



Executive Director's

Report to the

Board of Harbor Commissioners

DATE: MARCH 30, 2011

FROM: REAL ESTATE DIVISION

**SUBJECT: ORDER NO. _____ - RESETTING COMPENSATION UNDER
CONCESSION AGREEMENT NO. 517 WITH CABRILLO BEACH
YACHT CLUB**

SUMMARY:

Concession Agreement No. 517 (CA 517) grants Cabrillo Beach Yacht Club (CBYC) the use of Los Angeles Harbor Department (Harbor Department) property located within the Cabrillo Marina West Channel (Cabrillo Marina) in San Pedro, as depicted in Transmittal 1. CA 517 provides for the construction, operation, and maintenance of structures and facilities for berthing, dry storage of recreational vessels, and related operations.

The proposed Order resetting compensation covers the three five-year periods of May 21, 2001, through May 20, 2016. The proposed Order provides for the compensation to remain the same for the reset periods of May 21, 2001 through May 20, 2011, and establishes an updated methodology for calculating fixed minimum annual rent beginning with the third reset period on May 21, 2011.

RECOMMENDATION:

It is recommended that the Board of Harbor Commissioners:

1. Adopt the Order resetting compensation under Concession Agreement No. 517 for the three five-year periods of May 21, 2001, through May 20, 2016;
2. Authorize the Board Secretary to attest to the Order resetting compensation to be paid by Cabrillo Beach Yacht Club pursuant to Section 4(m) of Concession Agreement No. 517; and
3. Adopt Order No. _____.

DISCUSSION:

Background – CA 517 was granted for a 30-year term, commencing May 21, 1986, through May 20, 2016. However, the Third Amendment to CA 517, approved by City Council at its meeting of August 19, 1998, extended the term 30 years to September 23, 2028, and granted an increase in land and water area for the purpose of constructing a dry recreational boat storage, youth sailing program and boat launch/retrieval facility. In recognition of the project construction costs that were financed by CBYC, and for the activities and services provided by the yacht club to Cabrillo Marina and the boating community, it was agreed to extend the term commencing upon the effective date of the amendment. The current leasehold premises consist of 150,739 square feet (s.f.) of land area (3.46 acres) and 258,250 s.f. of water area (5.92 acres).

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CA 517 requires that compensation be reset every five years. The last compensation reset was established for the five-year period of May 21, 1996 through May 20, 2001. Due to pending appraisals of the adjacent properties, CBYC's pending interest in acquiring 22nd Street Landing, and pending CBYC's completion of a youth sailing center project, compensation reset was delayed. It is now recommended that the three five-year reset periods of May 21, 2001 through May 20, 2016 be reset.

Current Compensation – Compensation under CA 517 is based upon both a fixed minimum annual rent plus any percentage of gross receipts (percentage rent) that exceeds the fixed minimum annual rent. Percentages of gross receipts are the cumulative percentage revenue totals from CBYC operations. In 1996, CBYC's fixed minimum annual rent was set at \$165,588, which was based on land value of \$13.00 per s.f., and water value of \$4.80 per s.f., providing a ten percent rate of return, reduced by 25 percent for participation in percentage rent. CBYC has exceeded its fixed minimum annual rent since CA 517's inception with a five-year (2005-2009) annual average of percentage rent of \$276,855. Percentage rent is based upon gross receipts for various activities as follows: 25 percent recreational vessel berthing and dry storage, 7 percent income from banquet and room rentals, 5 percent from food sold in restaurants, 1 percent of boat brokerage sales, and 3 percent of gross income from general retail sales.

Compensation Reset (2001 – 2011)

- \$165,588 for compensation years May 21, 2001 through May 20, 2006
- \$165,588 for compensation years May 21, 2006 through May 20, 2011

Since CBYC consistently paid percentage rent in excess of the fixed minimum annual rent, changing the minimum annual rent retroactively would have minimal or no financial benefit to the Harbor Department. Therefore, the current CA 517 compensation shall be maintained for the periods of May 21, 2001 through May 20, 2006 and May 21, 2006 through May 20, 2011.

Compensation Reset (2011 – 2016)

- Beginning May 21, 2011, fixed minimum annual rent will be the greater of: 1) The previous year's fixed minimum annual rent; 2) The previous year's fixed minimum annual rent adjusted by the Consumer Price Index (CPI) for March of the previous year, capped at 3 percent; or 3) 75 percent of the average of the previous three years' rent paid (fixed minimum annual rent plus percent of gross receipts [percentage rent]).

As illustrated in the attached compensation table, the fixed minimum annual rent for CBYC may increase from \$165,588 to \$216,380 and would be dependent on the CPI for that time period. CBYC has historically paid percentage rent in excess of the fixed minimum annual rent.

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Beginning on May 21, 2011, compensation is proposed to continue to be made up of fixed minimum annual rent, plus percentage rent paid monthly. Fixed minimum annual rent will continue to be reset every year. However, fixed minimum annual rent is proposed to be based on the greater of: (a) the previous year's fixed minimum annual rent, (b) the previous year's fixed minimum annual rent adjusted by inflation (capped at 3 percent), or (c) 75 percent of the average annual rent paid in the prior three years. In no event is the fixed minimum annual allowed to be lower than the fixed minimum annual rent for the prior year.

The three-year average methodology is based upon appraisals performed in 2008 and is intended to better reflect adjustments to market conditions over a longer period of time. This methodology is utilized by other harbor jurisdictions throughout Southern California. The Harbor Department also utilized this methodology as one of the alternatives for calculating the minimum annual rent for Holiday Harbor and California Yacht Marina compensation resets that were approved in spring of 2010.

With respect to percentage rent, the appraisal surveyed Southern California regional waterfront operations (Marina Del Rey, Ventura Harbor, Channel Islands, Port of San Diego and Mission Bay), and the results indicated that current percentage rents under CA 517 are generally consistent with other similar operations. As such, it is proposed that percentage rents remain the same.

Rate of Return – Harbor Department staff has estimated the rate of return for the period of May 21, 2010 through May 20, 2016 to be 10.4 percent. Therefore, the proposed compensation reset is consistent with the Board of Harbor Commissioner's (Board) ten percent rate of return policy.

ENVIRONMENTAL ASSESSMENT:

The proposed action is an Order to reset compensation rates under CA 517 for three five-year periods. As an administrative action, the Director of Environmental Management has determined that the proposed action is exempt from the requirements of the California Environmental Quality Act (CEQA) under Article II Section 2(f) of the Los Angeles City CEQA Guidelines.

ECONOMIC BENEFITS:

This Board action will have no direct job impact in the five-county region.

FINANCIAL IMPACT:

The proposed Order resetting the fixed minimum annual compensation will increase the minimum annual amount that could be due to the Harbor Department. Because the tenant's total compensation paid based on percentage of gross receipts has consistently exceeded the minimum amount set, the proposed change will allow the concessionaire and the Harbor Department to continue to share revenues.

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CITY ATTORNEY:

The Order has been approved as to form and legality by the Office of the City Attorney.

City Attorney: TR (initials)

TRANSMITTALS:

1. Site Map
2. Order
3. Compensation Calculation Sheet

FIS Approval: WR (initials)



KATHRYN McDERMOTT
Deputy Executive Director

APPROVED:



GERALDINE KNATZ, Ph.D.
Executive Director

MJG:ST:JR:raw
Author: J. Rivie
BL374raw CBYC