

CITY OF SANTA ROSA  
CITY COUNCIL

TO: MAYOR AND CITY COUNCIL  
FROM: JASON NUTT, DIRECTOR  
TRANSPORTATION AND PUBLIC WORKS  
ANITA WINKLER, DEPUTY DIRECTOR - TRANSIT  
TRANSPORTATION AND PUBLIC WORKS  
SUBJECT: REVOCABLE LICENSE AGREEMENT AND OPERATING  
MEMORANDUM FOR LIMITED VEHICULAR ACCESS FOR  
EMPLOYEES OF TENANTS OF THE MUSEUM ON THE  
SQUARE BUILDING, 520 THIRD STREET  
AGENDA ACTION: RESOLUTION

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RECOMMENDATION

It is recommended by the Transportation and Public Works Department that the Council, by resolution, approve the issuance of a License for limited vehicular access into and out of the Transit Mall to access the surface parking lot on the south side of the MOTS Building for up to fourteen employees of tenants of the MOTS Building located at 520 Third Street and approve the Operating Memorandum that addresses operational details of the License.

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EXECUTIVE SUMMARY

Hugh Futrell, on behalf of the Museum on the Square LLC, the Owner of the Museum on the Square (MOTS Building) located at 520 Third Street, has requested the Council allow employees of commercial tenants of the MOTS Building to use the Transit Mall to access an onsite parking at the south side of the MOTS Building. Transportation and Public Works staff have had multiple discussions and other communications with the Owner to work out operating details for up to fourteen passenger vehicles to use the Transit Mall which are documented in an Operating Memorandum for Tenant Employee Parking.

Staff prepared a License allowing limited vehicular access into and out of the Transit Mall for up to fourteen employees of tenants of the Museum on the Square Building (MOTS Building) that calls for an initial fee of \$8500, biannual reviews by the City to ensure the use of the Transit Mall by the license does not interfere with transit use of the Transit Mall with a fee of \$5000 biannually for the City's review.

In determining a value of \$8500 for the requested license, staff relied on an evaluation of access rights prepared by Bowman and Associates.

This requested project relates to City Council Goal 1 to “create a strong and sustainable Economic Base”. This development is in a priority development area for the City, and with this development comes an increased full service office supply and a potential restaurant and museum tenant. The project has also helped spark the interest for the reunification of Courthouse Square and for development around the square.

## BACKGROUND

1. On May 29, 1986, AT&T and Pacific Bell (Grantors) conveyed to the City of Santa Rosa an Easement Limiting Access (“Original Easement”) granting to the City their rights for vehicles intended solely for passengers to use Second Street for ingress and egress to their respective properties. The Original Easement did not restrict the ingress or egress of vehicles and equipment required for the continued operation and maintenance of the Grantors’ business and facilities. The Urban Mass Transportation Administration, predecessor agency to the Federal Transit Agency (FTA), awarded a grant to the City for 80 per cent of the \$90,000 cost for that easement, thereby creating a “Federal interest” in the easement.
2. On June 28, 2011, the City Council adopted Resolution No. 27923 approving and conveying an easement to the Redevelopment Agency of the City of Santa Rosa, (“2012 Easement”) allowing limited passenger vehicle access through the Transit Mall for future residents of the MOTS Building and approving an operating memorandum that establishes conditions of use for the Redevelopment Easement. The Owner’s intent to provide residential units in the downtown area as part of the MOTS Building project served as consideration and compensation for the Redevelopment Easement. The 2012 Easement was recorded on January 30, 2012.
3. The Redevelopment Easement Agreement for the 2012 Easement included a description of how passenger vehicles would access the MOTS Building through the Transit Mall, recognition that the transit use within the Transit Mall could change and expand, and provisions for an Operating Memorandum between the City and the Owner that establishes conditions of use for the Redevelopment Easement.
4. Subsequently the City and the Owner executed the Operating Memorandum, dated June 1, 2011.
5. The Original Easement and the 2012 Easement passed to the Owner upon transfer of the title to the property to the Owner.
6. On May 7, 2013, the Successor Agency to the Santa Rosa Redevelopment Agency adopted Resolution No. SA-2013-02 amending the Disposition and Development

Agreement (DDA) with Museum on the Square LLC for a modified project which deferred the construction of the new five story residential addition.

### PRIOR CITY COUNCIL REVIEW

July 8, 1986, City Council adopted Resolution No. 17983 authorizing the acquisition and acceptance of an easement quit claim deed limiting AT&T and Pacific Bell access on Second Street at the Transit Mall.

June 29, 2010, City Council adopted Resolution No. 27673 approving and authorizing the execution of a Disposition and Development Agreement between the Redevelopment Agency of the City of Santa Rosa and the Museum on the Square LLC.

June 28, 2011, City Council adopted Resolution No. 27923 conveying an easement to the Redevelopment Agency of the City of Santa Rosa allowing vehicular access through the Transit Mall for future residents at the former AT&T site, 320 Third Street, and approving an operating memorandum addressing the operational details for the easement.

May 7, 2013, Successor Agency to the Santa Rosa Redevelopment Agency adopted Resolution No. SA-2013-02 approving the Amended Disposition and Development Agreement (DDA) with Museum on the Square LLC for a modified project which deferred the construction of the new five story residential addition.

### ANALYSIS

1. The Owner of the MOTS Building has requested City Council action to allow employees of the commercial tenants of the MOTS Building to drive their private vehicles into and out of the Transit Mall to access the privately owned parking lot at the south side of the building ("Requested License"). These employees would use the parking lot only so long as no residential units are occupied in the project.
2. The initial request was to allow passenger vehicles to access fifteen (15) parking spaces at the MOTS Building through the Transit Mall. This request also proposed a space for commercial delivery vehicles and a space for a maintenance vehicle, totaling 17 spaces. The City's Traffic Engineer evaluated the request and responded to the Owner that only 14 spaces would fit in the lot and still meet the Original Easement requirements that commercial vehicles be able to turn around in the MOTS Building parking lot so that they are able to exit forward into the Transit Mall. The Owner has agreed to the Traffic Engineer's finding, allowing a total of fourteen (14) on-site parking spaces. There are no additional spaces approved for use by commercial or maintenance vehicles servicing the MOTS Building. All approved spaces are for the use of employees of MOTS Building tenants.

3. Funds from the Federal Transit Administration (“FTA”) provided 80% of the funding used to purchase the 1986 quit claim easement with the remaining 20% of the funding coming from local sources, this creating a Federal interest in the use of the Transit Mall for non-transit vehicles. That Federal interest imposes certain requirements and limitations on subsequent activities in the Transit Mall and requirements that any funds generated by non-transit use of the Transit Mall be used for transit purposes or the federal share be remitted to the FTA.
4. When contacted by City Staff, FTA staff advised City staff that the relevant FTA regulations (FTA Circular 5010.1D, dated November 1, 2012), includes provisions for incidental use of FTA funded property so long as the City maintains continuing control over the property and that income from the incidental use to ensure that the incidental use does not interfere with the primary transit use of the Transit Mall and that proceeds from the incidental use may be retained by the City if they are used for eligible transit operating or capital expenses. The City must request and receive permission from the FTA for an incidental use of such property.
5. Staff submitted a request to the FTA for the incidental use of a limited number of non-transit vehicles into and out of the Transit Mall to access the parking lot adjacent to the MOTS Building, assuring that the City would maintain continuing control over the Transit Mall via biennial review of the uses under the license and whether or not those uses interfere with the primary transit purpose of the Transit Mall. The License, Attachment 1 to this report, includes:
  - Biennial review of the uses allowed by the License to ensure that those uses do not interfere with the transit use of the Transit Mall;
  - Provision that the License can be revoked by the City if the City determines that the uses allowed by the License interfere with the underlying transit purpose of the Transit Mall, but before the revocation is made the City and Owner will work together to eliminate the activity that interferes with Transit use of the Transit Mall;
  - An initial fee of \$8500 and a biennial fee for City review of the use allowed by the license to meet the FTA requirement that the City maintain; continuing control over the Transit Mall and ensure that the non-transit use does not interfere with the transit use of the Transit Mall. Provides a CPI based increase in the biennial fee every two years;
  - An Operating Memorandum for Revocable License that includes the requirements for the use of the parking permits allowed under the License and describes the Owner’s and City’s respective responsibilities (Attachment 2);

Bowman & Associates was hired to determine a value of the request for the use of the Transit Mall by non-transit vehicles to access the parking lot adjacent to the MOTS Building. That value was determined to be between \$6,000 and \$8500. Staff assigned a value of \$8500 to this use of the Transit Mall.

6. Staff recommends that the following conditions be included in the Revised Operating Memorandum and the Revised Operating Memorandum be referenced in the License.
  - A. Provisions that are based on the terms of the Operating Memorandum for Tenant Employee Parking.
    - i. Owner to issue parking permits to tenants' employees that are visible to Transit Service Representatives to verify their authority to drive in the Transit Mall.
    - ii. Establish an agreement between the City and the Owner requiring each employee who will be issued a parking permit for the MOTS Building parking lot to complete training conducted by the Transit Division to educate the holders of the parking permits about safety considerations associated with driving in the Transit Mall prior to Owner issuing a parking permit to the employee.
    - iii. Limit access into the Transit Mall by holders of MOTS Building parking permits to be only through the B Street/Second Street intersection.
    - iv. A parking permit will be revoked if the holder of that permit has more than one preventable accident or incident in the Transit Mall. Determination if an accident or incident was preventable shall lie with the City's Risk Manager.
    - v. Install the following regulatory traffic signs: "Stop," "Right-Turn Only," and "No-Left-Turn" signs on the MOTS Building site for outbound vehicles.
    - vi. Install a flashing light and audio warning system at the parking lot exit into the Transit Mall to be activated only when a car is present at the stop bar.
    - vii. Requirements for the design and operation of a security gate if the Developer elects to install one.
    - viii. Restrict the number of parking permits in the on-site surface lot to one per parking space. This should reduce the number of personal vehicles driving through the Transit Mall in hopes of finding a parking space in the MOTS Building lot.
    - ix. Parking lot layout must be approved by the City's Traffic Engineer.
    - x. Owner must provide a plan to enforce that the parking spaces are used by parking permit holders only, to be approved by the City's Transit Division. Plan should include signage and actions by the building management to enforce the permit parking only requirement.
    - xi. The posted speed limit of the Transit Mall is 10 miles per hour and will be posted by the Transportation and Public Works Department. This is a reduced speed limit from the Redevelopment Agreement reflecting the unrelated need to reduce the speed limit for all vehicles in the Transit Mall including the buses.

### FISCAL IMPACT

Approval of this action does not have a fiscal impact on the General Fund. The fees paid to the City by the Owners will be deposited in the Transit Fund and used for operating and capital expenses of the Transit Mall.

### ENVIRONMENTAL IMPACT

The Museum on the Square project was found to be exempt from review under the California Environmental Quality Act (CEQA) based on CEQA Guidelines Section 15332 pertaining to In-Fill Development Projects (Class 32 Categorical Exemption). Class 32 Categorical Exemption consists of projects characterized as in-fill development meeting the conditions described in this section. These conditions include:

- (a) The Project is consistent with the applicable General Plan designation and all applicable General Plan policies as well as with the applicable zoning designation and regulations.
- (b) The proposed project development occurs within city limits on a project site of no more than five acres substantially surrounded by urban uses.
- (c) The project site has no value as habitat for endangered, rare or threatened species.
- (d) Approval of the project would not result in any significant effects relating to traffic, noise, air quality, or water quality.
- (e) The site can be adequately served by all required utilities and public services.

The granting of the easement is a component of the approved Museum on the Square project and is therefore exempt under this section.

### BOARD/COMMISSION/COMMITTEE REVIEW AND RECOMMENDATIONS

Not applicable

### NOTIFICATION

Hugh Futrell, Museum on the Square LLC via email.

### ATTACHMENTS

- Attachment 1 – Revocable Non-Exclusive License Agreement
- Attachment 2 – Revised Operating Memorandum
- Attachment 3 – Letter from U.S. Department of Transportation
- Resolution

### CONTACT

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