



THE PORT
OF LOS ANGELES
Executive Director's
Report to the
Board of Harbor Commissioners

DATE: JULY 30, 2013

FROM: REAL ESTATE

SUBJECT: RESOLUTION NO. _____ - APPROVAL OF THE PORT OF
LOS ANGELES LEASING POLICY

SUMMARY:

The Port of Los Angeles Leasing Policy (Leasing Policy) supports the Strategic Plan while reinforcing consistency with other Board approved policies, the Los Angeles City Administrative Code, Los Angeles City Charter, the California Coastal Act, the State Lands Commission – Public Trust Doctrine, Tariff No. 4, the Port Master Plan, and the State Tidelands Trust Grant. The Leasing Policy applies to all of the varied types of property use agreements involving the use and occupancy of land, submerged land, buildings, and other real property assets and is intended to provide a framework for the City of Los Angeles Harbor Department's (Harbor Department) internal use in making leasing decisions, increasing efficiency, and achieving consistency and transparency, as they relate to the following:

- a) Development of new property use agreements; and
- b) Modifications to existing property use agreements.

This item was carried over from the July 25, 2013 Board of Harbor Commissioners' (Board) meeting in order to collect additional information requested by the Board.

RECOMMENDATION:

It is recommended that the Board of Harbor Commissioners:

1. Approve and adopt the Port of Los Angeles Leasing Policy; and
2. Adopt Resolution No. _____.

DISCUSSION:

Background/Context – Prior to the July 25th Board meeting, outreach was done to all affected Port of Los Angeles (Port) tenants. An informational report was submitted to the Board on June 25, 2013. Overall, comments were received via email, U.S. Postal Service, and also during a workshop held on June 19, 2013. Comments were also made at the July 25th Board meeting. During that meeting, staff was requested to provide information on tenant comments that were received and how these issues were either addressed in the Leasing Policy or where the Leasing Policy was revised in response to those comments. Staff reviewed all comments received, as listed below. Furthermore, staff will continue to communicate with these tenants to ensure a better understanding of their issues going forward and address any other concerns they have.

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Comments Received

Comments 1-4 have previously been submitted in the "For Information Only" memo to the Board dated June 25, 2013.

- Comments received (Transmittal 1)
 1. Catalina Channel Express (letter – June 5, 2013)
 2. H.J. Baker and Bro., Inc. (e-mail – June 17, 2013)
 3. SA Recycling (letter – June 13, 2013)
 4. California Yacht Marina (e-mail – May 21, 2013)
 5. Pacific Merchant Shipping Association (hand delivered letter to the Board on July 25, 2013)
 6. SA Recycling (hand delivered letter to the Board on July 25, 2013)

Overview and Response to Comments Received

1. Fair and Equitable Treatment

Several tenants, including H.J. Baker and Bro., Inc., Catalina Channel Express, Pacific Merchant Shipping Association (PMSA), and California Yacht Marina expressed concerns regarding fairness and uniformity across the Leasing Policy (Transmittal 2) in a way that works for their businesses type and size.

This underlying theme of fairness is addressed in the beginning of the document as one of the objectives of the policy (specifically #5) and is also addressed in numerous other sections throughout the Leasing Policy. The Leasing Policy specifically is a guideline for staff and the Executive Director to conduct business in a fair and impartial manner that recognizes differences in property types and uses. Nothing contained herein precludes the Staff from making different recommendations or the Board from making changes, exceptions, or otherwise implementing new directives as appropriate.

2. Term Options

Catalina Express had comments regarding the payment of an option fee and suggested that a better approach was to incorporate into the monthly rental amount spread over the initial term as well as credit against the future amount due. The Harbor Department chose this approach over building into "overall cost of the lease" as this is less costly to the tenant as it avoids paying a "return" on the additional amount, having escalations add to the cost, etc. Also, staff is not aware of any industry standard to apply all or a portion to the future amount due.

3. Assignments and Sublease

PMSA requested that the requirement for a 10 percent fee in return for granting an assignment be deleted. Catalina Channel Express wants consideration to be given in the event of an assignment when the original tenant is not being released by the sublease or assignment and a rent guarantee may be required.

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Regarding PMSA's concern, the 10 percent fee is not a requirement as the Leasing Policy clearly states "may" require a fee. The Harbor Department's position is that it should receive a portion of any premium received by a tenant during a change in control based on the value derived from their leasehold operation at the Port. Similarly, and in response to Catalina Channel Express' comment about requiring a rent guarantee from the assignor, the Leasing Policy states that the Harbor Department "may" require a rent guarantee; however the assignor is not automatically released from any of their obligations by assigning or subletting.

4. Rates, Fees and Charges

PMSA, Catalina Channel Express, California Yacht Marina, and SA Recycling had concerns over several areas of this section of the Leasing Policy (Transmittal 2). This section and Compensation Adjustments were the two major sections where issues were raised at the Leasing Policy workshop. One issue was in the language regarding the 10 percent and 12 percent Rate of Return (ROR). Staff changed the ROR language to note that the Harbor Department's goal is 10 percent and 12 percent, and is not an explicit mandate.

A second issue raised was the concern about "maximizing revenue." The Leasing Policy statement is to establish market rental rates and to maximize ROR based on market rent, not to maximize revenue. By basing on "market rent" the Harbor Department sets an upper "limit" on potential revenue and eliminates the potential for price gouging.

A third issue raised on this section was about market rental rates and how this was established given the Public Land Trust requirements. Staff reviewed this language and determined that the definition provided in the Leasing Policy is consistent with one of the factors noted in Public Land Trust requirements. PMSA was also concerned about using comparable industrial rates from other ports in the U.S. and/or West Coast. The Harbor Department's position is that it should not attempt to deem certain types of properties as "comparable." Only a certified appraiser or similarly qualified third party valuation analyst can do so and, to do otherwise, would go against the premise of transparency and the doctrine of "Public Trust" (not to be confused with the Public Land Trust).

To address other concerns raised, staff revised the language regarding different pricing methods that may be used to include all lease agreements, rather than only non-maritime related lease agreements. It should also be noted that deviations from the Leasing Policy, including market rates and ROR goals, will be brought before the Board for action during an open public meeting.

5. Compensation Adjustments

PMSA and SA Recycling had comments regarding the escalation provision and specifically with the Consumer Price Index (CPI) adjustment provision. SA Recycling specifically commented that such an automatic adjustment was in violation of the Public Land Trust which states that such adjustments must directly be in line with the expense of operating and maintaining the property. The Harbor Department's position is that an

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automatic CPI adjustment is absolutely consistent with the Public Land Trust in that rates are explicitly tied to inflation and is the most appropriate way (and in fact is the standard way) to measure direct costs related to the expense of operating the facility.

Another issue raised was on the reset to market process. Both commenters suggest that the escalation of rent each year keeps pace with the "market" and that we should waive the five-year market reset requirement. The Leasing Policy addresses this concern as it states that any reset shall take into account annual adjustments implemented in preceding periods. It continues by stating that in no case will any such reset result in adjustments beyond the market rental rate. Nonetheless, the Harbor Department cannot waive the five-year reset as it is mandated by the City Charter.

SA Recycling requested that payments to the Harbor Department for wharfage and dockage should be considered in determining rent. However, rent goes to occupancy of the property. Tenants do not have exclusive rights to the berth and wharf areas and use of these facilities is covered by the Tariff, not by this Leasing Policy.

PMSA requested that the language be deleted regarding adjustments which states "...nor will it result in a reduction to the existing rate." However, nothing precludes the Board from granting a reduction (one-time or otherwise), if deemed appropriate during an open public session. Staff does not recommend deleting this language, but has added "unless approved by the Board."

6. Pricing Platform

Catalina Channel Express sent comments regarding the "discretion" of management in setting these pricing platforms. This concern is addressed in the Leasing Policy which states that "Pricing platforms shall be consistent with all Board adopted financial policies."

7. Material Deviations

This section of the Leasing Policy is an overriding statement which creates a "Safety valve" that items may be brought to the Board for consideration. Some such items may be a waiver of security deposit, waiver of option fee, offer of rent reductions, waiver of CPI based escalation, etc.

ENVIRONMENTAL ASSESSMENT:

The proposed action is approval of the proposed Leasing Policy. As an administrative activity, the Director of Environmental Management has determined that the proposed action is exempt from the requirements of the California Environmental Quality Act (CEQA) in accordance with Article II Section 2 (f) of the Los Angeles City CEQA Guidelines.

ECONOMIC BENEFITS:

This Board action will have no employment effect.

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FINANCIAL IMPACT:

Adoption of this Leasing Policy will provide a framework for leasing decisions for new property agreements and modifications to existing property agreements and does not have a direct fiscal impact on the current year's budget.

CITY ATTORNEY:

The Office of the City Attorney reviewed and provided comments on the subject policy documents.

TRANSMITTAL:

1. Comments Received (1-6)
2. Leasing Policy





JACK C. HEDGE
Director of Real Estate

APPROVED:



GERALDINE KNATZ, Ph.D.
Executive Director

FIS Approval:  (initials)
CA Approval:  (initials)

 **FOB**



KATHRYN McDERMOTT
Deputy Executive Director