



Cover Memorandum/Staff Report

File #: 20-1077

Agenda Date: 1/19/2021

Item #: 7.B.

TO: Mayor and Commissioners
FROM: Marie Kalka, Finance Director
THROUGH: Jennifer Alvarez, Interim City Manager
DATE: January 19, 2021

DISCUSSION AND DIRECTION REGARDING THE HANDLING OF REQUEST RECEIVED FOR EXCUSAL OF PAYMENTS BASED ON INVOCATION OF FORCE MAJEURE CONTRACTUAL PROVISIONS

Recommended Action:

Staff seeks direction regarding the handling of requests received for excusal of payments based on invocation of force majeure contractual provisions.

Background:

Delray Intracoastal Cruises entered into an Agreement with the City on July 19, 2018. Pursuant to the Agreement, Delray Intracoastal Cruises is required to submit payment to the City in the amount of \$10,000 plus tax for their monthly rental.

On March 13, 2020, the City of Delray Beach (the City) declared a local state of emergency due to COVID19. Thereafter, on March 20, 2020, the City mandated closure of non-essential commercial and retail establishments. Due to the City's mandates, several businesses had requested excusal of payments owed the City by invoking the Force Majeure provision of their contracts.

On March 24, 2020 Delray Intracoastal Cruises requested to have their dockage payments excused during the state of emergency. On May 5, 2020, City Commission approved Delray Intracoastal Cruises to invoke their Force Majeure clause, subsequently their monthly fees were waived March 2020 through September 2020.

On December 10, 2020, Delray Intracoastal Cruises submitted a request to excuse payment for the period beginning October 1, 2020 until March 31, 2021 due to the restrictions imposed by the City pursuant to its local state of emergency, which has affected their passenger counts and events.

MONTH	2019 PASSENGER COUNT	2020 PASSENGER COUNT
March	6,867	2504
April	4,918	0
May	2,825	205
June	1,969	767
July	3,026	649
August	1,270	372
September	1,423	598

October	1,354	748
November	2,639	689
TOTAL	26,291	6,532

City Attorney Review:

Approved as to form and sufficiency.

Funding Source/Financial Impact:

Below are the amounts due from Delray Intracoastal Cruises:

Currently Due	Monthly Fee
Rent - October 2020	\$10,000.00
Rent - November 2020	\$10,000.00
Rent - December 2020	\$10,000.00
Upcoming Due	
Rent - January 2021	\$10,000.00
Rent - February 2021	\$10,000.00
Rent - March 2021	\$10,000.00
Total Request	\$60,000.00

Timing of Request:

Payments are due monthly, with the request received December 10, 2020, outstanding balance and future rental fees pending direction from the Commission.