

MAR 11 2008



## INFORMATION REPORT

FILE COPY

DATE: March 3, 2008

TO: City Manager  
DEPARTMENT: Economic Development (ED)  
SUBJECT: License Area Closure After Business Hours

APPROVED:

DATE:

3-3-08

In 2002, a License Area was created in front of the planter at the intersection of Lincoln Street and Pacific Avenue for exclusive use by customers of Kiosk #3, Kiosk #4 and New Leaf Market (Licensees). The Licensees have exclusive use of this area and may restrict access to area during the hours the businesses are open. After the businesses have closed, the area is open to public use.

A large number of people have been congregating in this License Area at night (after business hours). The after business hour activities have resulted in blocking of the sidewalk area and social problems, causing increased maintenance costs as well as negatively impacting patronage to nearby businesses. The Police have recommended that the area be closed to the public after business hours.

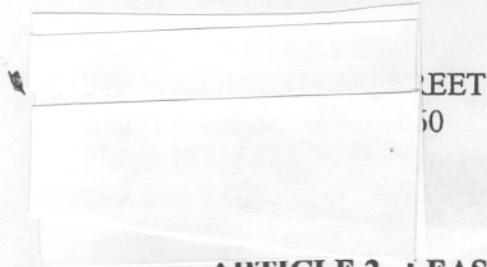
In order to protect the public and private investment, it is staff's intention to post the area as closed during the hours the businesses are closed, unless City Council directs differently by March 11, 2008.

Submitted by:

Ceil Cirillo  
Director

1.11 Security Deposit: \$428.00 (Section 7.01) :

1.12 Address for Notices to Tenant:



## ARTICLE 2. LEASE OF PREMISES

2.01 City of Santa Cruz as Landlord. Tenant acknowledges and understands that the Landlord is a municipality consisting of numerous offices, departments, agencies and districts. Whenever a provision contained in this Agreement, or any extension, modification or amendment, requires the "written consent" of the Landlord, such consent must be obtained from the then acting City Manager or Assistant City Manager for the City of Santa Cruz. Tenant may not rely on any statement or representation by any other employee, agent or representative of Landlord in obtaining such consent and any such statement or representation other than the express written consent of the City Manager or Assistant City Manager shall be null and void and have no effect. Nothing contained in this Section shall limit in any way the authority of any office, department, agency or district of the City or County of Santa Cruz, California from approving or withholding consent to any event or activity regulate by local law.

2.02 Premises. "Landlord leases to Tenant and Tenant leases from Landlord the retail kiosk designated as KIOSK NO. 3, 1130-K2 PACIFIC AVENUE, Santa Cruz, California (the "Premises") (Exhibit A).

2.03 Reservations. Landlord reserves the right at any time to make alterations or additions to the Premises. This lease confers no rights either with regard to the subsurface of the land below the ground level of the Premises or with regard to airspace above the roof of the premises

2.04 License, Appurtenant Rights, Public Right of Way Landlord is the owner of the public right of way surrounding the Premises described herein. Tenant desires to obtain the permission of Landlord to perform certain acts upon and within the public right of way. Now, therefore, Landlord, as Licensor, grants to Tenant, as Licensee, a license for the use of a portion of the public right of way surrounding the kiosk, and adjacent to the City planter box next to the Premises ("License Area") for the purpose of walk-up business, pick ups and deliveries, and outdoor seating consisting of tables and chairs. Licensee is permitted to physically demark the License Area subject to Landlord approval and the procedures and policies delineated in this Lease Agreement. The License Area is marked and described on the attached Exhibit C. The license is personal to the Licensee, non-assignable, and terminable and revocable at the will of the Licensor:

Any use of the public right of way surrounding the Premises by Tenant may be designated as either "non-exclusive" or "exclusive" at the sole discretion of the Licensor (City of Santa Cruz). The areas governed by the license are not a part of the Premises defined by the lease. The Licensee does not hold any estate or interest in the property of the City in the public

Lease Agreement Between the City of Santa Cruz and Marilyn Strayer

March 25, 2003

right of way by virtue of this license. The City may formulate rules, conditions of license, regulations and a permit process for the use of the public property and right of way area surrounding and in close proximity to Pacific Avenue kiosks and Premises, and the uses of other areas in the public right of way of the City. The areas surrounding the Premises may be governed thereby and the Tenant agrees to be bound by these rules and regulations and obtain such permits or licenses as may be required. These areas may be governed by this lease to the extent it is not in conflict with City rules, regulations, and permit requirements as they now or hereafter exist.

Landlord shall at all times retain exclusive final authority over the public right of way including the License Area. Landlord shall have the right to perform any and all acts of construction and maintenance in the public right of way, including the License Area, as fully and completely as if the license for the use of the License Area did not exist. Landlord will not be liable to the Tenant by reason of any injury to or interference with Tenant's business or property for any inconvenience or damages caused thereby.

The lease term applicable to the Premises does not apply to the License Area and Landlord retains the right at its sole discretion to terminate or revoke said license at any time. Termination or revocation of the Licensee's use of the License Area is not a grounds for termination of the lease. Termination or restriction of use the use of the License Area does not reduce rental payments due under the Lease Agreement.

"Exclusive" shall be construed for License Area management purposes as granting to the Tenant the right to restrict access to the License Area during the normal hours the business is open to customers of the Kiosk who have a legitimate purpose for utilizing the License Area for consuming food and drink purchased at the Kiosk.

The Exclusive License Area will be managed similar to the management of the City's Café/Retail Extension Areas. The Café Extension Area policies are attached as a frame of reference for the management of the Exclusive License Area as Exhibit D ("Café Extension Areas Policies and Procedures"). Exhibit D notwithstanding, Landlord (City) shall have final determination as to all policies and procedures with respect to the Exclusive License Area.

During any time period in which the License Area is designated as "Exclusive" by Landlord and Tenant operates the License Area in an Exclusive manner, Tenant shall remit to Landlord (City) the fee of \$25.00 pursuant to the terms and conditions of the monthly rent payments under this Lease Agreement beginning as of the date of Tenant taking possession of the Premises and thereafter.

**2.05 Tenant Improvements.** If applicable, the respective obligations of the Landlord and Tenant regarding preparation of and improvement to the Premises for Tenant's use are set forth in Exhibit E attached to this Agreement and are defined as either Landlord's Work or Tenant's Work, as the case may be. Any improvement, fixture or item of equipment that is not listed on Exhibit E is the Tenant's obligation at its sole cost and any such item must be approved in writing by the Landlord before work on such item of improvement or installation of said fixture or equipment commences.

**2.06 Condition of Premises.** Tenant acknowledges that it recognizes the uniqueness of the premises and accepts them in their current and disclosed condition existing on the date of



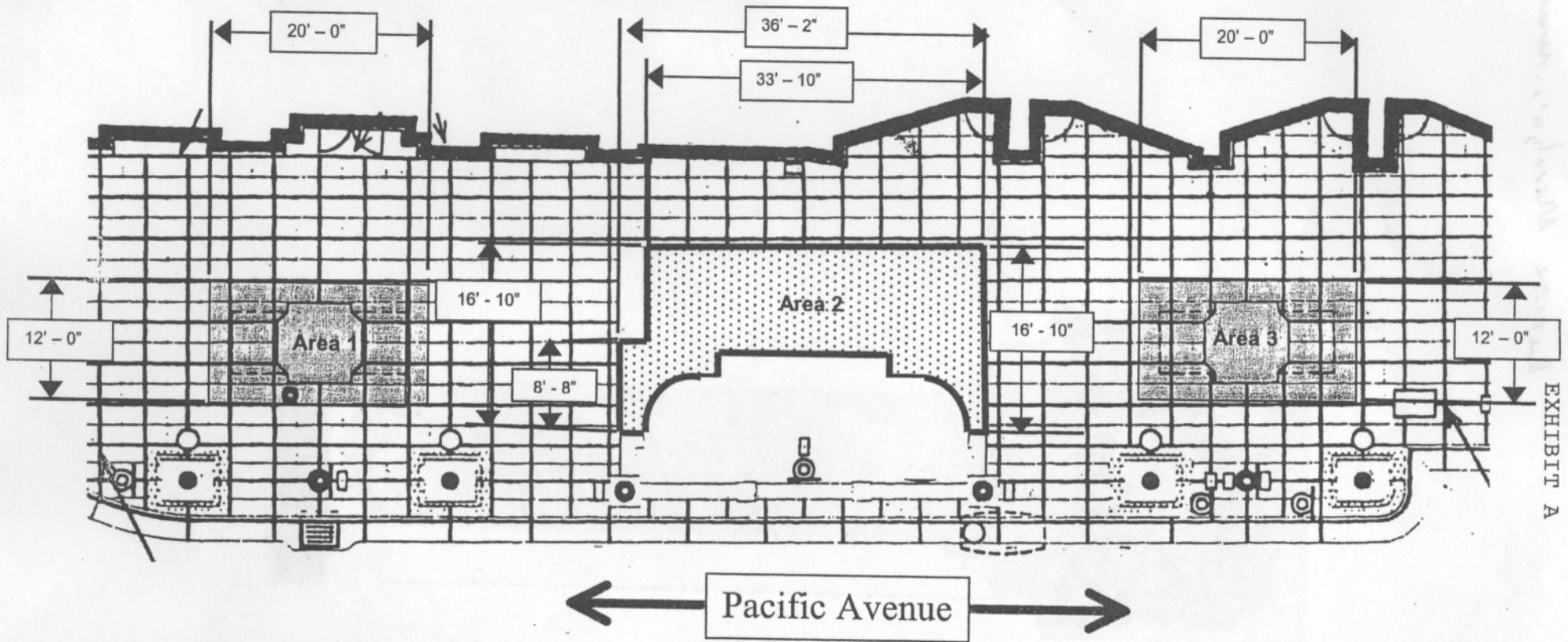


EXHIBIT A

**Licensed Areas**

<b>Kiosk Three</b>	<b>Size</b>
Area 1	240 square feet
Area 2	403 square feet

<b>Kiosk Four</b>	<b>Size</b>
Area 2	403 square feet
Area 3	240 square feet

Lincoln Street