

DATE: DECEMBER 18, 2018

FROM: WATERFRONT & COMMERCIAL REAL ESTATE

SUBJECT: RESOLUTION NO. _____ - RESETTING COMPENSATION UNDER PERMIT NO. 384 WITH THE CITY OF LOS ANGELES, DEPARTMENT OF RECREATION AND PARKS, CABRILLO MARINE AQUARIUM

SUMMARY:

Staff requests approval of the Order resetting compensation under Permit No. 384 (P384) with the City of Los Angeles Department of Recreation and Parks (Rec and Parks) for the Cabrillo Marine Aquarium (Aquarium) located in San Pedro. P384 has a 45-year term that commenced on February 2, 1979 and will expire on February 14, 2024.

P384 requires the readjustment of compensation every five years. Compensation has not been reset since 1999. The proposed Order resets compensation for five five-year compensation periods starting from February 2, 1999, to February 14, 2024, as follows:

February 2, 1999 to June 30, 2018:	Rent equivalent to credit previously charged and credited in the amount of \$177,875
July 1, 2018 to February 14, 2024:	\$310,393 per year

Compensation amounts due (since 1999) are subtracted from the Harbor Department's quarterly Rec and Parks invoices through which the Harbor Department reimburses Rec and Parks for the provision of services within certain facilities (including the Aquarium), in and around the Tidelands.

RECOMMENDATION:

It is recommended that the Board of Harbor Commissioners:

1. Find that the Director of Environmental Management has determined that the proposed action is administratively exempt from the requirements of the California Environmental Quality Act (CEQA) under Article II Section 2(f) of the Los Angeles City CEQA Guidelines;
2. Approve the Order resetting compensation for the five five-year compensation periods from February 2, 1999, to February 14, 2024 under P384;

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3. Authorize the Board Secretary to attest to the Order resetting compensation under Permit No. 384; and
4. Adopt Resolution No. _____ and Order No. _____.

DISCUSSION:

Background – Effective February 2, 1979, the Harbor Department granted Rec and Parks P384 for a period of 30 years, use of approximately 100,873 square feet (s.f.) of surface and subsurface land area for the construction, operation and maintenance of the Aquarium, located within the Cabrillo Beach premises.

The Aquarium is one of several facilities referenced in agreements between the City of Los Angeles (City) and the Harbor Department for City Services reimbursement. These agreements include the 1997 Agreement No. 1956 (MOU 1956) and the subsequent 2001 Settlement and Mutual Release Agreement No. 2138 (SA 2138). MOU 1956 and SA 2138 obligate the Harbor Department to reimburse the City for the cost of certain facilities and services performed in furtherance of the Tidelands Trust. The provisions of MOU 1956 supersede, to the extent inconsistent, the provisions of P384. Under MOU 1956 and SA 2138, the established Harbor Department rental credit amounts offset a portion of the operational expenses of the Aquarium which are presented to the Harbor Department through quarterly City Services invoices from Rec and Parks.

Current Compensation: Order No. 6446, approved by the Board at its meeting of August 14, 1996, set annual compensation for the period beginning February 2, 1994, and ending February 1, 1999, at \$128,465, with payment waived in recognition of tenant providing maintenance at the West Channel/Cabrillo area, consistent with the California State Tidelands Grant. As outlined below, that compensation was based on a 10 percent annual rate of return on an estimated \$13.00 per s.f. of land value for 98,135 s.f. surface area, and 2,738 s.f. of subsurface pipeline. The right of way area was discounted by 75 percent.

Annual Compensation - February 2, 1994 to February 1, 1999					
	Land (s.f.)	Value	Rate of Return	Subsurface Discount	Annual Compensation
Parcel 1	98,135 *	\$13.00	10%	0%	\$127,576
Parcel 2 (subsurface)	2,738 *	\$13.00	10%	75%	\$890
	100,873			TOTAL	\$128,465

* Land area calculations have changed with subsequent Harbor Department Engineering Drawings

The 2nd Amendment (effective March 1, 2002) added 39,157 s.f. of expansion premises and extended the term by approximately 15 years to February 14, 2024. The 2nd Amendment did not reference a change in compensation, but subsequent to the establishment of the MOU 1956 Harbor Department rental credit and the P384 2nd

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Amendment, the rental credit amount was established at \$177,875. Therefore, the land value attributable to Parcel 3 was estimated to be \$12.63.

Aquarium Compensation February 2, 1999 to June 30, 2018					
	Land (s.f.)	Value	Rate of Return	Subsurface Discount	Annual Compensation
Parcel 1	98,150	\$13.00	10%	0%	\$127,595
Parcel 2 (subsurface)	2,581	\$13.00	10%	75%	\$839
Parcel 3	39,157	\$12.63	10%	0%	\$49,441
Total Area	139,888			TOTAL	\$177,875

The Harbor Department rental credit attributable to the Aquarium has been held flat at \$177,875 annually since 1999, when the cost calculation methodology detailed in SA 2138 was finalized. Numerous prior attempts to reset the compensation by the Harbor Department were not successful. Most recently, the Waterfront & Commercial Real Estate Division received approval on September 15, 2015, to initiate negotiations to reset the compensation for P384. Soon thereafter, staff reached out to the Aquarium on various occasions to initiate the compensation reset process. Negotiations resulted in an agreement to accept prior credits received for past compensation reset periods, while adjusting the rent going forward beginning in July 2018.

Rec and Parks has expressed their desire to extend the term and expand the premises of the Aquarium in order to fulfill its Interpretive Master Plan, approved on May 7, 2014 by the Board of Recreation and Parks Commissioners. The current facility and any proposed expansion is consistent with the Port of Los Angeles Master Plan. Rec and Parks is currently in the process of preparing and submitting grant applications for various grant opportunities for the Aquarium, and have conveyed to the Harbor Department that their remaining term under P384 is below the minimum 30 years required by most grants.

It is the intent of Rec and Parks and the Harbor Department to commence negotiations for a successor permit or operating agreement immediately upon completion of the proposed compensation reset. The successor permit would clarify the roles and responsibilities of both departments in order to facilitate the most efficient operational and management structure between the departments.

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Proposed Compensation: For the periods commencing February 2, 1999, through June 30, 2018, the compensation shall be the amount previously charged and credited in the amount of One Hundred Seventy-Seven Thousand Eight Hundred Seventy-Five Dollars (\$177,875) per year but not to exceed any amounts actually charged and credited for Harbor Department property rent during such period.

For the periods commencing July 1, 2018 through February 1, 2019, and February 2, 2019 through February 14, 2024, the compensation shall be readjusted to the pro-rated amount of Three Hundred Ten Thousand Three Hundred and Ninety-Three Dollars (\$310,393) per year, consistent with a land value of \$22.50 per s.f. and a 10% rate of return, as follows:

Aquarium Compensation July 1, 2018 to February 1, 2024					
	Land	Value	Rate of Return	Subsurface Discount	Annual Compensation
Parcel 1	98,150	\$22.50	10%	0%	\$220,838
Parcel 2	2,581	\$22.50	10%	75%	\$1,452
Parcel 3	39,157	\$22.50	10%	0%	\$88,103
	139,888			TOTAL	\$310,393

Resetting the Aquarium’s compensation will be the first increase to the Harbor Department’s rent credit since 1999. Furthermore, both departments are motivated to negotiate towards a successor permit or operating agreement that will allow the Aquarium to potentially secure grant funding for a major expansion as well as provide increased operational and management efficiencies.

ENVIRONMENTAL ASSESSMENT:

The proposed action is an approval of an order resetting compensation for P384 with Rec and Parks, which is an administrative activity. Therefore, the Director of Environmental Management has determined that the proposed action is administratively exempt from the requirements of CEQA in accordance with Article II Section 2(f) of the Los Angeles City CEQA Guidelines.

FINANCIAL IMPACT:

The proposed action will result in an increase in the rental compensation received by the Harbor Department (via rental credit) in the amount of \$132,518 annually, for a total of \$744,678 for the period from July 1, 2018 through the expiration of P384 on February 14, 2024.

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CITY ATTORNEY:

The Order resetting compensation under P384 was prepared and approved as to form and legality by the Office of the City Attorney.


TRANSMITTALS:

1. Site Map
2. Order Resetting Compensation



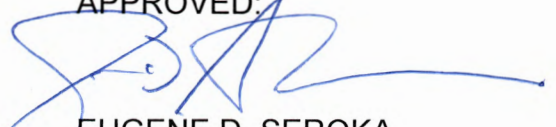
MICHAEL J. GALVIN
Director of Waterfront & Commercial Real Estate

FIS Approval: 
CA Approval: 



MICHAEL DiBERNARDO
Deputy Executive Director

APPROVED:



EUGENE D. SEROKA
Executive Director

ES:MD:MG:ER:RV:RDN:
Author:

BL768gs Rec & Parks Comp Reset