

Council Communication

February 2, 2016, Business Meeting

Contingent approval of an airspace license for Plaza Condo Unit Owners Association, Inc.

FROM:

Dave Kanner, city administrator, dave.kanner@ashland.or.us

SUMMARY

Plaza Condo Unit Owners Association, Inc., owner of the building at 25 North Main Street on the plaza, wishes to perform seismic upgrades to its property and in the process add a balcony to the building. The project will require Historic Commission review and Planning Commission approval. Placing a balcony over a public right of way requires an airspace license from the City. Allan Sandler, on behalf of the Plaza Condo Unit Owners Association, is seeking assurance that the City will grant an airspace license before initiating the process of seeking planning approval. This license is presented for Council approval, but it will not be executed until or unless Sandler receives Planning and Building approval for the project.

BACKGROUND AND POLICY IMPLICATIONS:

Plaza Condo Unit Owners Association, Inc. (Allan Sandler), is the owner of the building on the downtown plaza at 25 North Main Street. (The building also houses businesses addressed as 17, 19, 21 and 23 North Main St.) Like many buildings on the plaza, it is seismically unsound and Sandler wishes to perform improvements to the property to bring it into conformance with current seismic codes. Because the seismic upgrade includes “moment frames” that will project out onto the public sidewalk and because the project includes a third-floor balcony that projects out over the public sidewalk, Council permission was required to merely allow the property owner to submit an application for land use approval. The Council gave its permission at the November 17, 2015, business meeting, but such permission does not constitute Council support for the project.

In addition to and separate from the land use approvals, the project requires an airspace license allowing for the use of the airspace over the public right-of-way. A similar license was issued to Sandler in 1994 for a balcony at Martino’s restaurant on E. Main St. Staff proposes to treat the airspace license as we would a permit for an awning. The proposed fee for the license is \$655, which is what the city would charge for an awning permit.

Council is asked to approve this airspace license with the proviso that it will not be executed unless Planning and Building approval is granted for the project.

COUNCIL GOALS SUPPORTED:

N/A



FISCAL IMPLICATIONS:

Staff proposes to charge \$655 for this airspace license if/when it is executed.

STAFF RECOMMENDATION AND REQUESTED ACTION:

Staff recommends approval of this airspace license contingent on land use approvals.

SUGGESTED MOTION:

I move approval of an airspace license for Plaza Condo Unit Owners Association, Inc., and authorize the city administrator to execute the license only at such time as their seismic upgrade and balcony project has received all required land use approvals.

ATTACHMENTS:

Draft airspace license for 25 North Main St.



CITY OF ASHLAND
AIRSPACE LICENSE

License made this _____ day of _____, 2016, between the City of Ashland ("City"), and Plaza Condo Unit Owners Association, Inc., as Licensee;

City and Licensee agree:

1. DESCRIPTION OF PREMISES: City permits Licensee to use the following described property ("the premises") on the terms and conditions stated below:

See the attached Exhibit A.

2. TERM: This license shall begin on _____, 2016, and continue until terminated as provided in paragraph 15.

3. PAYMENT: Licensee shall pay to City for this license the sum of \$655.00.

4. PURPOSE: The premises shall not be used in any manner than for restaurant seating or human habitation nor used in any manner deemed by City to be a hazard or potential hazard to the public using the public sidewalk or right of way. Use and maintenance of the premises shall cause no interference with pedestrian or vehicular traffic on East Main Street or the adjacent public sidewalk or right of way. Licensee shall not use or allow the premises to be used for any unlawful purpose whatsoever.

4.1. Compliance with environmental laws. As used in this license, the term "hazardous material" means any hazardous or toxic substance, material, or waste, including, but not limited to, those substances, materials, and wastes listed in the United States Department of Transportation Hazardous Materials Table (49 C.F.R. § 172.101) or by the United States Environmental Protection Agency as hazardous substances (40 C.F.R. Part 302) and any amendments, ORS 466.567, 466.205, 466.640 and 468.790 and regulations of the Oregon State Department of Environmental Quality, petroleum products and their derivatives, and such other substances, materials and wastes as become regulated or subject to cleanup authority under any environmental laws.

"Environmental laws" means those laws cited in this subparagraph.

4.1.1. Licensee's compliance with laws and permits. Licensee shall cause the premises and all operations conducted on the premises (including operations by any subtenants) to comply with all environmental laws.

4.1.2. Limitation on uses of hazardous materials. Licensee shall not use or allow any agents, contractors or subtenants to use the premises to generate, manufacture, refine, transport, treat, store, handle, recycle, release or dispose of any hazardous materials, other than at reasonably necessary for the operation of Licensee's activities as contemplated under this agreement.

4.1.3. Lessor's Rights. Lessor shall have the right to conduct reasonable inspections and investigations of the premises and the operations conducted on the premises from time to time during normal business hours upon 48 hours notice unless an emergency requires less notice, and Licensee shall cooperate fully with Lessor during such inspections and investigations.

4.1.4. Indemnification. Licensee agrees to defend (with counsel approved by Lessor), fully indemnify, and hold entirely free and harmless Lessor from and against all claims, judgements, damages, penalties, fines, costs, liabilities, or losses (including, without limitation, diminution in value of the premises, damages for the loss or restriction on the use of rentable or usable space or of any amenity of the premises, damages arising from any adverse impact on marketing of space, sums paid in settlement of claims, attorneys' fees, consultant fees, and expert fees) which arise during or after the license term and which are imposed on, or paid by or asserted against Lessor by reason or on account of, or in connection with, or arising out of Licensee's generation, manufacture, use, transportation, refinement, treatment, storage, or disposal of hazardous materials, or any release of hazardous materials as a result of Licensee's use or activities, or of Licensee's agents, contractors, or subtenants.

5. INDEMNIFICATION: Licensee agrees to defend, indemnify and save City, its officers, employees and agents harmless from any and all losses, claims, actions, costs, expenses, judgments, subrogations, or other damages resulting from injury to any person (including injury resulting in death,) or damage (including loss or destruction) to property, of whatsoever nature arising out of or incident to the performance of this agreement by Licensee (including but not limited to, Licensee's employees, agents, and other designated by Licensee to perform work of services attendant to this agreement). Licensee shall not be held responsible for damages caused by the negligence of City.

6. INSURANCE: Licensee shall, at its own expense, at all times during the term of this agreement, maintain in force a comprehensive general liability policy including coverage for contractual liability, bodily injury and property damage for obligations assumed under this Contract. The liability under each policy shall be a minimum of \$1,000,000 per occurrence/\$2,000,000 aggregate. Liability coverage shall be provided on an "occurrence" not "claims" basis. The City of Ashland, its officers, employees and agents shall be named as additional insureds. Certificates of insurance acceptable to the City shall be filed with City's Risk Manager prior to the commencement of any occupation of the premises by Licensee under this agreement. These certificates shall contain provision that coverages afforded under the policies cannot be canceled and restrictive modifications cannot be made until at least 30 days prior written notice has been given to City. A certificate which states merely that the issuing company "will endeavor to mail" written notice is unacceptable.

7. IMPROVEMENTS. Except for the balcony to be constructed and attached to the building at 25 North Main Street, Ashland, Oregon, no improvements shall be placed in or on the premises, and no alterations shall be made on the premises without the prior

written consent of City. All improvements made by Licenses on the premises shall be and remain the property of Licensee.

8. TAXES AND UTILITIES. Licensee shall be responsible for all taxes and assessments, if any, on all real and personal property and improvements on the premises, including real property belonging to City. Licensee shall pay for all utility services furnished to the premises.

9. PERMITS. Licensee shall secure all necessary permits and licenses required in connection with operations on the premises and shall comply with all federal, state, and local statutes, ordinances, and regulations that may concern, in any way, Licensee's use of the premises.

10. ASSIGNMENT. The provisions of this license and all of its obligations and rights shall bind any assignee or successor of Licensee, and any purchaser or transferee of any interest of Licensee's in the building located at 58 East Main, Ashland, Oregon more specifically described as:

See the attached Exhibit B.

Licensee shall execute and acknowledge a memorandum of this License as it affects the property described in Exhibit B in a form suitable for recording, and City may record the memorandum.

11. SIGNS. Any sign erected or placed on the premises shall comply with the Sign Ordinance of the City of Ashland.

12. MAINTENANCE. Licensee shall, at its sole expense, keep and maintain the premises at all times in an orderly, clean, and safe condition.

13. ACCESS. There shall be no access from the premises to the public sidewalk or right of way unless necessitated by an emergency requiring immediate access from the premises to the sidewalk.

14. RIGHT OF ENTRY. City specifically reserves the right to enter and occupy the premises upon failure of Licensee to comply with any provisions of this license. City also reserves the right to enter the premises for purposes of inspection and to determine whether Licensee is complying with the provisions of this agreement and to perform acts necessary or proper for the protection, preservation, maintenance, reconstruction, and operation of the public right-of-way and sidewalk.

15. TERMINATION. In the event of breach of any of the license terms, City shall have the right to immediately terminate this license, to re-enter and repossess the premises, and to hold the same as though this license had never been made or issued. In addition, this license may terminate as to all or part of the premises when needed for public purposes, or when the City determines that it is in the public's best interest, upon

giving of a 180-day written notice to Licensee of its intent to terminate same. In the event of such termination, Licensee waives its rights to make a claim for any losses or damages suffered thereby.

15.1. Removal of improvements. In the event of termination, regardless of how effected, including termination for need or failure to comply with any provision of this license, Licensee shall, by the date of the termination, peaceably and quietly leave, vacate completely and surrender the premises, removing those improvements and fixtures placed or made by Licensee. If any improvements or fixtures are not removed from the premises and the premises are not completely vacated by the termination date, City may proceed to remove the same, and Licensee shall pay City, upon demand, the reasonable cost to City of such removal.

15.2. Removal of improvements by Licensee. At Licensee's expense, Licensee at any time may remove improvements and fixtures placed or made on the premises by Licensee. Upon such removal and surrender of the premises, City shall cooperate in providing Licensee with any instruments that Licensee reasonably may require for the purpose of removing from the public record any encumbrance to Licensee's property described in Exhibit B attributable to this License pursuant to paragraph 10.

16. WAIVER. Time is of the essence of every provision of this license. Failure of City to object to the violation of any provision of this license shall not be deemed a waiver by City of a subsequent similar breach or of City's right to demand strict performance by Licensee of the provision hereof.

Date: _____

Signed: _____

Allan Sandler for Plaza Condo Unit Owners Association, Inc., Licensee

License granted this _____ day of _____, 2016, for the above named Permittee to use the premises on the terms specified above.

Dave Kanner, City Administrator
City of Ashland