



City of Huntington Beach

File #: 19-394

MEETING DATE: 4/1/2019

REQUEST FOR CITY COUNCIL ACTION

SUBMITTED TO: Honorable Mayor and City Council Members

SUBMITTED BY: Fred A. Wilson, City Manager

PREPARED BY: Kellee Fritzal, Deputy Director of Economic Development

Subject:

Approve and authorize execution of a Three-Year Lease Agreement for 5770 Research Drive and adopt Resolution No. 2019-22 pursuant to SB 850 (Chapter 48, Statutes of 2018 and Government Code Section 8698.2) for the Development and Operation of a 50-Bed Navigation Center

Statement of Issue:

Homelessness in Huntington Beach has created numerous issues regarding the health, safety and welfare of the City. Numerous lawsuits have been filed against the County of Orange and other cities for the lack of emergency shelters that can house individuals and families that are homeless, including: Anaheim, Orange, Costa Mesa, Irvine, Aliso Viejo, Dana Point, San Juan Capistrano, and San Clemente. A majority of the lawsuits were consolidated and assigned to the United States District Court in Santa Ana. In order to provide emergency beds to Huntington Beach's homeless population and protect the City's right to enforce its laws, City Council action is requested to enter into a three-year Lease Agreement for the development of a 50-bed secular Navigation Center to shelter the homeless, and allow the City to enforce its anti-camping ordinances pursuant to Federal and State law.

Financial Impact:

The proposed action would authorize a three-year Commercial Lease Agreement, with two one-year options, in an annual amount of \$104,000. The combined three year lease would be approximately \$330,720. Staff is requesting an appropriation to increase in the FY 2018/19 Revised Budget in the Residual Receipts Fund, Office of Business Development, (23380101). Sufficient funds are available in the Residual Receipts Fund balance to accommodate this increase to the budget. Additional costs associated with operations of the facility will be brought to the City Council at a future meeting.

Recommended Action:

A) Authorize the Mayor and City Clerk to enter into the Three-Year Commercial Lease Agreement for 5770 Research Drive, Huntington Beach, CA; and,

B) Authorize the City Manager to execute all documents related to the Lease to further the action; and,

C) Adopt Resolution 2019-22, "A Resolution of the City Council of the City of Huntington Beach Pursuant to SB 850 (Chapter 48, Statutes of 2018 and Government Code Section 8698.2);" and,

D) Increase appropriations in the FY 2018/19 Revised Budget for the Office of Business Development by \$104,000 for the annual lease costs of the Navigation Center.

Alternative Action(s):

Do not approve the lease or declaration of shelter crisis and direct staff as necessary.

Analysis:

City Staff has been in discussions with the owner of a building located at 5770 Research Drive, located in the northwest area of the City south of McFadden Avenue, west of Springdale Street regarding operation of a homeless shelter. The building site is an approximately half-acre property within the Industrial (IL) zoning district, which is the City's designated "SB 2 Zone." SB 2 or Senate Bill 2 was enacted in 2008 and required cities and counties to identify a land use zone where emergency shelters are permitted with no conditional use permit or discretionary action. As such, in 2009, the City Council adopted amendments to the City's zoning ordinance to allow by right emergency or transitional and supportive housing in Industrial Zones including the development of emergency shelters. The proposed location will be leased by the City for the establishment of a 50-bed Navigation Center to house homeless. The creation of the Navigation Center will provide immediately available secular beds for individuals that are homeless while also providing for the increased enforcement of the City's Municipal Codes against camping in public places.

Homelessness in Orange County

In January 2017, a Point-in-Time Count and Survey of the homeless was conducted in which 119 persons were identified as unsheltered in the City of Huntington Beach. Of those, 73 were male and 46 were female. Since the last Point-in-Time Count, the number of unsheltered individuals in the County and in the City of Huntington Beach have likely increased. The County of Orange will soon be releasing the new Point-in-Time Count figures for each City and it is likely the City's figure for homeless individuals will increase from the 2017 numbers.

Compounding the health, safety and welfare issues created by homelessness are the legal challenges to enforcing ordinances prohibiting sleeping in outdoor areas, such as parks and public plazas. The Ninth Circuit Court of Appeals in *Martin et al v City of Boise* held that enforcing a City ordinance that prohibits sleeping in public places violates an individual's Constitutional prohibition on cruel and unusual punishment if there are no housing alternatives available (other than sleeping in the public) within that same jurisdiction.

In other words, the Courts have determined that cities cannot criminally punish individuals for sleeping outdoors if they have no alternative shelter. As a result, unless sleeping facilities are available in the City at the time of encounter, enforcement of the City's anti-camping or other ordinances constraining sleeping on public property would likely result in dismissal of any charges.

Last year, Federal lawsuits were filed when the County of Orange and City of Anaheim relocated several hundred homeless individuals from the flood control channel in Anaheim. A majority of those lawsuits were consolidated and assigned to Federal District Court Judge David Carter in Santa Ana. The City of Huntington Beach has not been sued as part of those lawsuits, at this time. However, the

Federal District Court has requested that all Orange County cities appear at court on Tuesday, April 2, 2019 (see Attachment) to report how it plans to comply with the basic tenets of Martin vs. Boise.

As a result of the litigation, nearby cities including Santa Ana, Tustin, Orange, Costa Mesa, Placentia, Buena Park, and Anaheim are building new and expanded shelters for homeless individuals and families. Importantly, the Court has indicated that by creating these facilities to house the homeless, cities can enforce their prohibitions on camping in public areas. In addition, cities that are committed to creating homeless facilities will have the opportunity to enter into approved Federal Settlement Agreements allowing them to enforce ordinances against sleeping and camping in public places.

Pursuant to these settlement agreements, the cities of Santa Ana and Anaheim have begun enforcement of their camping and related ordinances.

There is an urgent health, safety, and welfare need to establish an emergency homeless facility with beds available for homeless families and individuals within Huntington Beach. Taking action as soon as possible will ensure there are adequate secular sleeping alternatives available (to those willing to accept them) and will help the City of Huntington Beach ensure that public areas like parks, beaches, the Civic Center, libraries, Pier Plaza and City sidewalks remain safe, attractive and well-maintained for the public at large. If the migration of homeless populations from one or more cities to Huntington Beach continues while the City has not yet established immediately available beds for placement, the City will lack the ability to enforce its anti-camping ordinance, and the City's unsheltered population is likely to grow as a result.

Next Steps

City Staff has visited eight (8) shelters operated by various non-profits. The Staff has also met with the County of Orange, Anaheim, and Santa Ana regarding best practices and lessons learned. If this lease is approved, the City will be sending out a Request for Proposals for the tenant improvements at the site, and for a highly qualified Shelter Operator with 24/7 on-site security to ensure a safe and effective Shelter.

It is recommended that the City enter into a three (3) year commercial lease with two one-year options for 5770 Research Drive. The building is located in the SB 2 Zone for the establishment of a Navigation Center. To provide for shelter to the homeless as well as avoid litigation regarding homelessness in Orange County, the creation of the Navigation Center will provide for the enhanced enforcement of City Municipal Codes and safer public spaces for homeless and residents.

Next steps include the City entering into contracts for Tenant Improvements at the site, on-site Security Services and a Shelter Operator. Any required increases in funding will be requested at that time.

Environmental Status:

Not applicable

Strategic Plan Goal:

Enhance and modernize public safety service delivery
Enhance and maintain high quality City services

Attachment(s):

1. Lease Agreement with Michael Garcia and Stacy Garcia Property Owners for 5770 Research Drive
2. Resolution 2019-22, "A Resolution of the city Council of the City of Huntington Beach declaring a shelter crisis pursuant to SB 850 (Chapter 48, Statutes of 2018 and Government Code Section 8698.2)
3. Notice of Status Conference April 2, 2019 with Honorable Judge David Carter
4. Ninth Circuit Court of Appeals Decision in Martin et al v City of Boise (9th Cir. 9/4/18) _ F.4th __, Case No. 15-35845