



CITY OF

NEWPORT BEACH

City Council Staff Report

June 24, 2025
Agenda Item No. 14

TO: HONORABLE MAYOR AND MEMBERS OF THE CITY COUNCIL

FROM: Seimone Jurjis, Assistant City Manager/Community Development Director - 949-644-3232, sjurjis@newportbeachca.gov

PREPARED BY: Lauren Wooding Whitlinger, Real Property Administrator - 949-644-3236, lwooding@newportbeachca.gov

TITLE: Amendment No. One to the Lease Agreement with Ruby's Diner, Inc. for Use of a Portion of the Balboa Pier Located at 1 Balboa Pier

ABSTRACT:

Constructed by the City of Newport Beach in 1939, the Balboa Pier extends over the beach and ocean at Main Street on the Balboa Peninsula. Ruby's Diner, Inc. and its successors have leased the concession building at the end of the Balboa Pier since 1982. With the current lease expiring on July 1, 2025, the tenant requested an extension to provide time to plan and design a major remodel project and to negotiate a new lease to continue its business operations at the property. For the City Council's consideration is Amendment No. One to the Lease Agreement (Attachment A) with Heritage Management, Inc. (successor in interest to Ruby's Diner, Inc.), extending the use of a portion of the Balboa Pier for a term of seven years. Also included is a request to waive City Council Policy F-7, *Income and Other Property*.

RECOMMENDATIONS:

- a) Find this matter is exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15301 (Existing facilities) of the CEQA Guidelines, California Code of Regulations, Title 14, Division 6, Chapter 3, because it has no potential to have a significant effect on the environment;
- b) Authorize the City Manager and City Clerk to execute Amendment No. One to Lease Agreement between the City of Newport Beach and Heritage Restaurant Management, Inc. (successor in interest to Ruby's Diner, Inc.) for use of a portion of the City property known as the Balboa Pier, located at 1 Balboa Pier, in a form substantially similar to the amendment attached to the staff report; and
- c) Approve a waiver of City Council Policy F-7, *Income and Other Property* based on the findings contained in this staff report and the Agreement, that conducting an open bid process or changing the tenant would result in excessive vacancy, and tenant improvement allowances, expenses or rent concessions which would outweigh other financial benefits.

DISCUSSION:

Concessions at the Balboa Pier

In 1939, the City of Newport Beach constructed what became known locally as the Balboa Pier (Pier) at Main Street on the Balboa Peninsula as shown in Figure 1. The Pier, which extends over the sand approximately 920 feet into the ocean, was constructed with a small retail building at the end. The City leased the building to various third parties for operation as a concession as well as a bait and tackle shop. After falling into disrepair, the concession was closed in 1977 and left vacant for several years while the City attempted to find a new operator. In 1982, the City received a proposal to reopen the concession and entered into a lease agreement with Douglas Cavanaugh. After a small remodel, the concession was opened for business in December 1982. While it was initially intended to operate only seasonally, the success of the concession on the Pier led to the creation of the now iconic restaurant brand - Ruby's Diner.

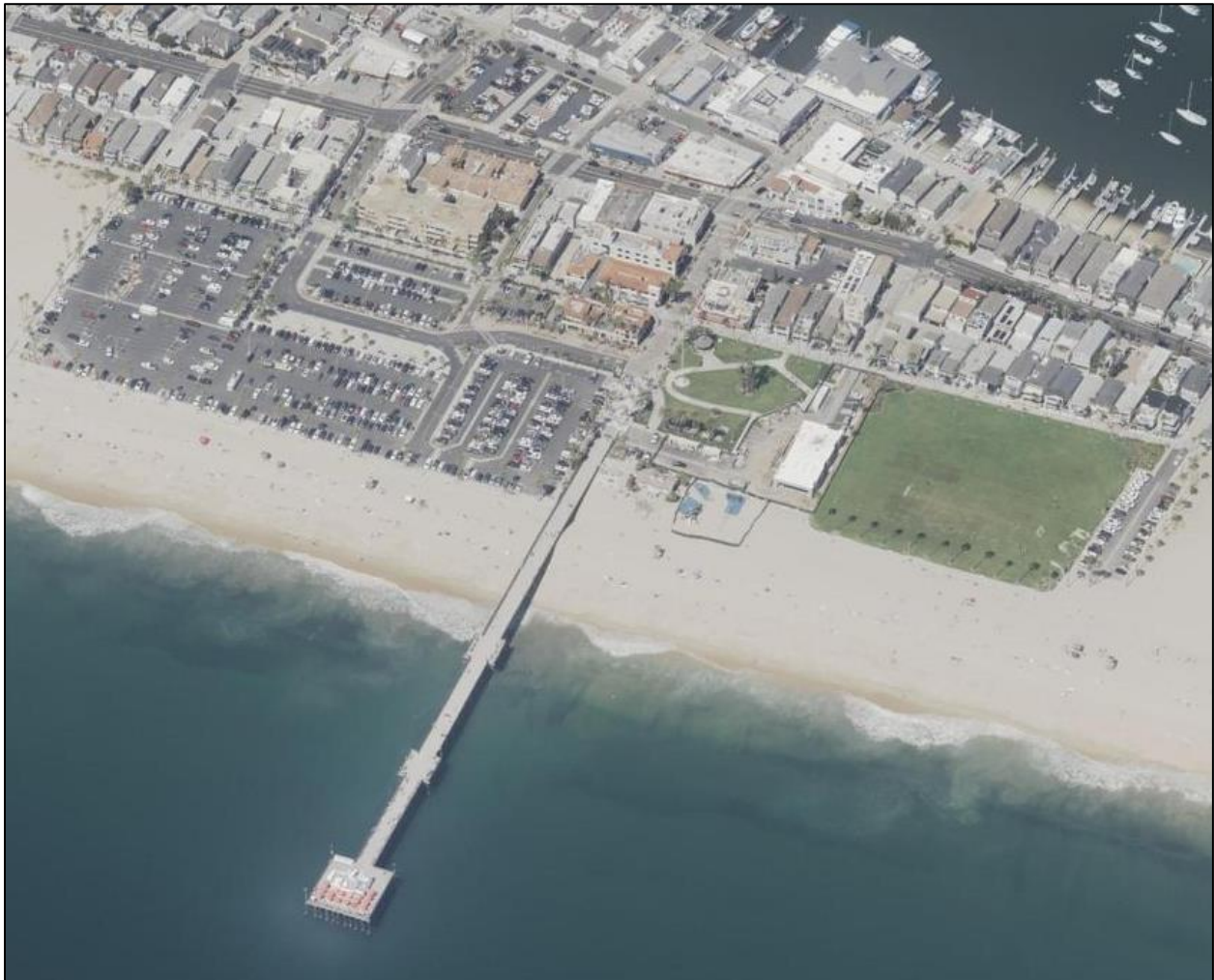


Figure 1, An aerial photograph of the Balboa Pier

Ruby's Diner, Inc. and the Current Lease

After operating for several years at the Pier, Ruby's Diner, Inc. was incorporated in 1985, and began operating year-round, serving hamburgers and shakes to visitors and residents from the concession window, small dining room, and outdoor patio (collectively, "Premises"), as shown in Figure 2 below. The success of the restaurant, named for Mr. Cavanaugh's mother Ruby, allowed the brand to expand, opening additional locations and concepts around Southern California.

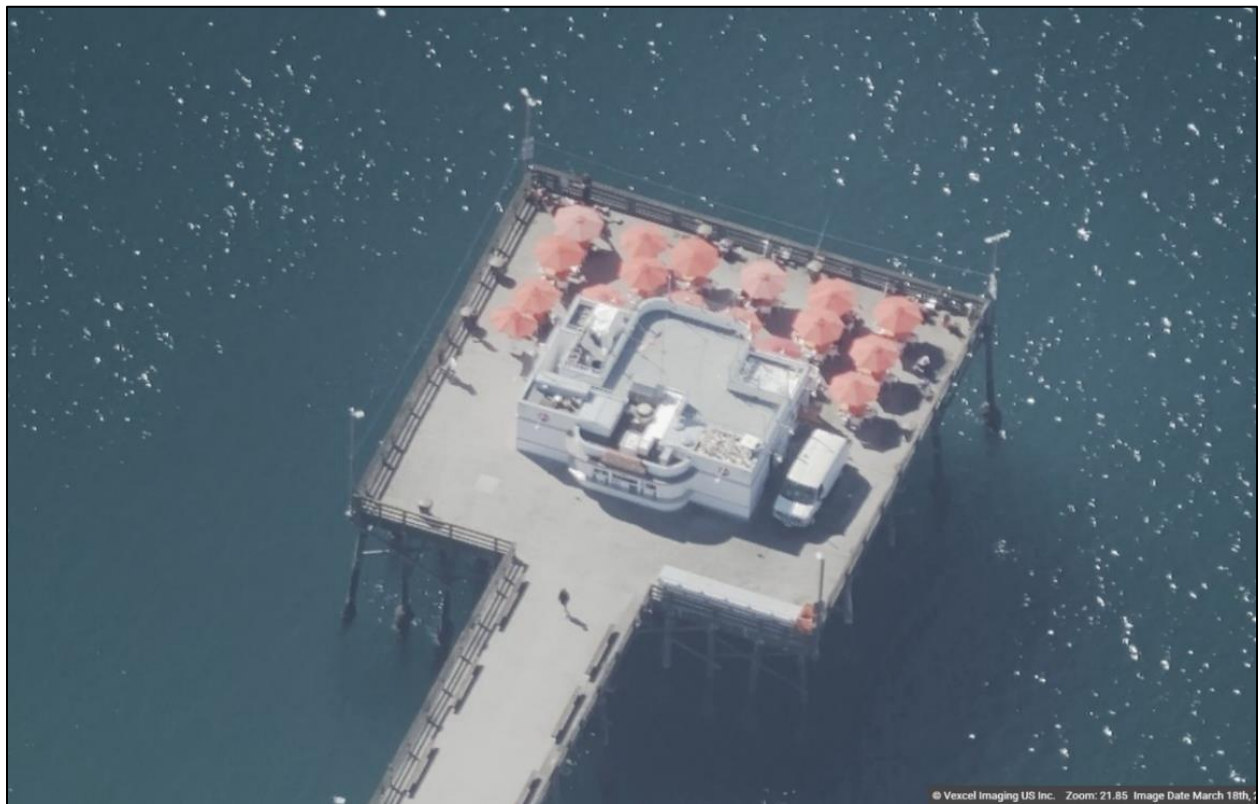


Figure 2, An aerial photograph of the Premises, as occupied by Ruby's Diner, Inc.

In November 1999, the City Council authorized the current lease agreement, which was executed between the City and Ruby's Diner, Inc. on July 1, 2000 (Lease). The Lease, provided as Attachment B to this report, had an original term of 15 years and included two five-year option terms that have both been exercised. With no further extensions available in the Lease, it is set to expire on July 1, 2025. Rent under the Lease is calculated as the greater of base rent (currently set at or \$46,835.40 per year, or \$3,902.95 per month) or percentage rent of 6% of gross sales up to \$1,000,000 and 6.5% of gross sales of more than \$1,000,000 per year. The City has collected over \$150,000 per year in percentage rent for the last three fiscal years.

In 2010, Ruby's Diner, Inc. franchised the restaurant location at the Pier to John Fisher of Heritage Restaurant Management, Inc. (Tenant) consistent with the terms of the Lease. In 2018, Ruby's Diner, Inc. filed for bankruptcy and its assets were subsequently sold to RD Franchise Systems, LLC, which is the current franchisor for Ruby's Diner restaurants

(Franchisor). The Tenant and Franchisor are working together to continue the success of the brand and the restaurant at the Pier, as outlined in a letter to the City (Attachment C).

Over the last several years, the Tenant has sought to perform various maintenance and repairs to the Premises. However, given the age and unique location of the structure, the Tenant has requested a seven-year extension to the Lease term (Amendment), to allow time to plan and obtain approvals for a larger redevelopment project. The Tenant seeks to work with the City and Franchisor to develop a capital improvement project to extend the life of the Premises and negotiate a new long-term lease to continue its operations of the original Ruby's Diner restaurant on the Balboa Pier. City staff and the Tenant have negotiated the terms of the Amendment and submit it for the City Council's consideration.

Amendment No. One to the Lease

The proposed terms of the Amendment, for continued use of the Premises, are summarized below:

1. The term of the Lease is revised to include one additional seven-year option, for a total possible term of 32 years, unless terminated earlier as provided by the Lease. Execution of the Amendment shall constitute the Tenant's timely exercise of the seven-year option term, and the new expiration date of the Lease shall be July 1, 2032.
2. Starting July 1, 2025, and annually thereafter during the seven-year option term, the base rent shall be increased by 3% over the then-effective base rent. Base rent is currently set at \$46,835.40 per year.
3. To comply with state law and the Newport Beach Municipal Code, the Tenant must source separate all refuse from its restaurant operations. The City shall construct a new enclosure for placement of the necessary waste containers for recycling and organics materials at the base of the Pier. This cost shall be borne by the Tenant up to \$50,000.00 and reimbursed to the City as additional rent.
4. The cost of all refuse collection from the Premises, even if provided under the City's contract, shall be the Tenant's sole responsibility and reimbursed to the City as additional rent.
5. The Tenant must keep the Premises, including those areas outside of the concession building used for outdoor dining within the southerly 80-feet of the Pier, in good condition at its sole cost and expense.
6. The scope and limits of the Tenant's insurance requirements have been updated to reflect current industry standards. The Tenant shall provide certificates of insurance to the satisfaction of the City's risk manager, naming the City as additional insured.

The Amendment has been reviewed by the City Attorney's Office and has been approved as to form. The Tenant has reviewed and approved the terms of the Amendment.

City Council Policy F-7, Income and Other Property

Due to the Tenant's long-term use of the Premises, and the unique services provided to the community, staff did not conduct an open bid process to solicit proposals from other operators, as typically required by City Council Policy F-7, *Income and Other Property* (Policy) (Attachment D).

Staff believes the following findings can be made, as required by the Policy, when an open bid is not conducted and a waiver is requested:

1. Converting the property to another use or changing the operator of the property would result in excessive vacancy, which would outweigh other financial benefits; and
2. The Tenant provides an essential or unique service to the community that might not otherwise be provided were an open bid for use of the property be required.

California Surplus Land Act

Assembly Bill 1486 was signed into law in 2019, went into effect in 2020, and made significant changes to the California Surplus Land Act (SLA) (Government Code §54220, et seq.). With further updates to the legislation in 2024, and in compliance with the updated SLA, the Amendment is not subject to the SLA since its terms do not provide for a "disposition of surplus land" as the Tenant is limited to tenant improvements and no development or demolition of the Premises shall occur.

FISCAL IMPACT:

Revenues collected pursuant to the proposed Amendment will continue to be posted to the Tidelands Fund (10050505) and General Fund (01050505) accounts in the Community Development Department and will be included in future years' budgets. The revenues collected from the existing Lease are included in the budget for fiscal year 2025-26.

ENVIRONMENTAL REVIEW:

Staff recommends the City Council find this matter exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15301 (Existing facilities) of the CEQA Guidelines, California Code of Regulations, Title 14, Division 6, Chapter 3, because it has no potential to have a significant effect on the environment. The City Council's action authorizes execution of the Amendment for the Tenant's use of an existing commercial space and the Tenant may pursue tenant improvements (i.e., remodeling) pursuant to the Amendment.

NOTICING:

The agenda item has been noticed according to the Brown Act (72 hours in advance of the meeting at which the City Council considers the item).

ATTACHMENTS:

- Attachment A – Amendment No. One to Lease Agreement
- Attachment B – Existing Lease Agreement
- Attachment C – Letter from Ruby's Hospitality Group
- Attachment D – City Council Policy F-7 - *Income and Other Property*