



## CITY COUNCIL AGENDA REPORT



**DEPARTMENT:** Administration

**MEETING DATE:** March 5, 2013

**PREPARED BY:** Laurie Lile, City Manager

**AGENDA LOCATION:** AR-3

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**TITLE:** Family Festival Productions, Inc., Request for Waiver of Franchise Fees

**OBJECTIVE:** To consider a request from Family Festival Productions, Inc., that the City Council forgive all outstanding franchise fees incurred during 2012 and waive all franchise fees due in 2013 for production of the Monrovia Family Festival.

**BACKGROUND:** Family Festival Productions, Inc. ("FFPI") has been the operator of the Monrovia Family Festival for the past 20 years. Today, the Family Festival has become one of the trademark activities in Old Town. Its certified farmers market and large selection of commercial vendors, food booths, children's rides and live entertainment attracts as many as 5,000 people each Friday. The Family Festival also has a positive spillover effect to Old Town shops and restaurants.

Considering the benefits of the Family Festival and its importance to the community, on December 20, 2011, the City Council voted unanimously to approve a new three-year Exclusive Franchise Agreement between the City of Monrovia and Family Festival Productions, Inc., for the production of a weekly street faire in Old Town Monrovia ("the Agreement"). The agreement between the City of Monrovia and FFPI stipulates that a franchise fee be paid to the City by FFPI in the amount of \$425 per show. These franchise fees generate revenue to the City's General Fund.

The remaining term of the Agreement expires on December 31, 2014, with an option by both the Contractor and the City to elect to extend the term through Dec. 31, 2016. While there is still a remaining three years of the Agreement, the Contractor has fallen behind on franchise fee payments and is in default of his contract. The Contractor, citing financial hardship, has requested that the City Council forgive all outstanding franchise fees and waive future franchise fees through December 31, 2014.

**ANALYSIS:** Within the Agreement is "Article 8, Franchise Fees." There is an exclusive franchise fee of \$425.00 per weekly street fair from March through December, and \$200.00 per weekly street fair event from January and February. In the event that a weekly street fair is cancelled due to either the City's direction or an uncontrollable circumstance, the City does not receive a franchise fee payment for that week. The Contractor is expected to make four franchise fee payments to the City each calendar year, totaling roughly \$18,600.00 each year. Failure to make any of these payments could result in a breach of contract per Article 10 of the Agreement.

Citing increasing insurance costs, a downturn in vendors and general financial hardship, the Contractor approached City staff in December 2012 requesting a waiver of an estimated \$38,075.00 in future franchise payments (\$20,100 for 2013 and \$18,275 for 2014) and forgiveness of \$19,025.00 worth of past-due franchise payments from 2012. In the past, leniency has been granted on payments. In 2009, the City Council voted to reduce the Contractor's weekly franchise

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payment from \$850.00 per show to \$425.00 for a six month period. Eventually, the \$425.00 was set as the franchise rate. Moving forward, the Contractor is asking the City Council consider further reducing the franchise rate through 2014 to \$0.

Following the initial request for a complete fee waiver, Family Festival Productions, Inc. in anticipation of non-payment offered a non-monetary proposal (Attachment A) to produce two additional shows to the Friday night Family Festival: Wednesdays in Old Town and a Sunday morning Farmers' Market. FFPI proposes that the cost of these two shows (\$1,100) be deducted each week from the total amount of franchise fees owed, taking approximately one year to catch up on. Wednesdays in Old Town began January 9, 2013, and is already being produced by FFPI and organized by the Old Town Merchants at no cost to the City. The Sunday morning Farmers' Market was previously operated by Family Festival Productions and was discontinued in 2012 due to lack of participation from vendors.

In a survey of surrounding cities and communities, many different options for operating a farmers' market or family festival were noted.

- Four cities surveyed ran their entire farmers' market in-house (Alhambra, Beverly Hills, Torrance and Santa Monica), mainly through their Departments of Community Services.
- Only one other city surveyed called for franchise fees, and that was the City of South Pasadena. The Chamber of Commerce owns the South Pasadena market, hiring a service provider to operate it, and the Chamber pays franchise fees to the City based on a percentage of gross sales. An additional one percent of sales go back into a capital improvement fund to provide capital improvements for the market area.
- Many cities surveyed operated a contract to manage the market. The City of Pasadena Recreation and Human Services Department contracts with a service provider to provide three farmers' markets in City parks. The City collects 30 percent of profits after insurance and certificate costs, bringing in between \$12-16,000 per quarter from the three markets. The City of La Verne Department of Community Development contracts with Family Festival Productions to operate their family festival, and collect no fees, but are looking at models that would help them recover some costs.
- The City of Whittier and the community of Montrose both operate their farmers' markets through their merchants associations (Uptown Whittier Merchants Association and Montrose Shopping Park Association). These downtown associations hire a manager to operate the market and any profits from the market go back to supplement improvements of the business improvement districts. Montrose used to operate a full-blown family festival, but merchants decided in 2001 that it was in their best interests to scale it down to just a farmers' market.
- Only one city surveyed, Long Beach, ran their farmers' market through the ecumenical society.
- The City of San Dimas farmers' market is run through a non-profit organization. The market is on a smaller scale than Monrovia. The City provided around \$6,000 for the non-profit to purchase barricades and equipment at the start of the market, but is now entirely run through the non-profit. Vendors pay a \$50 business license fee per year, bringing in approximately \$1,000 to the City per year.

- Larger markets that mimic the Family Festival, such as Alhambra, Santa Monica and Hollywood, are run through the City or non-profit organizations

In short, there are many different models when operating a Family Festival or Farmers' Market concept. While there is no one accepted best practice, many owners and operators surveyed have stressed that focus should always be placed on the purpose of the market. In Monrovia's case, the purpose of the market is to attract business to the Old Town District and provide Monrovians with an option to purchase fresh, organic produce and entertainment. Currently, Family Festival Productions, Inc., while not fulfilling their franchise fee payments as specified in their contract, has sought to fulfill that mission each Friday night.

Since the issue was initially scheduled on the agenda in December and while Staff has been researching practices in other communities, several vendors have expressed an interest in providing a proposal to take over production of the Friday night event. At this time, Staff has not requested any specific proposals in light of the fact that the current contract with Family Festival Productions, Inc. remains in effect, although technically in breach.

**FISCAL IMPACT:** Forgiveness of past fees and the waiver of future fees would result in a total revenue loss of an estimated \$57,400.00. Franchise fees from the Family Festival generate nearly \$18,600.00 each year to the City. Forgiveness of all future franchise fees through the entire term of the contract would result in a total loss of approximately \$38,075.00. Past payments due from 2012 totals \$19,025.00.

**OPTIONS:** The following options are presented for consideration:

- 1) **Do not waive franchise fees. Work with the Contractor to collect any outstanding fees and continue to collect future franchise fees.** Direct Staff to notice FFPI of breach in contract and give the contractual 30 day written notice to abate. This decision may lead to recouping of all franchise fees owed, or default in the Contractor's exclusive franchise agreement. During this time the City can explore other financially viable and contractual options to continue a family festival or farmers market in Old Town.
- 2) **Waive past due franchise fees and future franchise fees, and direct the Contractor to operate a Wednesday night show and Sunday morning farmers market at cost in lieu of payment.** This option, proposed by the FFPI, would result in no paid franchise fees and multiple service options for events in Old Town. (Exhibit A)
- 3) **Waive the past due fees and future fees for the remainder of the Contract or any period of time the Council deems appropriate, or elect to temporarily reduce the franchise fees.** This decision allows the Contractor to continue to operate through the period of time as specified by the Council, and the City would not recoup any or limited franchise fees.

**CITY COUNCIL ACTION REQUIRED:** Based on the City Council's deliberation, the appropriate action would be a motion to select one of the options presented above and direct Staff accordingly with respect to the disposition of the request by Family Festival Productions, Inc.



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## Family Festival Productions Inc.

January 24, 2013

To: Laurie Lile, Monrovia City Manager  
Monrovia City Council

Family Festival Productions, Inc. has been a Monrovia fixture for over 20 years now. The highly successful Friday night show has grown over the years to become a leader in southern California area farmer's markets and street fairs. Improvements to the downtown business district came, in part, due to the success of the Friday night event as it has brought in weekly crowds to the area.

With numbers provided from actual "head counts" of attendees from different show nights throughout the course of a year, then averaged out, it showed that the Friday night Family Festival brings over half-a-million visitors annually to Monrovia. This has helped to create an added value to business and property owners in the downtown district.

In addition to the Friday night event, we have produced a Sunday Farmer's Market that has run for over 2 years next to Library Park. FFPI continues to run the market at a financial loss. Family Festival has requested to relocate the show for its spring start in a new location adjacent to downtown housing. The new Wednesdays in Old Town event is being managed in association with City Staff and FFPI. Administration of the evening, electrical needs, promotional assistance, and "live" entertainment and their associated costs are being provided by Family Festival Productions.

Other FFPI support to the community over the years has come in the way of logistics and infrastructure to various events presented by the City, local service organizations, and community groups. Art fairs, car shows, food events, music & cultural shows, and more have been examples of FFPI willingness to being good corporate citizens in its hometown of Monrovia.

Due to the downturn in the economy of recent years, it has become impossible to operate in the "black." Our operational expenses have increased and skyrocketed, in particular: liability, commercial vehicle, and workman's comp. insurances; security costs; maintenance and storage expenses; payroll; marketing; permit fees; and administrative costs. Any considerations that the City could make in providing some fiscal relief to Family Festival in light of their years of services to the City would be greatly appreciated.

In analyzing the Family Festival Production, Inc., financial situation we looked towards the two newer weekly events in the Monrovia Old Town business district- the Wednesdays in Old Town program and the Sunday Farmer's Market (at a new location).

FFPI has approximately \$18,000 in outstanding franchise fees from 2012. We anticipate running both of these show's at an operating loss. Those weekly expenses have been averaged out as follows:

**Average Weekly Expenses**

**Wednesdays in Old Town**

\$300 Music  
\$350 Payroll  
\$ 50 Insurance

\$700 costs

**Sunday Farmer's Market**

\$100 Music  
\$250 Payroll  
\$ 50 Insurance

\$400 costs

**-\$1,100 total for both shows in average weekly expenses-**

In regards in any anticipated income for both these programs, we do not expect any for the foreseeable future. There will be no vendor fees collected as both of these weekly events must be seeded with complimentary vendor spaces. Due to the initial attendance being small and requiring to be developed over time it is very difficult to encourage weekly vendors to participate on a regular basis.

We vision a remedy to our financial issue and concerns over the two new programs in the following way: Would the City of Monrovia consider applying the FFPI anticipated weekly averaged expenses from these two shows towards the current and past due Franchise Fees? If requested by the City, FFPI would report weekly/monthly as required.

I look forward to hearing from you regarding this proposal. If you have any questions or need any further information, please do not hesitate to contact me. Thank you for your time and consideration.

Sincerely,

Dave Gayman, Owner & President  
Family Festival Productions, Inc.