



## Legislation Details (With Text)

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**On agenda:** 11/18/2019 **Final action:** 11/18/2019

**Title:** Approve First Amendment to Lease between the City and Kokomo's Surfside Grill, Inc., for a Beach Food Concession at the Marine Safety Education Center and approve Consent to Assignment and Assumption of Lease for Kokomo's Concession

**Attachments:** 1. Att #1 - Kokomo's Assignment Agreement w/Exhibits A-C.pdf

Date	Ver.	Action By	Action	Result
11/18/2019	1	City Council/Public Financing Authority	approved	Pass

## REQUEST FOR CITY COUNCIL ACTION

**SUBMITTED TO:** Honorable Mayor and City Council Members

**SUBMITTED BY:** Oliver Chi, City Manager

**PREPARED BY:** Kellee Fritzal, Deputy Director of Economic Development

### Subject:

**Approve First Amendment to Lease between the City and Kokomo's Surfside Grill, Inc., for a Beach Food Concession at the Marine Safety Education Center and approve Consent to Assignment and Assumption of Lease for Kokomo's Concession**

### Statement of Issue:

The City Council is asked approve the Consent to Assignment and Assumption of Lease Agreement for Kokomo's Concession and First Amendment to the Lease dated September 5, 2017, between the City of Huntington Beach and Kokomo's Surfside Grill, a California Corporation for a Beach Food Concession on the first floor level of the Marine Safety Education Center.

### Financial Impact:

The First Amendment will increase the base monthly rent resulting in an annual increase of \$735.00, in addition to any increases in sales overage rent. Revenues will be deposited into the General Fund (10000100.43095).

### Recommended Action:

A) Approve and authorize the City Manager to execute the Consent to Assignment and Assumption of Lease Agreement for Kokomo's Concession; and

B) Approve and authorize the City Manager to execute the First Amendment to Lease dated September 5, 2017 between the City of Huntington Beach and Kokomo's Surfside Grill, a California Corporation for a Beach Food Concession on the first floor level of the Marine Safety Education

Center.

**Alternative Action(s):**

Do not approve the Consent to Assignment and Assumption of Lease Agreement and First Amendment to Lease and direct staff accordingly.

**Analysis:**

On September 5, 2017, the City Council approved a 10-year Lease Agreement ("Lease") with Kokomo's Surfside Grill, Inc., for the operation of a beach concession located at the Junior Lifeguard Headquarters. Kokomo's Surfside Grill, Inc., is currently operated by Michael and Christie Bartusick. They sell food, drinks, and offer beach equipment rentals to residents and visitors out of the 1,140 square foot concession.

Recently, Michael Bartusick approached staff about selling the business known as Kokomo's Surfside Grill, Inc., to Michael and Joseph Ali. The Ali's currently manage Zack's Pier Plaza and Zack's Too (located near Beach Blvd.), which have a history of providing excellent customer service and enhancing the visitor experience to tourists and the local community. In addition, Zack's Pier Plaza is amongst the strongest revenue generating concessionaires operating along the beach.

In order for Mike and Joseph Ali to operate the Kokomo's Surfside Grill, a formal assignment of the Lease is needed to transfer the Lease terms, conditions, and all obligations. Section 34 (a) of the Lease states that the Lessee shall not voluntarily assign or otherwise transfer its interest in the Lease or in the Premises, without prior written consent of the City. The City Attorney's Office has prepared a Consent to Assignment and Assumption of Lease Agreement for Kokomo's Concession to complete the transaction. The basic terms of the Lease are as follows:

- 10-year term, eight (8) years remaining
- Options: One five-year option, at City's discretion
- Base Monthly Rent: \$250.00 (low), \$750 (middle), and \$1,500.00 (peak) seasons
- Percentage Rent: 4% (low), 9.5% (middle), 11.5% (peak) seasons
- Low Season: January, February, November, and December
- Middle Season: March, April, and October
- Peak Season: May, June, July, August, and September

In addition, a First Amendment to the Lease has been prepared to clarify the annual base rent escalations by utilizing the All Urban Consumers (CPI-U) for the Los Angeles-Riverside-Orange County Area (1982-84=100) as published by the U.S. Bureau of Labor Statistics for September 1, 2019. The chart below compares the differences in the base rent amounts between the Lease and the First Amendment:

Season	No. of Months	Original Lease		First Amendment	
		Base Rent	Season Subtotal	New Base Rent	Seasonal Subtotal
Low	4	\$250	\$1,000	\$270	\$1,080
Middle	3	\$750	\$2,250	\$800	\$2,400

Peak	5	\$1,500	\$7,500	\$1,601	\$8,005
Totals	12		\$10,750		\$11,485

The annual difference in rent between the First Amendment and the Lease is \$735. Each year thereafter, the base rent amount will increase based on the aforementioned CPI. Upon approval of both agreements by the City Council and close of escrow for the business assets, Mike and Joseph Ali will operate the concession as Kokomo's Surfside Grill. The Economic Development Committee (EDC) reviewed the request for Assignment at the September 11, 2019, meeting and recommended approval. Based on the foregoing, staff is recommending approval of the assignment.

**Environmental Status:**

No applicable

**Strategic Plan Goal:**

Strengthen long-term financial and economic sustainability

**Attachment(s):**

1. Consent to Assignment and Assumption of Lease Agreement for Kokomo's Concession, including Exhibit "A," Lease dated September 5, 2017; Exhibit "B," First Amendment to Lease Dated September 5, 2017, and Exhibit "C," Agreement for Purchase and Sale of Assets.