



**DATE: NOVEMBER 9, 2011**

**FROM: REAL ESTATE**

**SUBJECT: RESOLUTION NO. \_\_\_\_\_ - REVISED REVOCABLE PERMIT  
TEMPLATE**

**SUMMARY:**

A Revocable Permit (RP) is a terminable rental agreement which is issued by the City of Los Angeles Harbor Department (Harbor Department) for various uses at the Port of Los Angeles (Port).

City Charter section 655(e) provides that RPs may be issued by the Executive Director, subject to the approval of the Board of Harbor Commissioners (Board). Historically, the Board has delegated the authority to issue RPs to the Executive Director, subject to the use of a Board-approved RP template with set terms and conditions. The most recent Board-approved RP template dates back to 1990 and necessitates revision so that it is consistent with current practices, policies, rules, and regulations.

The proposed revised RP template improves the document by clarifying the term of the agreement; outlines the tenant's environmental obligations; provides a methodology for automatic rent adjustments; clarifies maintenance and repair obligations; updates insurance requirements; and sets additional requirements for certain uses such as liquid bulk pipelines and tanks.

The proposed RP template was presented to the Board on September 1, 2011. The Board directed staff to allow affected tenants an opportunity to review and provide feedback on the proposed RP template. The proposed RP template and a Frequently Asked Questions document were sent to 100 tenants on September 27, 2011 with a letter requesting comments by October 11, 2011. Comments from the four tenants who responded were summarized and distributed to the Board in a "For Information Only" report dated November 2, 2011. No significant changes were made to the previously submitted proposed RP template.

**RECOMMENDATION:**

It is recommended that the Board of Harbor Commissioners:

1. Approve the revised standard Revocable Permit template;

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2. Adopt Resolution No. \_\_\_\_\_, which authorizes the use of the new Revocable Permit template; and
3. Adopt Resolution No. \_\_\_\_\_, which delegates authority to the Executive Director to execute Revocable Permits that do not materially deviate from the revised Revocable Permit template; and are valued at, or provide for annual compensation up to \$150,000. Further, the Resolution authorizes the Executive Director to modify the template when the negotiated language results in more stringent or restrictive tenant obligations than those provided in the Revocable Permit template.

**DISCUSSION:**

Background and Need – A RP is typically issued when there is little to no tenant investment involved in the site, avoiding the need for a long lease term to amortize the cost of any improvements made. RPs are desirable from a land use perspective, since they allow the Harbor Department to maintain maximum flexibility in planning the future use of an underlying site.

Historically, the Board has delegated the authority to issue RPs to the Executive Director, subject to the use of a Board-approved RP template with set terms and conditions. The existing template was adopted by the Board in 1990.

Currently, a RP is subject to the approval of the Board when it: 1) materially deviates from the 1990 template; 2) involves consideration in excess of \$150,000 annually; and/or 3) is a no-charge rental arrangement. When RP deviations occur, it is typically because: 1) the RP template is outdated and is not consistent with current practices; and 2) there are provisions that lack clarity relative to the tenant's obligations.

To address this issue, staff conducted a line-by-line review of the 1990 template to identify provisions requiring clarification, improvement, and strengthening, and to propose changes. The proposed major changes to the RP template (Transmittal 2) include:

Term – The provision requires that if the RP continues past five years from the effective date, it must be reviewed by the Board prior to the RP's fifth anniversary. At the time of the five-year review, the Board could require staff to: 1) allow the RP to continue with no changes to the language in the agreement; 2) update the RP so that it reflects the Harbor Department's then-current policies and practices, such as environmental and financial requirements; 3) terminate the RP and consider other uses for the underlying site; or 4) implement a new tariff item that would apply to all RPs, in the event there is a Port-wide issue to be addressed.

Compensation – The compensation provision now allows for automatic upward adjustments consistent with inflation by using the Consumer Price Index on an annual basis. Additionally, the Executive Director retains the right to increase compensation to market rate at any time during the term by giving the tenant at least 30 days written notice.

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Maintenance and Repair – The maintenance and repair provision clarifies that all maintenance and repairs are to be undertaken by the tenant, at its sole cost, unless otherwise specified in an exhibit which defines the Harbor Department's specific maintenance obligations, if any.

Environmental Obligations – The provisions concerning the tenant's environmental obligations have been significantly modified to: 1) identify the specific environmental laws, policies, and regulations that apply to use of the premises; 2) provide guidelines as to how contamination caused by the tenant must be addressed; and 3) clearly set the conditions in which the premises are to be restored and returned to the Harbor Department on the termination date of the RP. The purpose of these revisions is to clarify the tenant's obligations. As background, the 1990 template is silent on some aspects of the tenant's environmental obligations, particularly regarding contamination caused during the term of the RP. The new template addresses this issue.

Pipelines and Tanks – The revised template contains new sections tailored to the use of pipelines and tanks because of the high-risk nature of liquid bulk operations relative to contamination. These new sections appear in an addendum to the RP and would only apply when the premises are used for pipelines and tanks. Further, the sections would supplement the environmental obligations described above. They outline the rules governing pipelines and the tenant's obligations relative to compliance with such rules, as well as requirements for routine testing and inspections.

Insurance – The insurance provisions have been revised to be consistent with the Harbor Department's standard insurance language for agreements. Additionally, they now include a provision which would allow the tenant to self insure, subject to tenant meeting certain conditions, such as submitting documentation to evidence the financial capacity to self insure and written approval from the Executive Director.

Executive Director's Authority – The Executive Director will be authorized to execute RPs that: 1) do not materially deviate from the revised RP template; and 2) are valued or provide for annual compensation up to \$150,000. Further, the Executive Director will have the authority to modify the template when the negotiated language results in more stringent or restrictive tenant obligations than those provided in the template.

Future Use of Revised RP Template – The revised RP template will replace existing RPs when they are amended (i.e., for changes to premises or compensation) and will be used for new tenants as well.

Future Review of RP Template – The RP template will be reviewed by Harbor Department staff in annual intervals to determine if further modifications to the template are necessary. Any future material changes to the template would be referred to the Board for approval.

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**ENVIRONMENTAL ASSESSMENT:**

The proposed action is approval of a revised standard RP template. As an administrative activity, the Director of Environmental Management has determined that the proposed action is exempt from 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 direct employment effect in the five-county region.

**FINANCIAL IMPACT:**

Approval of the proposed revised RP will not have a financial impact upon existing RPs in effect. The revised RP template will be used for new RPs and will replace existing RPs that are amended. The revised RP template ensures that compensation paid to the Harbor Department is escalated annually by the Consumer Price Index, and is still subject to adjustment by the Executive Director upon giving 30 days notice.

**CITY ATTORNEY:**

The proposed RP template is subject to approval as to form and legality by the Office of the City Attorney.

**TRANSMITTALS:**

- 1. Resolution
- 2. Revocable Permit Template

FIS Approval: KP (initials)  
 CA Approval: IM (initials)

  
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