ITEM 7.1.1

COMMUNICATION FROM THE PUBLIC
President and Members of the El Pueblo Commission  
Arturo Chavez, General Manager  
El Pueblo Monument

Ladies and Gentlemen,

July 3, 2020

Months ago, we asked Arturo Chavez if Olvera Merchants owed rent during the stay at home orders and whether we could begin to renegotiate the Olvera Street rents. The City Attorney advised that they thought rents were still due because of the force majeure section in our rental agreement. Mr. Chavez added that a renegotiation would require City Council approval, is a lengthy process and what we needed was a covid19 addendum. Any approach that will provide reasonable rent relief is welcome. Merchants also asked your Commission to consider adopting a rent hardship policy to address immediate, short-term impacts until Council action could be taken. Commission President Louie was told by the City Attorney that the Commission doesn’t have the authority to approve this policy, though prior Commissions have routinely approved diverse policies including rent hardship.

We wonder if the Commission can recommend or implement any changes in our rental agreements? There are terms in our lease that prohibit any reduction in rent, anytime, for any reason. It has no safe harbor clause to excuse rents in situations such as those brought about by covid19. Current rents are completely unachievable and rent deferral just postpones the pain and is inappropriate given future economic outlooks. We will need to discuss a new rental rate with the Commission and have already raised the issue with Councilman Cedillo to ask about process as to how to make necessary contract amendments.

Rents paid as a percentage of gross sales must replace our flat rate rents because the amount of sales revenue cannot be forecast. These discussions should commence soon. After years of dispute as to whether we can sell our businesses, the City Attorney finally issued an opinion that the “goodwill” of the business can be sold by the Merchants, however, a different concession agreement would be offered. There may be cases where businesses now attempt those sales or ask for a reduction in rented space as a way of minimizing our liability. The track record at El Pueblo in how it has designed its new tenant agreements has been poor resulting in turnover and repeated vacancies. The Commission must be wise in deciding how much rent is feasible and to err on the side of retaining a businesses may have to be the objective. With sales reported monthly under a percentage, the Monument will see what their “new normal” is and can modify its budget to reflect the actual levels of income. If business grows over time, the rents will automatically increase.

Some of you know we are trying to push ahead with initiatives to bring some vitality back to Olvera Street. We believe that fencing to encircle Olvera Street, several museums and the Kiosko would be beneficial. This will provide a larger area to be considered for calculations of maximum visitation; ensure that visitors are asymptomatic through temperature taking, masks wearing and dousing with sanitizer; would enables additional seating for our taco stands or curbside food service with “socially distanced” tables and chairs and decals around the Kiosko and provides a visible location for “live” entertainment broadcast over a loudspeaker to attract and retain the visitors. The fencing will also ensure that we are not contending with unsafe visitors whose presence is a major concern when they do not follow health protocols, requiring constant intervention by security and some difficult “regulars” on the Street do reportedly carry the virus. Health and safety must take precedence in any reopening plan. We have a bid for fencing that is slightly over $2000 to rent for a six months. This combination of features may help to draw locals back to the area. How soon can this be underway?
The City Council has already agreed to fund the Monument from July 1- Sept. 30. This relieves the Department’s short term fiscal crisis due to the lack of rents, parking and filming revenue. The Chair of Budget and Finance (of City Council) has requested a report on the current impacts on El Pueblo and its stakeholders in the next 90 days along with ways to generate more income. If Federal covid19 or other funding is available, this could relieve the Monument’s operating expenses for a period of time and if rent forgiveness is also granted, it would likewise relieve our heaviest burden.

The impacts to Olvera Street Merchants have been severe with the forced closures beginning March 15. For most Merchants, no sales have been realized and the majority of businesses continue to be closed until the situation stabilizes and our remedial measures are implemented. Some merchants have remained open during the stay at home orders reporting average sales decreasing 90% over the same period in 2019. Others have used SBA funding that has run out forcing closure of the business due to sustained losses from being open. We had hoped for a “grand” reopening marketed via social media until the wave of protests, riots and spikes in covid cases appeared with renewed calls for more restrictions. Larger retailers and restaurants have ongoing expenses for insurance, utilities, alarm and limited personnel. Restaurants face difficult liability issues related to worker exposure to covid19 and the lack of workman’s comp insurance to defend these claims. A single employee death would result in guaranteed bankruptcy for the tenant. Food and labor costs have increased as well as a hike in the minimum wage in July, 2020. The changing opening and closing rules for dine-in restaurants combined with limited seating and the related decrease in clientele stand among the greatest challenges to our larger operators. Even if we open, we know we will not be profitable for an unknowable period of time. Continuing to operate at a loss is not feasible for most of us.

Five Olvera merchants have already closed down and we suspect more will follow. The effect of numerous business closures on Olvera Street will cascade into steadily decreasing visitor counts, diminished parking revenues, scant museum attendance and insufficient revenue to offset the Monument’s expenses without continuing City support. It will be more difficult to replace a tenant in this economic climate than to try to save an existing one.

The City Attorney has said that one of our contract provisions requires rent payment in spite of acts of God, national emergencies, forced quarantines, etc. This provision is entitled: Force Majeure. Force Majeure is a legal term that normally excuses a party from non-performance of its contractual obligations when they become impossible due to an event that the parties could not have anticipated or controlled. The City of Los Angeles has a very unique interpretation of force majeure in that it does not alleviate the rent regardless of the most severe events. Exhibit J, also in our rental agreements, does excuse the parties from liability due to “…epidemic, “forced quarantines”, amongst other events beyond the parties control. This provision is disregarded in its entirety and would otherwise protect the Merchants from rent demands due to the impacts of covid19. California Civil Code 1641 requires: “Effect to be given to every part of a contract”, unfortunately, the City Attorney has stated that Exhibit J is subordinate to the force majeure provision because it is not in the body of the concession agreement but instead is only an exhibit. A legal technicality may be the reason for the potential closure of several Olvera St. businesses? Our City Attorney should examine the impact of their opinions and when in conflict with formally adopted positions of the Commission, should seek to resolve these conflicts.

Your Commission adopted two supportive positions on rent forgiveness, one in the form of a letter transmitted to City Council, one an in-house vote. It remains unclear whether the Commission can institute a policy for interim rent relief or create a covid19 addendum on your own authority. Present circumstances would seem to support such action to keep Olvera Street half
alive. To fill the void of District 14 leadership, Councilman Cedillo has introduced a motion to address rent relief for the Merchants through the end of the year. We are told his motion will be heard when Council reconvenes in a few weeks. If the Commissioners would personally contact Council Members and ask for their support or send their letter once again, this would be most helpful.

The present situation raises important questions as to the role, function and authority of the El Pueblo Commission. No one seems to understand what, if any, authority the Commission has and this affects your ability to function as prescribed under the Charter.

In our research, we discovered the legal Doctrine of Frustration of Purpose: performance of a contract may be discharged where, after a contract is made, a party’s principal purpose for entering into the contract is substantially frustrated by the occurrence of an event that the parties assumed would not occur at the time they made the contract. In the context of covid19, frustration of purpose may be caused by business closures, cancellation of special events, and other disruptions which clearly exist on Olvera Street and have for months.

Similarly, the Doctrine of Impossibility typically excuses non-performance if the non-performing party can establish that: (1) an unexpected intervening event occurred; (2) the parties’ agreement assumed such an event would not occur; and (3) the unexpected event made contractual performance impossible. It would seem our situation conforms to both descriptions so might this affect the current opinion of the City Attorney on rents?

We thought it important to provide some background to help orient our new Commissioners and General Manager. We very much appreciate all of your continued support and hope you can help clarify some of the issues we have raised in this letter.

Sincerely,

Vivien Bonzo
Olvera Street Merchants’ Association
Olvera Street Merchants’ Covid19 Relief Committee