

RESOLUTION NO. 2022-XXX

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF FULLERTON, CALIFORNIA, DECLARING THE NEED TO RETURN PUBLIC RIGHT OF WAY AT THE NORTHEAST CORNER OF HARBOR BOULEVARD AND COMMONWEALTH AVENUE TO PUBLIC USE

WHEREAS, a portion of the public right of way along Commonwealth Avenue just east of Harbor Boulevard contiguous to 100 North Harbor Boulevard of approximately 384 square feet was the subject of a 2004 Site Lease Agreement and Encroachment Agreement with Intimate Inns of California, Inc. DBA Florentine's Tuscany Club, a tenant at this location who ceased occupation of the property in October 2020. The agreement allowed Florentine's to rent certain portions of the City's sidewalk area on Commonwealth Avenue adjacent to the Property for its business purposes, with intended benefits to the City of Fullerton. The property owner was not a party to the agreement.

WHEREAS, the City and Intimate Inns entered into the First Amendment to Encroachment License Agreement revising the term of the agreement on July 18, 2017. The property owner was not added as a party to the agreement. The agreement was scheduled to expire on May 30, 2023, if not earlier terminated.

WHEREAS, actual use of the encroachment area ceased for a period of longer than one year and the tenant has not paid rent under the terms of the agreement since prior to the closure of Florentine's Tuscany Club.

WHEREAS, numerous members of the public have called upon the City to restore the use of the public right of way at this critical location in the City's downtown due to its lack of productive use, the need for additional access for disabled and non-disabled pedestrians and travelers and the increased amount of active, non-vehicular, transportation needs in the City's downtown due to the long-term effects of the COVID-19 pandemic and changed public needs relating to outdoor access resulting therefrom.

WHEREAS, no party has made a request to assign the agreement to another party, nor has the City agreed to assign the agreement to anyone. Further, the Agreement states that vacating the Premises is a material default. Non-payment of rent is also a material default.

WHEREAS, the location of the encroachment at the northeast corner of Commonwealth and Harbor is the only one of the four corners at this intersection with the narrowed pedestrian corridor caused by the encroachment. Removal of the encroachment will allow for additional pedestrian capacity.

WHEREAS, restoration of the public right-of-way at the location of the encroachment to its full width is necessary and appropriate to restore this area to the public's use.

WHEREAS, there is no possibility that this resolution will have a significant effect on the environment and therefore this action is not subject to CEQA.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF FULLERTON RESOLVES AS FOLLOWS:

1. The recitals provided in this resolution are true and correct and are incorporated into the operative part of this resolution.
2. The City Council of the City of Fullerton does hereby declare that the terms of Site Lease Agreement and Encroachment Agreement have been materially breached by abandonment of use and failure to pay rent and the lease is in default and is terminated.
3. The City Council of the City of Fullerton does hereby declare that it is necessary to restore the public's use of the public right of way along Commonwealth Avenue, east of Harbor Boulevard, adjacent to 100 North Harbor Boulevard, Fullerton, California, and directs the City Attorney to notify the owner of the encroaching building to remove the encroachment and to restore the public right of way to its pre-encroachment condition.
4. Staff has reviewed this resolution for compliance with the California Environmental Quality Act (CEQA), the CEQA Guidelines and the City's environmental procedures, and found it exempt pursuant to Section 15061 (b)(3) (General Rule) of the CEQA Guidelines, in that the City Council hereby finds that it can be seen with certainty that there is no possibility that the passage of this resolution will have a significant effect on the environment.

ADOPTED BY THE FULLERTON CITY COUNCIL ON AUGUST 16,
2022.

Fred Jung
Mayor

ATTEST:

Lucinda Williams, MMC
City Clerk

Date