



Executive Director's

Report to the
Board of Harbor Commissioners

DATE: APRIL 19, 2016

FROM: WATERFRONT & COMMERCIAL REAL ESTATE

**SUBJECT: RESOLUTION NO. _____ - RESETTING COMPENSATION
UNDER PERMIT NO. 624 WITH 22ND STREET LANDING PARTNERS,
LLC**

SUMMARY:

Staff requests approval of the Order resetting compensation for Permit No. 624 between 22nd Street Landing Partners, LLC, (22nd Street/tenant) and the City of Los Angeles Harbor Department (Harbor Department) for the operation and maintenance of structures and facilities for sport fishing and a restaurant located in San Pedro. Permit No. 624 has a 30-year term that commenced on November 27, 1987 and will expire on November 26, 2026. The proposed Order resets compensation for three five-year compensation periods commencing November 27, 2002, to November 26, 2017 (hereinafter 2002-2007, 2007-2012, 2012-2017). For periods or years already passed, the proposed minimum rent was exceeded by the gross receipts rent actually received. Therefore, for past periods or years, the minimum rent will be set based on rent actually received. Those amounts are proposed to be as follows:

- 2002-2007: \$139,610 (average annually)
- 2007-2012: \$123,371 (average annually)
- 2012-2015: \$222,046 (average annually)
- 2015-2017: the greater of the minimum annual rental amount of \$146,111 or the percentage of gross receipts. The minimum monthly rental amount will be adjusted annually thereafter by the Consumer Price Index (CPI) for the remainder of the compensation period.

RECOMMENDATION:

It is recommended that the Board of Harbor Commissioners (Board):

1. Find 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 as determined by the Director of Environmental Management;
2. Approve the Order resetting compensation for the three five-year periods of November 27, 2002 through November 26, 2017 under Permit No. 624;

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- 3. Authorize the Board Secretary to attest to the Order resetting compensation under Permit No. 624; and
- 4. Adopt Resolution No. _____ and Order No. _____.

DISCUSSION:

Background – Permit No. 624 grants 22nd Street the use of Harbor Department land consisting of approximately 57,319 square feet (s.f.) and water consisting of approximately 74,035 s.f. in San Pedro (Transmittal 1). The permitted uses include the construction, operation, and maintenance of structures and facilities for berthing of sport fishing and charter vessels, small boat rentals, passenger and cargo transportation and water taxi, restaurant and lounge, seafood market and snack bar, fishing vessel brokerage and insurance sales, and for purposes incidental thereto. All improvements are owned and maintained by the tenant.

As required by the terms and conditions of Permit No. 624, it is necessary to reset compensation for each five-year period. Compensation has not been reset since November 27, 2002. The delay in resetting compensation was due to several factors which include changes to the leased area; development of the Cabrillo Way Marina (CWM); a Harbor Department audit of the tenant’s financial records; and discrepancy in the interpretation of the gross receipts provision with another sport-fishing landing which resulted in one landing having more favorable rates. Staff initiated and recently completed these past due negotiations in March 2016.

Current Compensation - On June 9, 1999, the Board approved Order No. 6650, which among other items, established the minimum annual rent retroactively for the 1997-2002 period at \$195,444 and the following percentage rent requirements shown in Figure 1.

Figure 1

Gross %	Description
5%	Food & Beverages at Snack Bar
3%	Food in Restaurant
5%	Beverages in Restaurant
1%	Boat Sales
10%	Insurance Brokerage Commission
5%	Boat Rentals

Gross %	Description
3.5%	Boat Chartering & Rentals 24hr+
3.5%	Ship Chandlery & Bait Sales
3%	General Retail Sales
25%	Compensation for 3rd Party Vending Machines
5%	Tenant Owned Vending Machines
5%	All Other Activities

The Permit was further amended on January 13, 2009, to reflect a reduction in the land and water areas due to the requirements of the CWM project. The impacts of the CWM project also resulted in a reduction of the minimum annual rent to the current amount of \$113,388 with the percentage of gross receipt values remaining as indicated in the above Figure 1.

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In June 2008 and February 2014, the Harbor Department solicited the services of a professional real estate appraiser to provide an opinion of the rental value of the land and water for 22nd Street. In October 2013, the Harbor Department’s Management Audit Department completed a financial audit of 22nd Street’s financial records to verify the accuracy of reported gross receipts. The audit was deemed inconclusive due to the tenant’s deficient records and internal financial controls. Subsequently, the Harbor Department requested the appraiser who performed the February 2014 appraisal for a 2012 valuation date to include an opinion of the potential gross receipt earnings of the business and establish an opinion of percentage of gross receipts that should be proposed, which are presented as follows in Figure 2:

Figure 2

Proposed	Description	Current
5%	Food & Beverages at Snack Bar	5%
3%	Food in Restaurant	3%
5%	Beverages in Restaurant	5%
1%	Boat Sales	1%
10%	Insurance Brokerage Commission	10%
5%	Boat Rentals	5%

Proposed	Description	Current
5%	*Boat Chartering & Rentals 24hr+	3.5%
5%	*Ship Chandlery & Bait Sales	3.5%
5%	*General Retail Sales	3%
25%	3rd Party Vending Machines	25%
5%	Tenant Owned Vending Machines	5%
5%	All Other Activities	5%

*Change In % from current requirement

Proposed Compensation – Staff requests approval of the Order resetting compensation for Permit No. 624 between the 22nd Street and the Harbor Department for three five-year compensation periods commencing November 27, 2002 to November 26, 2017.

The 2008 appraisal analysis estimated that the annual minimum rent is \$114,000 for the 2002 valuation date (totaling \$570,000 for the 2002-2007 period) and \$102,400 for the 2007 valuation date (totaling \$512,000 for the 2007-2012 period), indicating a general decline in ground lease rates between the two valuation dates. For the 2002-2007 period, 22nd Street paid a total amount of \$698,053, exceeding the minimum appraised value of \$570,000, and a total amount of \$616,856 for the 2007-2012 period, again exceeding the minimum appraised value of \$512,000. Therefore, it is proposed that for these two five-year periods, the compensation be reset to the amounts 22nd Street has already paid which are: \$698,053 for the 2002-2007 period and \$616,856 for the 2007-2012 period.

The 2014 appraisal analysis indicated that if 22nd Street were to continue operating in the same manner as the previous years, they would be considered an underperforming operation when compared to the production “potential” of similar operations in other municipal harbors. The estimated annual minimum rent for the operations was \$114,750, while the estimated potential annual minimum rent was \$168,750. Based on the appraisal for the 2012 valuation date, the minimum annual rent, beginning with the November 27, 2012 period, is proposed to be \$141,750, the average of the appraised as is amount and the potential amount “Appraised Average.”

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Beginning with the 2012 valuation date, and annually thereafter, the tenant has paid in excess of the Appraised Average rent trended upward annually by the CPI. Additionally, as a result of the tenant's improved record keeping following the Harbor Department's audit, beginning in the year 2014, 22nd Street's monthly gross receipts payments have substantially increased (see Figure 3).

Figure 3

Year	September CPI Index	Proposed Minimum Annual Rent (Increased by CPI)	Proposed Minimum Monthly	Actual Annual Amount Paid (includes Percentage Rent)	Actual Average Monthly Amount Paid
Nov. 27, 2012 - Nov. 26, 2013	N/A	\$ 141,750.00	\$ 11,812.50	\$ 158,845.87	\$ 13,237.16
Nov. 27, 2013 - Nov. 26, 2014	0.63%	\$ 142,647.16	\$ 11,887.26	\$ 226,450.12	\$ 18,870.84
Nov. 27, 2014 - Nov. 26, 2015	1.67%	\$ 145,035.62	\$ 12,086.30	\$ 280,845.51	\$ 23,403.79
Nov. 27, 2015 - Nov. 26, 2016	0.74%	\$ 146,111.97	\$ 12,176.00		
Nov. 27, 2016 - Nov. 26, 2017	TBD				

As indicated by the above Figure 3, 22nd Street's actual amount paid have steadily increased and surpassed the appraised minimum amounts for each period. It is proposed that compensation be reset to the amounts already paid for the November 27, 2012 through November 26, 2015 periods.

For the compensation period beginning November 27, 2015, it is recommended that the fixed monthly minimum rent be set at the greater of the total gross receipts shown in Figure 2, or a minimum annual amount of \$146,111. The minimum annual rental amount shall be adjusted upward by the CPI for the final year of the current five-year compensation period.

Staff requests that the Board approve the proposed Order (Transmittal 3) to set compensation under Permit No. 624 for the periods commencing November 27, 2002 through November 26, 2017.

ENVIRONMENTAL ASSESSMENT:

The proposed action is approval of Orders resetting compensation under Permit No. 624 with 22nd Street, which is an administrative activity. As such, the Director of Environmental Management has determined that the proposed action is exempt from the requirements of CEQA in accordance with Article II Section 2(f) of the Los Angeles City CEQA Guidelines

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FINANCIAL IMPACT:

Based on an estimated 2012 benchmark market value of \$22.00 s.f. for land in this area and \$7.33 per s.f. for water, the estimated rate of return for the proposed minimum annual rent for the 2012-2017 period of \$141,750 is 9.11 percent. Therefore, it is expected that if the current business productivity remains constant, the gross receipts rent collected will exceed the Board-required 10 percent rate of return for land.

CITY ATTORNEY:

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

TRANSMITTALS:

1. Site Map
2. Engineering Drawing 2-2450
3. Order

FIS Approval: MB (Initials)
CA Approval: _____ (Initials)


MICHAEL J. GALVIN
Director of Waterfront & Commercial Real Estate


MICHAEL DiBERNARDO
Deputy Executive Director

APPROVED:


EUGENE D. SEROKA
Executive Director

ES:MD:MG:ER:RV:KS:raw
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BL587raw 22nd Street Landing Comp Reset