \$ 4,120.99 | \$6,010.00 | Anderson |
| 2015 | \$ 6,190.30 | 31.4% | \$1,945.68 | 68.6% | \$ 4,244.62 | \$6,190.30 | Becerra |
| 2016 | \$ 6,376.01 | 31.4% | \$2,004.05 | 68.6% | \$ 4,371.95 | \$6,376.01 | Becerra |
| 2017 | \$ 6,567.29 | 31.4% | \$2,064.18 | 68.6% | \$ 4,503.11 | \$6,567.29 | Becerra |

None of the payments due under the “City Lease” column above have been collected by the City. The new owner of the building, Mr. Becerra, was officially notified by the City in October 2016 that the ground lease existed. Since that time, the staff has been renegotiating the lease with Mr. Becerra. Part of that negotiation included agreeing that the staff would propose that the usable square footage would be reduced from 9,817 square feet to 4,495 since this is the actual usable square footage of the actual property. This would reduce the 2017 payment from \$4,503.11 to \$2,063.21. The staff also agreed to recommend that the amounts due in 2015 and 2016 should be waived as the City is not able to reasonably prove that Mr. Anderson notified Mr. Becerra of the existing ground lease when he purchased the business in May of 2015. The staff can only confirm that we directly notified Mr. Becerra in October 2016 that a ground lease existed. Mr. Becerra paid the 2017 lease at the reduced area amount of 4,495 square feet which totaled \$2,063.21.

Mrs. Ruth Molina, the owner of Yogurt in Love, would now like to lease the property for 2018.

The rent will be adjusted by 3% annually and can also be reset by the City every 3 years. The lease will automatically renew unless proper notice is given by the City. The proposed annual lease payment for 2018 is \$2,125.11 based on the reduced area amount of 4,495 square feet, and would be due upon execution of this lease.

Council Committee, Board/Commission Action:

Click or tap here to enter text.

Alternatives:

Click or tap here to enter text.

Recommendation:

That the Council consider, by motion, on the following matters pertaining to the lease of property located at 201 South LBJ (the site of the former Dixie Cream Donut Shop):

- a) Approving the acceptance of an amount in settlement of rent due under an existing lease of real property located at 201 South LBJ.
- b) Approving the termination of the existing lease
- c) Approving a new Lease Agreement of the property with Suenos & Rezo, LLC for the operation of a frozen yogurt shop and authorizing the City Manager to execute the Lease Agreement.