City of Santa Monica®

City Council Report

City Council Meeting: October 24, 2017
Agenda Item: 4.A

To: Mayor and City Council

From: Andy Agle, Director, Housing and Economic Development, Economic Development Division

Subject: Study Session regarding Labor Peace Agreements

Recommended Action

Staff recommends that Council review, consider, and provide direction regarding requiring labor-peace agreements in the City's leasing guidelines and policies for City-owned properties with food-service operations.

Executive Summary

For nearly 15 years, the City has required new leases on City-owned properties on the Pier and in the Downtown to include provisions that minimize the likelihood of labor conflicts that could disrupt the payment of revenues to the City. Council recently directed staff to evaluate requiring new food-service tenants on City-owned properties to enter into labor-peace agreements with an appropriate labor organization. This staff report provides information on the subject of labor-peace agreements (LPAs) including the legal and economic considerations associated with requiring LPAs for food-service operators as a condition of executing a lease with the City. The potential impacts to small businesses are also examined and policy options are provided to advance the City's goal of preventing disruptive labor conflicts, and protecting the City's leasing revenues and its vibrant economy, while preserving opportunities to support and encourage small, independent, non-formula businesses in the community. In protecting the City's leasing activity revenue stream from disruption, staff seeks direction that incorporates Council's long-standing commitments to safeguard the rights and wellbeing of local workers with support and promotion of local business.

Background

The City owns various types of real estate including buildings, kiosks, parking structures, and parking lots. City-owned properties not currently in use for municipal purposes are leased or licensed for commercial uses that generate rental revenues and provide community and visitor-serving amenities. The City also leases or licenses its properties to various nonprofit organizations such as the People Concern (OPCC), the Growing Place, and WISE & Healthy Aging to provide social and educational services for the community. This report focuses on the food-service tenants that lease or license property from the City and does not address the non-profit tenants or other types of commercial tenants.

The majority of leased or licensed City-owned properties (City Properties) used for commercial purposes are located primarily in four areas of the City:

- Downtown, in mobile-vending carts and pavilions on the Promenade, and on the ground floor of Parking Structures 5 and 6;
- Santa Monica Pier, in a variety of buildings, kiosks, and mobile-vending carts;
- Santa Monica Airport, which has a variety of buildings and airport hangars; and,
- Santa Monica State Beach, in which the City owns various concession stands.

Additionally, there are three food-service operators in City-owned properties that are not included in the four areas identified above: The Victorian on Main Street, Chez Jay on Ocean Avenue, and the Bookmark Café at the Main Library. The Victorian is a long-term lease that predates any of the existing leasing guidelines. The process of leasing Chez Jay and the Bookmark Café has generally mirrored the City's policies outlined in the Downtown and Pier Guidelines, with the exception that Council is the approving entity of the leases rather than the Pier Corporation board or the Downtown Santa Monica Inc. board.

In total, the City manages 101 properties including the concession buildings on the beach. Of the 101 properties, 27 properties are leased or licensed to businesses that

are food-service operators or have a component of food service as part of their operation. A listing of the food-service operators (City Tenants) who lease or license City Properties is provided in Attachment A.

The City first adopted labor-peace guidelines nearly 15 years ago when the Santa Monica Pier Leasing and Licensing Guidelines were adopted on March 11, 2003 (Attachment B) and soon afterwards the Downtown Leasing and Licensing Guidelines on July 8, 2003 (Attachment C). The labor-peace provisions incorporated in the Pier and Downtown guidelines clarify the City's proprietary interest and prohibit all City tenants from engaging in practices that impede the tenants' employees' ability to organize and contract with a labor organization for the purpose of collective bargaining. The specific labor-peace provision that applies to all leases and licenses states:

> "Because the City has a financial or proprietary interest in the businesses operating from its leaseholds, some of which are in industries that have a history of labor/management conflict, the risk of interruption of rental revenue received by the City would be minimized if such businesses were assured of labor peace. An appropriate labor peace provision for businesses engaged in visitor- serving commercial activities would minimize the City's exposure to revenue interruption and disruption of public enjoyment of the Promenade [and the Pier]. New or substantially amended agreements for leasehold operation shall provide that the tenant will not engage in practices that impede employees' ability to organize and contract with a labor organization for the purpose of collective bargaining. Such prohibited practices include harassment, intimidation, "captive audience" anti-union meetings or illegal terminations of workers in retaliation for organizing. A substantial amendment is defined as a change of use of the property, an increase in seating or square footage of more than 25%, or an extension of lease duration. Tenant engagement in prohibited practices shall constitute an event of default under the terms of lease. Affected leases would be

> those businesses having five or more full or part-time employees and engage in restaurant or visitor-serving activities."

On March 24, 2015 (Attachment D), Airport staff presented several recommendations regarding operations at the Santa Monica Airport and the City's future use of Airport land. At the meeting, Council directed staff to incorporate a labor-peace agreement requirement in all airport leases. On October 25, 2016 (Attachment E), Council authorized the City Manager to negotiate and execute a lease agreement with Spitfire Grill, a long-standing restaurant at the Airport, under the terms and conditions presented in the staff report. In accordance with Council's direction from the March 24, 2015 meeting, staff incorporated the labor-peace provisions within all of the commercial leases at the airport, with the exception of Spitfire Grill, where negotiations between the City and Spitfire Grill have reached an impasse.

At its meeting on August 23, 2016 (Attachment F), Council directed staff to amend the existing labor-peace provisions in the licensing and leasing guidelines for the Downtown and Santa Monica Pier to mirror the labor-peace agreement requirement for food- service operators at Los Angeles World Airports (LAX). Mirroring the LAX model would result in the following requirement:

> "In order to protect the City of Santa Monica's interest in ensuring that food- service operations produce the expected revenues to the City, Lessee shall supply to the appropriate City administrator a fully executed labor-peace agreement between Lessee (or the entity which will operate the food-service establishment) and any labor organization that is actively engaged in representing and attempting to represent food-service workers. The labor-peace agreement must be a valid and enforceable agreement which prohibits the labor organization and its members from engaging in any picketing, work stoppages, boycotts, or any other economic interference with the food-service operation for the duration of the lease and must cover all operations at the food-service

establishment (other than construction, alteration, or repair of the premises) including those conducted by sublessees or under management agreements, other than non-food retail sales."

The provision above is referred to herein as the "proposed labor-peace agreement requirement" or "proposed LPA provision." At this time, all commercial airport leases at the Santa Monica Airport have an LPA requirement similar to the LAX language. However, some non-commercial hangar leases (those only for storage of aircraft) and the Spitfire Grill lease, which is still under negotiation, do not have LPA language.

Additionally, Council directed staff to evaluate potential impacts of the proposed LPA provision on small, food-service businesses prior to amending the guidelines.

Discussion

To help provide additional context, the number of employees working for the City's food- service operators (City Tenants) and the revenues generated by the businesses were evaluated to determine how many of the tenants are considered small businesses.

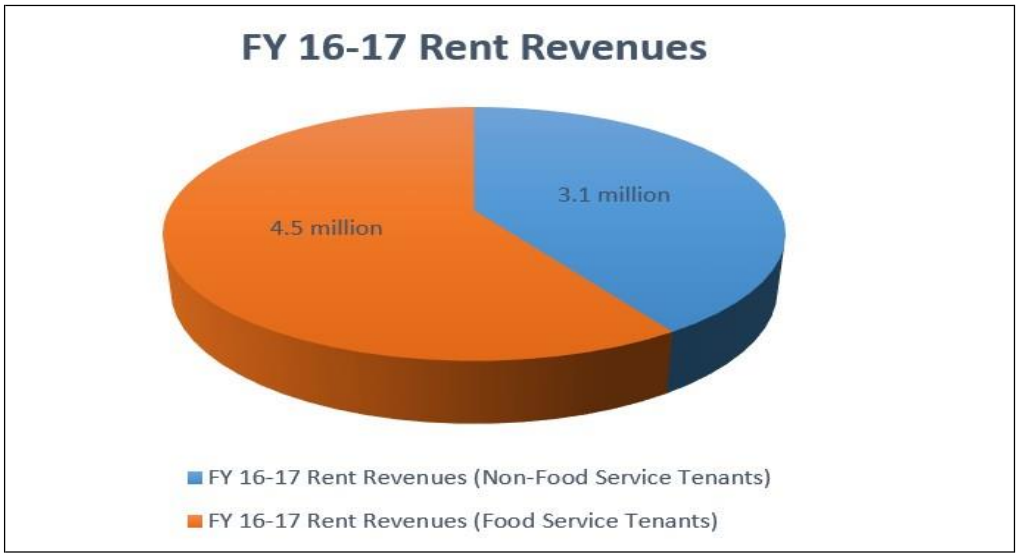
The Small Business Administration (SBA) establishes small-business-size standards on an industry-by-industry basis, but generally specifies a small business as having fewer than five hundred employees for manufacturing businesses and less than $7.5 million in annual receipts for most non-manufacturing businesses. The definition also varies by circumstance. For example, a business with fewer than twenty-five, full-time-equivalent employees with average annual wages below $50,000 is classified as a small business. In line with the measure, the minimum wage laws of the State of California and the City classify small businesses as having 25 or fewer employees.

As a group, the City Tenants employ a range of full- and part-time positions totaling approximately 600 employees annually, which includes additional part-time, seasonal staff hired by businesses on the Pier and Beach during peak season. Based on the

State and City's classification of small business (25 or fewer employees), the majority of the City Tenants would qualify as small businesses. Specifically, of the 27 food-service tenants, approximately eight tenants employ more than 25 full- and part-time employees.

In terms of revenues, the City collected approximately $7.6 million in rental revenues in FY 16-17. Of the $7.6 million, approximately $4.5 million (59 percent) was generated by the City Tenants with food-service operations.

Figure 1: Total Rent Revenues in FY 16-17



Under the SBA definition for non-manufacturing businesses, any business with less than $7.5 million in annual receipts would be considered a small business. Based on the SBA standard, the majority of City Tenants qualify as small businesses and tend to be local, independent, non-formula operators, consistent with the preferences within the City's leasing and licensing guidelines.

Labor Peace Agreements (LPAs)

Congress enacted the National Labor Relations Act (NLRA) in 1935 to protect the rights of employees and employers, to encourage collective bargaining, and to curtail certain private-sector labor and management practices, which can harm the general

welfare of workers, businesses, and the U.S. economy. Under a labor-peace agreement, a labor organization, an employer, or both, agree to waive certain federally protected rights in order to avoid labor disruptions.

LPAs come in many forms. Certain LPAs have been described as legally binding card-check-neutrality agreements between an employer and a labor organization in which the employer agrees to remain neutral in the event their employees wish to vote to unionize. It is important to note that negotiating and executing a LPA does not necessarily mean employees will unionize. In general, LPAs provide workers with rights to organize in the workplace, while the subject labor organization commits to forgo engaging in picketing, boycotting, or striking. LPAs vary depending on what terms are agreed upon between a particular business and labor organization. Terms may include elements such as[ii]:

- Labor Organization Access. The employer agrees to provide the labor organization with reasonable, limited access to its premises and employees.
- Employee Roster. The employer agrees to provide the labor organization with a complete list of contact information for its employees.
- Card Check. Both parties agree to a card-check process accompanied by a waiver of the National Labor Relations Act (NRLA) secret-ballot election process. Employees can sign a card authorizing a labor organization to represent them and a neutral third party (i.e. an arbitrator, a priest) counts the cards to determine if a majority of workers want to unionize. If a majority signs cards for the labor organization, the employer agrees to recognize the labor organization for purposes of collective bargaining.
- Neutrality. The employer agrees to remain neutral during the organizing campaign. The employer agrees to not take any action or make any statement showing preference for or opposition to unionization. The labor organization agrees not to coerce or intimidate employees in their decision.
- No Economic Action. Both the labor organization and the employer agree

to refrain from economic action, including strikes, picketing, or lockouts.

- First Consideration. Employer agrees to give first consideration in filling job vacancies to applicants referred by the labor organization.
- Dispute Resolution. The parties agree to submit any disputes concerning the interpretation or applications of the labor-peace agreement to binding arbitration.
- Additional Facilities. The employer agrees to recognize the labor organization as representative of employees at facilities acquired after the agreement is signed, upon a proper showing of a card-check majority by the labor organization.
  The employer may agree to extend an existing collective bargaining agreement to those facilities.
- Binding Interest Arbitration. The parties agree to submit to arbitration if no agreement is reached following a specified period of negotiations.

LPA Provisions and the National Labor Relations Act (NLRA)

There have been numerous lawsuits in recent years challenging the legality of locally imposed labor-peace agreements. Many of these lawsuits contend that labor-peace agreements trigger federal preemption under the NLRA. The NLRA grants employees two basic rights: (a) the right to form, join, or assist a union and (b) the right to engage in concerted activities for mutual aid or protection, which is any effort by two or more employees to improve pay, benefits, or working conditions. Under the NLRA, an employer cannot legally take any adverse employment action against employees who engage in union activities. Specifically, the NLRA stipulates: "Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring

membership in a labor organization as a condition of employment as authorized in section 158 (a)(3) of this title." [iii]

A state or municipality may not regulate employers in a manner that encroaches upon the jurisdiction of the NLRA, as such, regulation is preempted by the federal NLRA. However, as the Ninth Circuit recently articulated in *Airline Services Providers v. Los Angeles World Airports*, when a state or local government buys services or manages property as a private party would, it acts as a market participant and courts presume that its actions are not subject to preemption. Thus, the Ninth Circuit upheld LPA provisions included by the City of Los Angeles in its license agreements with service providers at LAX that refuel and load planes, take baggage tickets, help disabled passengers and provide similar services, because the Court found that the City of Los Angeles was acting as a market participant and not as a regulator. The Court further concluded that the scope of Los Angeles' use of the LPA provision at LAX was sufficiently narrow as to only address a specific proprietary problem (minimizing work stoppages at LAX) without imposing a City-wide policy that would affect the service providers' operations outside of LAX.

Courts have also upheld the inclusion of LPA provisions in state and local government contracts where such provisions are included as a narrowly tailored means of avoiding disruption of government projects. On such grounds, the Supreme Court has affirmed the authority of local officials to include LPA provisions commonly known as “project agreements” that require all firms performing construction on a single government project of limited duration to enter a particular kind of collective-bargaining agreement. Project agreements are typically used in connection with large-scale infrastructure projects in which the final product is “owned” by the local government. Project agreements reduce the total cost of individual government projects by ensuring a skilled workforce and creating a high probability that work will proceed continuously, without strikes, picketing, or other disturbances arising from disputes with unions.

LPA Requirements in Other Jurisdictions

California, Connecticut, Florida, Maryland, Minnesota, New York, Nevada, Oregon, Pennsylvania and Washington have labor-peace requirements that vary based on the projects and local laws. Additional examples include the City of New York, through Executive Order No. 19, titled “Labor Peace for Retail Establishments at City Development Projects,” in which labor-peace agreements became a requirement at retail and food-service establishments within development projects that receive financial assistance from the City of New York. In 1980, the San Francisco Redevelopment Agency required the Marriott Corporation to sign a labor-peace agreement in conjunction with its proposal to build a hotel on a City-owned parcel. The agreement included neutrality and card-check provisions. Approximately two decades later, in 1998, the City of San Francisco passed a “labor peace” ordinance applicable to contractors and subcontractors of hotel and restaurant projects where the City had a proprietary interest. Under the ordinance, any covered hotel or restaurant must sign a card-check agreement with any union requesting one. The San Francisco Airport Commission created a similar set of requirements for employers doing business at San Francisco International Airport.

In addition to New York and San Francisco, cities that have since enacted labor-peace ordinances include Baltimore, Pittsburgh, and Washington, D.C. While not necessarily as explicit as those in San Francisco, the City of Baltimore ordinance spells out five circumstances in which the City has a proprietary interest: 1) the City derives revenue from property leasing; 2) the City derives revenue from a project through borrowing from the City; 3) at least part of a project’s operating revenues are used to service debt on City bonds; 4) project loans are underwritten or guaranteed by the City; and 5) the City has an ongoing economic or non-regulatory interest dependent on the financial success of the project. The City of Pittsburgh’s ordinance states that employers, including subcontractors, “shall be or become signatory to valid collective bargaining agreements” with any labor organization seeking to represent its employees “as a condition precedent to its contract with the City of Pittsburgh.” This actually goes beyond the San Francisco ordinances, which at least require worker support. The Washington, D.C. law stipulates that any contract related to a hotel project must

include a labor peace agreement signed by an employer and any union that represents, or reasonably might represent, workers there.

In Maryland, an applicant for a license to operate a video lottery terminal must have "entered into a labor peace agreement with each labor union that is actively engaged in representing or attempting to represent video lottery and hospitality industry workers in the state." In return, the union will refrain from "picketing, work stoppages, boycotts and any other economic interference" within the first five years after the license is granted. The New York State law applies to any hotel or convention center employing more than

15 people in which a state agency asserts a proprietary interest. As with Maryland, a union agrees for five years not to disrupt employer operations.

LPA Provisions Currently in City Leases

Council first authorized a labor-peace-agreement requirement on September 19, 2000 when a previous owner of the current Viceroy Hotel sought approvals to sell its leasehold interest. In the transaction, the transfer of the tenant's leasehold interest in the Viceroy property triggered the preexisting leasehold requirement of providing a fully executed labor-peace agreement to the City. The transfer was approved in 2000, and the City was provided with a fully executed collective-bargaining agreement entered into by and between the operators of the Viceroy and a labor organization. A collective-bargaining agreement is a special type of commercial agreement, usually negotiated between management (on behalf of the company) and a labor organization (on behalf of employees) to regulate the terms and conditions of employees in the workplace, including the duties of employees and employer. The example of the Viceroy is unique in that the City's real estate portfolio does not currently include other hotel properties with food-service operations.

Proposed Change to the City's LPA Provisions

As described earlier, the proposed change to the City's LPA provisions would mirror the LAX labor-peace requirements. Specifically, all future City Tenants with food-

service operations would be required to submit an executed LPA as a condition of entering into a lease with the City. Currently, the labor-peace provisions in the Downtown and Pier leasing guidelines do not require tenants to demonstrate an executed LPA; rather, the labor-peace provisions stipulate that all City Tenants operating under the leasing guidelines in Downtown and the Pier cannot impede employee efforts to organize.

LAX Labor Peace Requirements

In the LAX labor-peace model, service providers are required to enter a labor-peace agreement with any employee organization that requests one. LAX's labor-peace policies were authorized pursuant to resolutions adopted by the Airport Board of Commissioners (BOAC) in Resolution 23437 from October 15, 2007 and Resolution 24860 from August 6, 2012. The requirements are:

> (i) Concessionaire shall have a signed Labor Peace Agreement (LPA) with the labor organizations representing or seeking to represent concession workers at the premises covered by the Agreement;
>
> (ii) Concessionaire shall have submitted to LAWA a copy of such LPA, executed by all of the parties; and
>
> (iii) Such LPA shall prohibit such labor organizations and their members from engaging in picketing, work stoppages, boycotts or other economic interference with the business of Concessionaire at any of the airports operated by LAWA for the duration of the Agreement.

In addition to concessionaires, any entity providing a commercial service at LAX, including all airline-service companies (i.e. baggage handlers, aircraft loading and unloading, counter and gate functions, etc.), whether unionized or not, are required to execute a service-provider license agreement with any organization, agency, or employee committee that can address worker grievances and disputes involving wages, hours of employment, and working conditions. Certain license agreements

between LAX and commercial service providers also include labor-peace agreements with the organization representing the workers. In the event an employer and a labor organization are unable to agree to a labor-peace agreement within 60 days of the labor organization's written request, the dispute must be submitted to a mutually agreed-upon mediator to assist the parties in reaching a reasonable labor-peace agreement through mediation. If mediation fails, the parties must submit the dispute to the American Arbitration Association (AAA) for arbitration conducted in accordance with the AAA rules.

City's Preference for Small, Non–Formula, Independent Businesses

Santa Monica has a vibrant and diverse economy. The Downtown leasing guidelines emphasize the importance of and City's preference for small, independent businesses within the tenant-selection criteria. The hospitality sector, which includes hotels, restaurants, and bars, directly supports Santa Monica's tourism industry and provides a strong stimulus to the local economy by creating jobs and producing revenues for the City. The City-owned properties at the Beach, in the Downtown, and on the Pier provide neighborhood-serving uses and amenities for the community and visitors, help activate the City Properties, and often fill gaps that would not otherwise be addressed by the market. The majority of City Tenants are small, independent businesses. Given the importance of small businesses to the community, Council asked that consideration be given to the potential impacts of labor-peace requirements on small, food-service businesses. As part of this research, staff conducted a series of outreach efforts to gather feedback and information.

Community Outreach and Input

Staff presented the proposed labor-peace agreement requirement to the Santa Monica Pier Board on February 22, 2017, Downtown Santa Monica, Inc. Board on February 23, 2017 and the Chamber of Commerce Governmental Affairs Committee on

March 6, 2017. In addition to businesses and residents, representatives of a labor organization attended several of the discussions. The feedback received included these key concerns and suggestions:

- *Uncertainty.* As the terms and conditions of LPAs vary based on what is negotiated between an employer and a labor organization, small businesses expressed concerns regarding the high level of uncertainty. In particular, the uncertainty represents additional risks for a small business as the inability to identify the legal, administrative and operational costs prior to negotiating an LPA and pursuing a lease with the City makes understanding and planning for on-going operating expenses more challenging. Additionally, food-service businesses expressed concern that a labor organization would have unilateral leverage in negotiating a LPA if it is a condition of entering into a lease with the City. Without any contingencies or alternative approaches to resolve disagreements in negotiating

  terms of an LPA, concerns were raised that the requirement could dissuade many smaller businesses from pursuing leasing opportunities with the City.

- *Legal Expenses.* Given the complexities associated with LPAs, concerns were raised that understanding and negotiating LPAs may be more daunting for small businesses and may require specialized legal assistance. Depending on the extent and difficulty of the negotiations between a tenant and a labor organization, including the possibility that such negotiations might require the use of an arbitrator or mediator, the legal costs to a small business could pose financial hurdles that dissuade small businesses from pursuing leasing opportunities in City Properties. As a result, concerns were raised that only larger, more established chains or franchises, with in-house legal counsel or deep financial resources, would have the means to fund the additional legal expenses.

- *Increased Operating Costs*: Concerns were expressed that LPAs would likely

lead to unionization, with an associated increase in operating costs. Concerns are particularly acute for small, food-service operators who run modestly priced restaurants in which profit margins are low.

- *Thresholds*: Participants considered whether thresholds could be developed, below which small businesses would not be subject to the LPA provision. Small businesses are a critical component of and a major contributor to the strength of local economies. Small businesses help stimulate economic growth by providing local jobs and employment opportunities to people who may not be employable by larger businesses, franchises, or national chains. One option is the 25-employee threshold contained in the minimum-wage ordinance. Another option is to impose the requirement based on the square footage to be leased. A third option is to exempt food-service carts on the Santa Monica Pier given the short terms (36 months) of cart licenses and micro-entrepreneurial nature of cart businesses.
- *LPA Template:* To help address the uncertainty associated with LPAs, some participants suggested the City develop a standard form or template for LPAs in order to give prospective tenants a clear idea of what would be expected. This approach, however, may be challenging as each LPA is unique based on what is negotiated between a labor organization and a business. Additionally, because the City is not a party or signatory to an LPA, the City's promulgation of a template may not be prudent.
- *Business Protections*: Some participants commented that the LPA provision would help businesses prevent disruptive labor conflicts, which could negatively affect revenues and customer loyalty. Others argued that Santa Monica food-service businesses have generally not been subject to labor conflicts and questioned the likelihood of future conflict.

Alternatives

There are seven primary alternative approaches that Council could pursue:

1. *Amend Existing Leasing Guidelines with LPA Requirement:* One option for consideration is to update the leasing guidelines to require labor-peace agreements for food-service operators in all City-owned properties and adopt a policy to include the LPA requirement for properties not covered under the Airport, Downtown, or Pier leasing guidelines to ensure consistent policies and practices with respect to food-service operators. Under this option, the leasing guidelines would be amended to include the following language:

   > "In order to protect the City of Santa Monica's interest in ensuring that food- service operations produce the expected revenues to the City, Lessee shall supply to the appropriate City administrator a fully executed labor-peace agreement between Lessee (or the entity which will operate the food service establishment) and any labor organization that is actively engaged in representing and attempting to represent food-service workers. The labor-
   >
   > peace agreement must be a valid and enforceable agreement which prohibits the labor organization and its members from engaging in any picketing, work stoppages, boycotts, or any other economic interference with the food-service operation for the duration of the lease and must cover all operations at the food-service establishment (other than construction, alteration, or repair of the premises) including those conducted by sublessees or under management agreements, other than non-food retail sales."

Additionally, the dispute-resolution process used at LAX could be included in which, in the event an employer and a labor organization are unable to agree to a labor-peace agreement within 60 days of the labor organization's written request, the dispute must be submitted to a mutually agreed-upon mediator to assist the parties in reaching a reasonable labor-peace agreement through mediation. If mediation fails, the parties must submit the dispute to the American

Arbitration Association (AAA) for arbitration conducted in accordance with the AAA rules.

2. *Adopt A Template or Guidelines for LPAs:* While the LAX LPA provision affirmed by the Ninth Circuit does not specify what concessions a business would have to make to satisfy the City's LPA requirement, existing City Tenants interested in pursuing and extending leasing opportunities with the City expressed deep concerns about the ambiguity and uncertainty associated with negotiating LPAs. City Tenants and other business stakeholders have asked that the City provide as much clarity and details as possible with respect to LPA requirements and process, such as a template. However, as noted, given that the City is not a party or signatory to any LPA, insertion of the City's specific desires may be problematic.

3. *Amend Labor Peace Provisions with Threshold Exemptions:* In accordance with the City's minimum wage classification, a small business is defined as a business (corporation, limited liability company or proprietorship) with 25 or fewer employees. Currently, the existing labor-peace provisions in the City's leasing guidelines for Downtown and the Pier apply to those businesses engaged in restaurant or visitor-serving activities and having five or more full or part-time employees. Under this alternative, the LPA requirement could, for example, apply to businesses with 26 or more employees with exemptions granted for small businesses with 25 or fewer employees. A threshold exemption based on square footage is not recommended, as all but five City tenants are located in City-owned properties of less than 5,000 square feet.

4. *Adopt LPA with a No-Strike Pledge:* The Santa Monica-Malibu Unified School District (District) adopted an LPA policy in 2005 for District-owned properties leased to hospitality operations. The District's LPA requirements are similar to LAX requirements in that the District does not execute any lease, in this case,

with a hospitality operations lessee, unless and until the hospitality operations lessee has signed a labor-peace agreement with any labor organization seeking to represent hospitality workers at the premises covered by the lease. In the District's LPA requirement, however, each labor-peace agreement must contain a No-Strike Pledge. The exact language reads:

> "Each labor peace agreement must contain a No-Strike Pledge. A Hospitality Operations Lessee shall be relieved of the obligations of this section with respect to a Labor Organization if the Labor Organization places conditions upon its No Strike Pledge that the Board of Education finds, after notice and hearing, to be arbitrary or capricious".

Under this alternative, the City adopts the LPA requirement with a No-Strike Pledge that allows the City to waive LPA requirements in certain circumstances similar to the District's policy.

Under any of the first four alternatives, staff recommends that food-service carts and outdoor-dining licenses be exempted from the labor-peace requirements, given the nature of the licenses.

5. *Keep Labor Peace Provisions As-Is:* Council may wish to consider keeping the current labor-peace provisions given that: (a) the existing labor-peace provisions in the Downtown and Pier Leasing Guidelines currently prohibit City Tenants from engaging in practices that impede employees' ability to organize and contract with a labor organization for the purpose of collective bargaining; (b) the City has not yet experienced work stoppages at any of the City Properties; and (c) the impacts of LPAs on rental income and small businesses is unknown and unpredictable at this time.

6. *Require Good-Faith Negotiations.* Council could adopt the State of California's approach of requiring a statement by the applicant that it intends to execute a LPA or is in the process of doing so. The approach does not make an executed LPA an express requirement of obtaining a lease with the City before

a lease can be executed. Instead, if the tenant does not follow through with executing a LPA with a labor organization, the City has the flexibility of deciding whether to declare a breach of the lease agreement. The approach strengthens the City against challenges and claims of "injury in fact." This approach might also be combined with adopting non-binding guidelines as suggested in the second alternative.

7. *Remove All Requirements*: Council could eliminate the existing labor-peace provisions in the leasing guidelines in recognition that the NLRA provides employees with basic rights to form, join, or assist a labor organization and the right to engage in concerted activities for mutual aid or protection, which is any effort by two or more employees to improve pay, benefits, or working conditions. Additionally, under the NLRA, an employer cannot legally take any adverse employment action against employees who engage in union activities.

Based on the Council direction staff would return to Council for formal approvals to amend the Airport, Downtown, and Santa Monica Pier Leasing Guidelines and implement the any requirement or conditions prospectively in forthcoming requests for proposals, leases and licenses.

Financial Impacts and Budget Actions

There is no immediate financial impact or budget action associating with conducting the study session. Depending on the direction chosen, leasing revenue from City-owned properties may be affected.

[i] https://www.sba.gov/contracting/getting-started-contractor/make-sure-you-meet-sba-size- standards/summary-size-standards-industry-sector

[ii] Neutrality Agreements and Proprietary Interest Protection Agreements. Miller-O'Brien.

[iii] *National Labor Relations Act of 1935 §7*

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Approved	**Forwarded to Council**
Andy Agle, Director 10/17/2017	Rick Cole, City Manager 10/18/2017

Attachments:

A. Summary of Food Service Tenants
B. Council Item #8-A, March 11, 2003
C. Council Item #1-F, July 8, 2003
D. Council Item #8-A, March 24, 2015
E. Council Item #3-F, October 25, 2016
F. Council Item #13, August 23, 2016
G. Written Comments
H. Powerpoint Presentation