

REQUEST FOR COUNCIL ACTION



CITY COUNCIL MEETING DATE:

NOVEMBER 17, 2020

TITLE:

**APPROVE A SECOND AMENDMENT TO
EXTEND THE TERM AND INCREASE THE
OUTDOOR DINING SPACE FOR THE
LICENSE AGREEMENT WITH EAST END
REALTY PARTNERSHIP, LP AND
WURSTHAUS, INC. ALLOWING
TEMPORARY OUTDOOR DINING
ACTIVITIES TO OCCUR WITHIN PLAZA
CALLE CUATRO FOR THE PERIOD
DECEMBER 1, 2020 THROUGH
NOVEMBER 30, 2021 FOR AN AMOUNT
NOT TO EXCEED \$2,028
(GENERAL FUND)**

CLERK OF COUNCIL USE ONLY:

APPROVED

- ☐ As Recommended
- ☐ As Amended
- ☐ Ordinance on 1st Reading
- ☐ Ordinance on 2nd Reading
- ☐ Implementing Resolution
- ☐ Set Public Hearing For _____

/s/ Kristine Ridge

CITY MANAGER

CONTINUED TO _____

FILE NUMBER _____

RECOMMENDED ACTION

Authorize the City Manager to execute a second amendment to extend the term and increase the outdoor dining space for the License Agreement with East End Realty Partnership, LP and Wursthhaus Inc., allowing temporary outdoor dining activities to occur within Plaza Calle Cuatro for the period of December 1, 2020 through November 30, 2021, in an amount not to exceed \$2,028, subject to non-substantive changes approved by the City Manager and the City Attorney.

DISCUSSION

Downtown Santa Ana has several entry points, but the corner of 4th and French Streets is a unique entry point to Downtown Santa Ana because of the open space at Plaza Calle Cuatro (Plaza), the convenient parking structure, vibrant murals, and a variety of active businesses. Among those businesses, in that prime location, is Wursthhaus, Inc., a restaurant that provides an authentic Euro-dining experience that serve hand-made sausages and German and Belgian beer. The property owner and business owner are committed to the success of Downtown Santa Ana.

On May 7, 2019, the City Council approved a license agreement with East End Realty Partnership, LP, 129 W. Wilson Street, Suite 100, Costa Mesa, Ca 92627, and the Wursthhaus Restaurant, located at 305 E 4th Street, Suite 106, to conduct temporary outdoor dining activities within Plaza Calle Cuatro for the period of June 1, 2019 to November 30, 2019. After the execution of the agreement, the parties were not able to implement the outdoor dining experience within the Plaza

due to unanticipated delays and loitering concerns within the Plaza. The parties requested a twelve-month extension of the agreement.

On November 5, 2019, The City Council approved a twelve-month extension license agreement beginning December 1, 2019 and ending November 30, 2020, with East End Realty Partnership, LP, and Wursthau, Inc., allowing temporary outdoor dining activities within the Plaza.

The outdoor dining activity by Wursthau has contributed to positive activity within the Plaza. The approximately 200-square-foot area (10' x 20') located immediately adjacent to the southwest corner of Plaza Calle Cuatro and adjacent to the business entrance is utilized for limited outdoor dining activities when not utilized by the City for publicly sponsored events. In an effort to achieve business sustainability, Wursthau Inc. has requested permission to extend the outdoor patio by an additional five (5) feet, which would align to the restaurant's front door. The request would accommodate the restaurant owner to provide service more efficiently and does not negatively impact Plaza Calle Cuatro.

The use of the space will continue to be limited to food and beverage services conducted by Wursthau located at 305 E 4th Street, Suite 106. The outdoor dining activities will coincide with the restaurant's hours of operation. While these hours may change from time to time, the restaurant typically operates from 11 AM to 12 AM Sunday through Tuesday, 11 AM to 1 AM Wednesday through Thursday, and 11 AM to 2 AM Friday through Saturday.

Fixtures within this outdoor dining area are limited to temporary/removable outdoor chairs, tables, umbrellas, and if desired, border barriers (fencing) that can be removed upon notice and request by the City of Santa Ana, in accordance with the license agreement (Exhibit 1).

Salient terms of second amendment to the license agreement are as follows:

- Twelve-month term
- No outdoor dining events permitted when the City of Santa is conducting special events
- The City will also retain the right to conduct unplanned events upon 24-hour notice to the licensed party
- License Fee \$169 per month; calculation of monthly fee:
 - 30 days at \$161 per day (per City Miscellaneous Fee Schedule) of entire plaza = \$4,830
 - Square Footage of entire plaza = 8,564 (per assessor's records)
 - Square Footage of dining space = 300
 - $(300 \div 8564 = 3.5\% \text{ of Plaza multiplied by } \$4,830 \text{ monthly fee} = \$169 \text{ (rounded)})$
- Licensee will be responsible for maintenance of the dining area, providing insurance coverage, and compliance with all other City regulations

ENVIRONMENTAL IMPACT

In accordance with the California Environmental Quality Act (CEQA), the proposed licensing and leasing activity is exempt from further review in accordance with CEQA Guidelines Section 15301 (Existing Facilities).

FISCAL IMPACT

The City of Santa Ana will be receiving revenue in the amount of \$2,028 from this twelve-month license. Funds will be deposited in the following account for the specified year.

Fiscal Year	Accounting Unit-Account #	Fund Description	Accounting Unit, Account Description	Amount
FY 20-21	01113002-57361	General Fund	PRCSA-Recreation Facility Rental	\$2,028

Fiscal Impact Verified By: Kathryn Downs, CPA, Executive Director – Finance and Management Services Agency

Submitted By: Minh Thai, Executive Director – Planning and Building Agency
Lisa Rudloff, Executive Director – Parks, Recreation, and Community Services Agency
Steven Mendoza, Executive Director – Community Development Agency

Exhibit: 1. Second Amended Agreement

**SECOND AMENDMENT TO TEMPORARY
OUTDOOR DINING LICENSE AGREEMENT**

This SECOND AMENDMENT TO TEMPORARY OUTDOOR DINING LICENSE AGREEMENT ("Second Amendment to License Agreement") is entered into this _____ day of _____, 2020, by and between the City of Santa Ana, a charter city and municipal corporation duly organized and existing under the Constitution and laws of the State of California ("City"), East End Realty Partnership, LP, and Wursthaus, Inc. (collectively "Licensee").

RECITALS

- A. On May 7, 2019, the City and Licensee entered into the Temporary Outdoor Dining License Agreement No. A-2019-063 ("License Agreement") to allow temporary outdoor dining activities within a portion of Plaza Calle Cuatro ("Plaza"), adjacent to real property located at 301-305 East Fourth Street, Suite 106, Santa Ana.
- B. On November 30, 2019, the City and Licensee entered into a First Amendment to Temporary Outdoor Dining License Agreement No. A-2019-200 to extend the term of said License Agreement, increase the amount of the License Fee to cover the extended term, and clarify the type of fencing that may be installed on the Licensed Property.
- C. In accordance with the terms and conditions of said License Agreement, the parties desire to: amend said License Agreement to extend the term of said License Agreement for an additional one year, subject to the payment of an additional License Fee by Licensee; increase the amount of the License Fee to cover the extended term; and, allow a five (5) foot extension of the outdoor patio to align with the restaurant's front door.

NOW THEREFORE, in consideration of the mutual and respective promises, and subject to the terms and conditions of said License Agreement, except as herein modified, the parties agree as follows:

- 1. **Section 1, Term and Purpose of License**, shall be amended to extend the term of the License Agreement from November 30, 2020, until November 30, 2021.
- 2. **Section 1, Terms and Purpose of License**, shall also be amended to increase the size of the Licensed Premises by extending the outdoor patio by an additional five (5) feet to the south to align with the restaurant's front door, thus increasing the size of the Licensed Premises, as depicted in Exhibit 1 attached hereto and incorporated herein by reference.
- 3. **Section 2, Licensed Premises and Use, subsection (a)**, shall be amended to reference Exhibit 1 attached hereto to depict the expanded Licensed Premises under said License Agreement.

4. **Section 3, License Fee**, shall be amended to reflect that, upon execution of this First Amendment to License Agreement, Licensee shall pay to the City a one-time non-refundable fee of Two-Thousand and Twenty-Eight dollars (\$2,028) to cover this second extended term of the License.
5. Except as hereinabove modified, the terms and conditions of said License Agreement remain unchanged and in full force and effect.

IN WITNESS WHEREOF, the parties hereto have executed this Second Amendment to License Agreement the date and year first above written.

ATTEST:

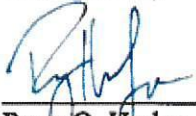
CITY OF SANTA ANA

DAISY GOMEZ
Clerk of the Council

KRISTINE RIDGE
City Manager

APPROVED AS TO FORM:

SONIA R. CARVALHO
City Attorney



Ryan O. Hodge
Assistant City Attorney

EAST END REALTY PARTNERSHIP, LP



Ryan Chase

RECOMMENDED FOR APPROVAL:

WURSTHAUS, INC.

MINH THAI
Executive Director
Planning and Building Agency

Gabriel Ruiz

4. **Section 3, License Fee**, shall be amended to reflect that, upon execution of this First Amendment to License Agreement, Licensee shall pay to the City a one-time non-refundable fee of Two-Thousand and Twenty-Eight dollars (\$2,028) to cover this second extended term of the License.
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CITY OF SANTA ANA

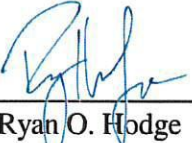
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APPROVED AS TO FORM:

SONIA R. CARVALHO
City Attorney

EAST END REALTY PARTNERSHIP, LP



Ryan O. Hodge
Assistant City Attorney

Ryan Chase

RECOMMENDED FOR APPROVAL:

WURSTHAUS, INC.

MINH THAI
Executive Director
Planning and Building Agency



Gabriel Ruiz

EXHIBIT 1
EXPANDED LICENSED PREMISES

EXHIBIT 2

SECOND AMENDMENT TO OUTDOOR DINING LICENSE AGREEMENT
EAST END REALTY PARTNERSHIP, LP AND WURSTHAUS INC.
TEMPORARY OUTDOOR DINING PLAZA CALLE CUATRO

