



Antonio R. Villaraigosa

Mayor, City of Los Angeles

Board of Harbor
Commissioners

Cindy Miscikowski
President

David Arian
Vice President

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Sung Won Sohn, Ph.D.

Geraldine Knatz, Ph.D.

Executive Director

April 25, 2012

Honorable Members of the
City Council of the
City of Los Angeles

CD No. 15

Attention: Mr. Michael Espinosa, City Clerk's Office

SUBJECT: AGREEMENT NO. 12-3050 - APPROVAL OF LICENSING AGREEMENT AND
LICENSING FEE SCHEDULE FOR COMMERCIAL USE OF CITY OF LOS
ANGELES HARBOR DEPARTMENT PHOTOGRAPHS

Pursuant to Section 606 of the City Charter, enclosed for your approval are a Licensing Agreement and Licensing Fee Schedule for Commercial use of City of Los Angeles Harbor Department Photographs. This agreement was approved by the Board of Harbor Commissioners at its meeting of March 1, 2012.

RECOMMENDATION:

1. The City Council approve the proposed template form of Licensing Agreement and Licensing Fee Schedule;
2. Adopt the determination by the Los Angeles Harbor Department 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; and
3. Return to the Board of Harbor Commissioners for further processing.

Respectfully submitted,

KORLA G. TONDREAULT
Commission Secretary

cc: Trade, Commerce & Tourism Committee
Councilman Rosendahl, encs.
Councilman LaBonge, encs.
Councilman Buscaino, encs.
Christine Yee Hollis, CLA, encs.

Alvin Newman, CAO, encs.
Lisa Schechter, CD4, encs.
Aaron Gross Government Affairs, encs.
Robert Henry, encs.
Mandy Morales, Mayor's off, encs.

RECOMMENDATION APPROVED;
RESOLUTION NO. 12-7268 ADOPTED; AND
AGREEMENT NO. 12-3050 APPROVED
BY THE BOARD OF HARBOR COMMISSIONERS

March 1, 2012
Korla H. Tondra
SECRETARY



Executive Director's
Report to the
Board of Harbor Commissioners

DATE: FEBRUARY 22, 2012

FROM: HISTORIC SITE OFFICE (ARCHIVES)

SUBJECT: RESOLUTION NO. 12-7268 APPROVE LICENSING
AGREEMENT AND LICENSING FEE SCHEDULE FOR COMMERCIAL
USE OF CITY OF LOS ANGELES HARBOR DEPARTMENT
PHOTOGRAPHS

SUMMARY:

The City of Los Angeles Harbor Department (Harbor Department) asks the Board of Harbor Commissioners (Board) to approve the template form of the Licensing Agreement and Licensing Fee Schedule to allow the Harbor Department to license and charge licensing fees for commercial use of Harbor Department owned photographs. The Licensing Agreement contains terms and conditions of commercial use of Harbor Department photographs, and charges clients reasonable licensing fees according to the Licensing Fee Schedule, which was developed based upon benchmarking fee schedules of the City of Los Angeles and other public agencies.

RECOMMENDATION:

It is recommended that the Board of Harbor Commissioners:

1. Approve the proposed template form of Licensing Agreement and Licensing Fee Schedule;
2. Direct the Board Secretary to transmit the proposed template form of Licensing Agreement and Licensing Fee Schedule to the City Council for its approval pursuant to Section 606 of the City Charter;
3. Upon approval by the City Council, authorize the Executive Director or her Designee to execute the Licensing Agreement with individual licensees in accordance with Harbor Department policy; and
4. Adopt Resolution No. 12-7268.

DATE: FEBRUARY 22, 2012

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SUBJECT: RESOLUTION NO. 12-7268 APPROVE LICENSING AGREEMENT AND LICENSING FEE SCHEDULE FOR COMMERCIAL USE OF PHOTOGRAPHS

DISCUSSION:

Background – The Harbor Department Historic Site Office (Archives) has been engaged in an effort to digitize the Harbor Department's historical photograph collection and make it available to the public online. In early 2011, it was brought to the attention of the Harbor Department senior management team that other City departments (Department of Water and Power and Los Angeles Public Library) employ photo use agreements and charge licensing fees for commercial use of their photograph collections which do not fall under the California Public Records Act Request (CPRA). As directed by senior management, Archives received guidance from the City Attorney's Office to clarify the distinction between requests for personal use of photographs to be processed under the CPRA and requests for commercial use of photographs for which licensing agreements and licensing fees could be required. The Harbor Department's proposed commercial use guidelines include licensing and fees for a one-time commercial publication or use (e.g. books, magazines, film, exhibits, seminars, advertising, etc.) and would require additional licensing and fees for repeat or additional use.

The City Attorney's Office has drafted Los Angeles Harbor Department Photograph Order Form/Licensing Agreement (Transmittal 1) (Licensing Agreement) for use by the Harbor Department in licensing of the commercial use of its photograph collection. The Licensing Agreement is based upon the similar forms used by other agencies within the City of Los Angeles, such as the Los Angeles Department of Water and Power (LADWP). The proposed action to establish a licensing fee schedule and Licensing Agreement for commercial use of Harbor Department photographs does not modify the guidelines for processing of CPRA requests for personal, non-commercial use of photographs.

Fee Schedule Creation - Archives benchmarked data on fees being charged by other public and private research institutions, universities, libraries and government agencies, including other City of Los Angeles agencies, in order to determine a fair and appropriate fee schedule for commercial use. Based upon its benchmark review, Archives determined that the Harbor Department would adapt the fee schedule used by the LADWP as fair and appropriate for the Los Angeles Harbor Department Licensing Fees Schedule (Transmittal 2).

Licensing fees will range from \$25 to \$300 per image, per use, for up to 20 images. Fees will be collected by Harbor Department employees in the division processing the request before licensing agreements and digital images are handed over to the licensee. Checks made payable to Port of Los Angeles or Los Angeles Harbor Department will be delivered to the cashier's office as received and will be deposited into the Harbor Revenue Fund using GL Code 49093. Licensing fees will help offset the

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SUBJECT: RESOLUTION NO. 12-1268 APPROVE LICENSING AGREEMENT AND LICENSING FEE SCHEDULE FOR COMMERCIAL USE OF PHOTOGRAPHS

cost of nonrevenue generating operations, such as Archives. The Executive Director of the Harbor Department or Designee may waive the licensing fee if the request is deemed to be in the best interest of the Harbor Department, or for public benefit.

Archives has created a procedure for carrying out a commercial photo request (Transmittal 4). Any commercial photo requests will be processed through the Archives Office.

ENVIRONMENTAL ASSESSMENT:

The proposed action is to approve a Licensing Fee Schedule and Licensing Agreement. 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.

FINANCIAL IMPACT:

Receipts of licensing fees under the proposed Board action will be deposited into Harbor Department Account 49093 (Photo Licensing & Commercial Use Fees). Based on requests for photos for commercial use in 2011, the estimated revenue is \$2,500 per year. Amount of requests and revenue may significantly increase once the collection is accessible online. Archives is currently budgeting \$2,000 per year for PastPerfect and PastPerfect-Online software, licensing, support and webhosting. PastPerfect database and PastPerfect-Online are currently maintained with staff on loan from Construction Division. To cover this staffing need in Fiscal Year 12/13 Archives has budgeted \$20,000 in outside services. One terabyte (1TB) has been allotted for storage of PastPerfect images on the Archives server. The 3,100 images currently in PastPerfect utilize 14GB of storage. It is estimated that 18,000 images will be added by the end of 2013 utilizing only 98GB of storage. At this rate of increase it should take 10 years to use the allotted 1TB of storage with a total storage capacity of 219,000 images. Although revenue from licensing fees is not expected to cover the cost of Archives digitization projects the proposed licensing fees are based upon what is considered fair by industry standards and not aimed at cost recovery efforts for digitization and preservation efforts.

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SUBJECT: RESOLUTION NO. 12-7268 APPROVE LICENSING AGREEMENT AND
LICENSING FEE SCHEDULE FOR COMMERCIAL USE OF
PHOTOGRAPHS

CITY ATTORNEY:

The Office of the City Attorney has prepared and approved Licensing Agreement as to form and legality.

TRANSMITTALS:

1. Los Angeles Harbor Department Photograph Order Form/Licensing Agreement
2. Los Angeles Harbor Department Licensing Fee Schedule
3. Los Angeles Harbor Department Historical Archives Research Request Form
4. Procedure for Carrying Out Commercial Photo Request

FIS Approval: ef (initials)

CA Approval: gme (initials)

APPROVED:


GERALDINE KNATZ, Ph.D.
Executive Director

GK/ff

EXHIBIT "A"
LOS ANGELES HARBOR DEPARTMENT
TERMS AND CONDITIONS TO
PHOTOGRAPH USE LICENSING AGREEMENT

1. **Licensed Property.** The Licensed Property consists of the photographs listed on page 1 and any attached pages to this Agreement, and does not exceed 20 photographs. [Do not use this form when the number of photographs exceeds 20 or the project is primarily a compilation of City-owned photographs. Contact the Los Angeles City Attorney's Office Intellectual Property counsel at 213-978-8138 for such compilation requests.]

2. **City Trademarks Contained in Photographs.** The Licensed Property contains the following City Trademarks (for example, City of Los Angeles Seal, Port of Los Angeles logo, Port Police badge, City or Port department or program name or logo, insignia, motto, etc.):

3. **Licensed Uses.** The Licensed Property may only be used for one-time publication or use in one project in the following manner:
 - a. Type of User/Purpose of Use: (Check One):
 Individual or student for private or educational purposes
 Print publication
 Television or Home Video/DVD
 Feature Film
 Exhibit
 Internet/Website (list URL): _____
 Seminar or event slide show
 Advertising
 Other (describe) _____
 - b. Title of Publication or Project: _____
 - c. Producer of Publication or Project: _____
 - d. Producer's Address: _____
 - e. Manner in which Licensed Property will be used _____
 - f. Tentative Publication/Release Date: _____
 - g. Electronic Copies Permitted: Yes No

4. **Territory.** _____ (e.g. United States, North America, EU, Worldwide)

5. **Licensed Use is Non-Exclusive.** Licensee has A non-exclusive right to commercial use as limited by this Agreement and has ***NO authority to grant exclusive licenses to others on behalf of the City of Los Angeles.***

6. **Payment to Licensor.** \$_____ (Combined Total from page 1 of this Agreement). Licensee shall make payment check payable to "***City of Los Angeles Harbor Department***" and payment is due upon signing of this Agreement. Payment must be received before processing of your order will begin.

7. **Intellectual Property Notices for Licensed Property.** When City's trademarks (as listed in paragraph 2) appear in the Project or Publication, corresponding trademark notices (for example, "LAPD™ is a trademark of the City of Los Angeles" for the trademark LAPD) shall be included in a proper location therein. Similarly, photographs licensed shall be identified with the proper copyright notice of "© City of Los Angeles" in the Publication or Project.

EXHIBIT "B"
STANDARD TERMS AND CONDITIONS
To
INDIVIDUAL PHOTOGRAPH USE AGREEMENT

1. **LICENSE.** LICENSOR hereby grants to LICENSEE in the TERRITORY a limited license to use the LICENSED PROPERTY for the LICENSED USES only. All rights not expressly granted to LICENSEE are retained by LICENSOR.

2. **LICENSEE ACKNOWLEDGMENT OF LICENSOR'S EXCLUSIVE RIGHTS AND INTELLECTUAL PROPERTY RIGHTS.** LICENSEE acknowledges LICENSOR'S exclusive rights in the LICENSED PROPERTY. LICENSEE shall not, at any time directly or indirectly challenge or interfere with LICENSOR'S exclusive rights in the LICENSED PROPERTY. LICENSOR, however, makes no representation or warranty with respect to the validity of legal rights in any LICENSED PROPERTY. LICENSEE agrees that its use of the LICENSED PROPERTY inures exclusively to the benefit of LICENSOR and that LICENSEE shall not acquire any rights in the LICENSED PROPERTY as a result of this license.

3. **LIMITATIONS ON USE OF CITY TRADEMARKS (IF ANY).** Unless otherwise expressly provided in Exhibit "A" to this Agreement, the use of any City Trademark under this Agreement is limited to its display in the LICENSED PROPERTY. Any of the City trademarks may not be severed from or used independent of the LICENSED PROPERTY.

4. **QUALITY CONTROL.** Through and by use of LICENSED PROPERTY, LICENSEE shall not demean, disparage, disgrace, or cast in an unfavorable light, the City of Los Angeles or any of its employees, departments or boards, and all uses of the LICENSED PROPERTY shall be of high quality. LICENSOR retains the right to review, approve, and reject all proposed uses of the LICENSED PROPERTY at least thirty (30) days before LICENSED PROPERTY or the materials embodying them are distributed, displayed, or placed in the stream of commerce in any manner. Any materials rejected by LICENSOR shall not be distributed, displayed, or placed in the stream of commerce in any manner by LICENSEE. LICENSEE hereby stipulates that its breach of this paragraph constitutes irreparable harm to LICENSOR for which any award of money damages is inadequate, and that LICENSEE will not oppose LICENSOR'S

enforcement of this paragraph, including by means of injunctive relief actions.

5. **VERIFICATION OF USE.** LICENSOR reserves the right to verify the actual scope of use of the LICENSED PROPERTY and payment of full compensation through various means including auditing. Upon such demand to verify, LICENSEE shall cooperate in a timely manner with the LICENSOR and its employees, officials, agents and consultants. LICENSEE is hereby on notice of the legal liabilities resulting from falsifying records to avoid or decrease payments to a governmental entity such as the LICENSOR City of Los Angeles, under the California False Claims Act (California Government Code §§ 12650 et seq.), including treble damages, costs of legal actions to recover payments and civil penalties of up to \$10,000 per false claim (Cal. Gov. Code § 12651(a)(7)).

6. **TERMINATION WITH CAUSE.** LICENSOR may immediately terminate this Agreement for cause on 24 hours' notice. Upon such termination with cause of this Agreement, all rights granted to LICENSEE under this Agreement shall forthwith terminate and immediately revert to LICENSOR. LICENSEE shall immediately on termination (a) cease all uses of the LICENSED PROPERTY (b) cease distribution of all materials incorporating the LICENSED PROPERTY, (c) return to LICENSOR within three (3) business days following such termination all copies of the LICENSED PROPERTY and all materials embodying same, and (d) destroy all electronic copies of the LICENSED PROPERTY and all materials embodying same.

7. **EXPIRATION AND SURVIVABILITY.** This Agreement expires upon full and complete performance of parties' obligations under this Agreement. **However, Paragraphs 1, 2, 3, 4, 5, 6 and 9 shall survive the expiration or termination of this Agreement.**

8. **WARRANTIES.** LICENSOR DISCLAIMS ALL KINDS OF WARRANTIES, INCLUDING THE WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE AND MERCHANTABILITY. LICENSEE IS SOLELY RESPONSIBLE FOR CLEARING ALL UNDERLYING THIRD-PARTY INTELLECTUAL PROPERTY RIGHTS, INCLUDING

EXHIBIT "B"
STANDARD TERMS AND CONDITIONS
To
INDIVIDUAL PHOTOGRAPH USE AGREEMENT

TRADEMARK RIGHTS AND RIGHT OF PUBLICITY, IF ANY, IN THE LICENSED PROPERTY.

9. INDEMNITY. LICENSEE agrees to defend and indemnify LICENSOR, and its officials, commissioners, directors, agents, and employees, against all costs, expenses, and losses (including reasonable attorney fees and costs) incurred through claims of third parties against LICENSOR based on the exercise of LICENSEE's rights under this Agreement and against any liability, damages, and expense (including reasonable attorney fees and costs) suffered as a result of LICENSEE'S breach of any provisions of this Agreement. Notwithstanding the foregoing, LICENSEE shall have no obligations to indemnify and defend under this Paragraph for any claim by third parties regarding LICENSOR's intellectual property rights in or of the LICENSED PROPERTY except for uses that have not been authorized by LICENSOR in this Agreement.

10. JURISDICTION AND DISPUTES. This Agreement shall be construed and governed in accordance with the laws of the City of Los Angeles and the State of California. All disputes under this Agreement shall be resolved by the courts seated in the County of Los Angeles of the State of California, including the U.S. District Court for the Central District of California, and the LICENSEE consents to the jurisdiction of such courts, agrees to accept service of process by mail, and hereby waives any jurisdictional or venue defenses otherwise available to it.

11. AGREEMENT BINDING ON SUCCESSORS. The provisions of the Agreement shall be binding on and shall inure to the benefit of the parties hereto, and their heirs, administrators, successors, and assigns.

12. WAIVER. No waiver by either party of any default shall be deemed as a waiver of prior or subsequent default of the same or other provisions of this Agreement.

13. ASSIGNABILITY. The license granted hereunder is for limited use in the Publication or Project as stipulated under "Licensed Uses" of this Agreement and this limited license is assignable and survivable of termination (without cause) or expiration of this Agreement. However, any attempted assignment of the rights

under this license beyond those granted constitutes LICENSEE'S bad faith and/or fraudulent entering into this Agreement, and the unauthorized assignment (if any) shall be null and void *ab initio*.

14. RELATIONSHIP OF PARTIES. LICENSEE acknowledges that it is not an agent or representative of LICENSOR and has no authority to assume or create any obligation on behalf of or in the name of, or binding upon, LICENSOR, or to represent LICENSOR in any manner not specifically provided herein. LICENSEE shall be solely responsible for the payment of all taxes and fees related to the LICENSED USES under this Agreement.

15. TIME OF THE ESSENCE. The payment by LICENSEE of all fees, royalties and/or other payments to LICENSOR shall be of the essence, and any late payment or non-payment shall result in the immediate acceleration of all payments under this Agreement and LICENSOR shall have the right to immediately terminate this Agreement under Paragraph 6 of these Terms and Conditions.

16. INTEGRATION. This Agreement constitutes the entire understanding of the parties, and revokes and supersedes all prior and contemporaneous agreements between the parties, oral or otherwise. It shall not be modified or amended except in writing signed by the parties hereto and specifically referring to this Agreement.

[END OF TERMS AND CONDITIONS]

LOS ANGELES HARBOR DEPARTMENT

PHOTOGRAPH LICENSING FEES

- 1) The fees associated with usage of Los Angeles Harbor Department (LAHD) photographs listed below are:
- per image,
 - subject to one time use only, and
 - any subsequent or different uses must be applied for separately and are subject to additional use fees.

<i>Advertising, Packaging & Product Design (all media)</i>	\$150
<i>Books, Publications (all media)</i>	\$ 75
<i>Brochures and Flyers (all media)</i>	\$ 50
<i>Commercial Decor (all media)</i>	\$150
<i>Commercial media, including film, television, video, CD, DVD and all other electronic media</i>	
<i>Basic fee for one time use, one language distribution rights</i>	\$125
<i>Basic fee for worldwide, all media, in perpetuity</i>	\$150
<i>Educational Media, educational or industrial in-house presentations</i>	\$ 25
<i>Trade publications, including electronic magazines</i>	\$ 75

- 2) The following fee is for multiple usage of Los Angeles Harbor Department (LAHD) photographs, and is:
- per image, and
 - any subsequent or different uses must be applied for and are subject to additional use fees.

<i>Commercial Decor (all media)</i>	\$300
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Procedure For Carrying Out Commercial Photo Request

1. When a photo use request is received Harbor Department personnel in the lead processing division (e.g. Director of Archives & Collections/Archives, Graphics Supervisor/Public Relations or Legislative Representative/Government Affairs) will determine if it is for commercial use or for personal use, which falls under the umbrella of CPRA with assistance from the City Attorney's office and/or Government Affairs Division as necessary.
2. If the request is determined to be for personal use under the CPRA it will be routed to the Government Affairs Division and normal procedures for CPRA requests will be followed.
3. If the request is determined to be for commercial use it will be routed to the Archives, and Archives staff will provide the requestor/licensee with the Licensing Fee Schedule and ask the requestor/licensee to fill out the Research Request Form for internal use. If request is for more than 20 photos City Attorney's Office will be contacted before request is processed. For orders of more than 20 images, the City Attorney's Office will not use Licensing Agreement, but will review the request and draw up special forms, which may include a different pricing depending on volume and specific circumstances.
4. If request is less than 20 photos, Archives staff will inform the requestor/licensee the estimated time required to fulfill the request, which is typically 5 to 15 business days, but depends on the volume of requested images and staff's workload at the time, etc.
5. Archives staff will carry out the research request and route the Licensing Agreement to the City Attorney's Office for review.
6. Upon approval by the City Attorney's Office, Archives staff will mail or email two (2) copies of the Licensing Agreement, which will also serve as an invoice, stating the amount due for the order.
7. Requestor/licensee will fill out and sign both sets of forms and return them to the Archives with their check for the amount stated on the Licensing Agreement.
8. Archives staff will forward check and supporting documents to the Cashier at the 4th Floor Administration, by the next business day, to be deposited in the Harbor Revenue Fund GL Code 49093.
9. Signed originals of the Licensing Agreement will be routed to the City Attorney's Office to be signed as to form and legality, and to the Executive Director or Designee for signature.
10. Signed Licensing Agreements will be routed back to the Archives. Archives staff will keep one signed original Licensing Agreement and return the other signed original to requestor/licensee with DVD of ordered images.
11. Signed original of the Licensing Agreement and a copy of the check will be kept on file in the Archives Office for three years, after which they will be forwarded to Records Management Division and kept on file according to the City of Los Angeles Records Retention Schedule.
12. If Archives or any Harbor Department division becomes aware that the requestor/licensee has violated the terms of the License Agreement they will inform the City Attorney's Office.

13. The Executive Director of the Harbor Department or Designee may waive the Commercial Use Fee if it is in the best interest of the Harbor Department or for the public benefit, however steps 1-10 must be followed and a Licensing Agreement form must be signed and kept on file.

0150-09734-0000

TRANSMITTAL

TO Geraldine Knatz, Ph.D., Executive Director Harbor Department	DATE APR 06 2012	COUNCIL FILE NO.
FROM The Mayor	COUNCIL DISTRICT 15	

**PROPOSED APPROVAL OF A LICENSING AGREEMENT AND FEE SCHEDULE
FOR COMMERCIAL USE OF THE HARBOR DEPARTMENT PHOTOGRAPHS**

Transmitted for further processing and Council consideration.
See the City Administrative Officer report attached.


MAYOR

MAS:ABN:10120114t

REPORT FROM

OFFICE OF THE CITY ADMINISTRATIVE OFFICER

Date: April 04, 2012

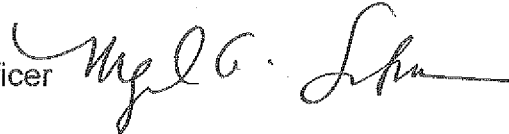
CAO File No. 0150-097.34-0000

Council File No.

Council District: 15

To: The Mayor

From: Miguel A. Santana, City Administrative Officer



Reference: Transmittal from the Harbor Department dated March 6, 2011; referred by the Mayor for report on March 8, 2012

Subject: **PROPOSED APPROVAL OF A LICENSING AGREEMENT AND FEE SCHEDULE FOR COMMERCIAL USE OF THE HARBOR DEPARTMENT PHOTOGRAPHS**

SUMMARY

The Harbor Department (Port) Board of Harbor Commissioners (Board) requests approval of Resolution No. 12-7268 authorizing a proposed Licensing Agreement and Licensing Fee Schedule for commercial use of Port-owned photographs. The Port is involved with an effort to digitize the Department's historical photograph collection and make them available to the public online. The proposed licensing agreement will provide the terms and conditions for the commercial use of the Port-owned photographs and the licensing fees schedules to charge prospective clients and customers. The Port states that the licensing fee charges are based upon a polling of fee schedules from other City agencies, local museums, libraries and universities. Pursuant to Charter Section 606, Council approval is required because the proposed Board action grants a license with the Port.

DISCUSSION

The Port's senior management requested its staff to survey other City departments and agencies in order to develop licensing guidelines, agreements and fee schedules for use of commercial photographs of Port of Los Angeles (POLA) property and scenes. The Port's Historic Site Office (Archives), with assistance from the City Attorney, developed guidelines for anyone requesting commercial use of photographs. Most requests for personal use of images or photographs are normally processed under California Public Records Act (CPRA) guidelines. The CPRA is a law passed by the State Legislature and Governor in 1968 requiring inspection and/or disclosure of governmental records to the public upon request, unless exempted by law. Since the commercial use of photographs does not fall under the CPRA provisions, the Port can require an agreement and fees. The Port staff researched and benchmarked information on the agreements and fees.

The proposed Port licensing agreements and fees will establish the following guidelines and documents (see Attachments): 1) photograph order form/licensing agreement; 2) licensing fee guidelines; 3) photograph request form; and, 4) the procedure for carrying out commercial photo

requests. In addition, the Port's Archives members perform work on digitizing, archiving and preserving POLA images and photos to preserve them for Port history and records. As a result, the Port will be able to meet a growing interest in requests and ensure that approximately 100 years of Port images will be properly stored, shared and preserved for future years. According to the Port, the proposed action to establish a licensing agreement and fee schedule for commercial use of photographs will not effect or modify the guidelines for processing of CPRA requests for personal, non-commercial use of photographs.

The Port staff researched and benchmarked information and fees from public and private researched institutions, universities, libraries and government agencies to determine appropriate fee schedules. Based on its survey of agencies and other City departments, the Port proposes to use a fee schedule and guidelines similar to the one currently being used by the Los Angeles Department of Water and Power (DWP). The licensing agreement requires that anyone requesting to use Port images for commercial use to sign a contract that will stipulate that the photographs will only be used in an appropriate and approved manner (see attached Transmittals). The guidelines for commercial use would include licensing and fees for one or more time use or publications in books, magazines, exhibits, seminars, educational material, advertisements and film and other media.

Licensing fees are projected to range from \$25 to \$300 per image, per use, up to a maximum of 20 images or photographs, unless otherwise approved. The licensing fees and guidelines will assist the Port with regulating usage and conforming to general industry standards for photograph collection and preservation. According to the Port, these licensing fees are considered a fair price by industry standards. The Port Executive Director will have the discretion to waive the licensing fee if the request is deemed to be in the best interest of the Port or public benefit.

In 2011, the Port budgeted approximately \$2,000 per year in expenses to support costs for software, licensing and web hosting of its photo collection online. A web hosting service is a type of internet hosting service that allows individuals and organizations to make their website accessible via the World Wide Web. The Department received an estimated 25 requests, which if it was charging a fee would have generated approximately \$2,500 in revenue for the commercial use of Port photographs. The Port expects that requests for photographs may increase because of the ability of the public to make requests online. However, the requests may fluctuate from year to year, based on demand. The Port expects to make approximately 18,000 digitized images available on-line by 2013. The Port states that any revenue from the fees will be payable to the Port and deposited into the Harbor Revenue Fund. The Port states that revenue from licensing fees and the Harbor Revenue Fund will help offset the cost of non-revenue generating operations, such as the Archives office. The Port states that future licensing fees is not anticipated to cover the operational costs for the Archives Office and its preservation and digitized projects.

The proposed Leasing Agreement and Fee Schedules are in compliance with City requirements and have been approved as to form by the City Attorney. The Port Director of Environmental Management has determined that the proposed action is administrative and therefore 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.

RECOMMENDATION

That the Mayor:

1. Approve Harbor Department (Port) Resolution No. 12-7268 authorizing a proposed Licensing Agreement and Licensing Fee Schedule for Commercial Use of Port-owned photographs; and
2. Return the document to the Port for further processing, including Council consideration.

FISCAL IMPACT STATEMENT

The Harbor Department (Port) licensing agreements and fees will establish guidelines and documents for commercial photograph requests. After polling several public and private agencies, the Port proposes to use a fee schedule similar to the one currently being used by the Los Angeles Department of Water and Power (DWP). The licensing fees for photographs will range from \$25 to \$300 per image, per use, for up to 20 images. These licensing fees are considered a fair price by industry standards. Although future revenue may increase because of the ability for the public and customers to make requests online, the primary objective is to digitize and preserve nearly 100 years of Port images and history. There will be no impact on the City General Funds. All licensing fees and revenue will be deposited in the Harbor Revenue Fund.

TIME LIMIT FOR COUNCIL ACTION

Pursuant to Charter Section 606, "Process for Granting Franchises, Permits, Licenses and Entering Into Leases," and the Los Angeles Administrative Code Section 10.5, "Limitation and Power to Make Contracts," unless the Council takes actions disapproving a contract that is longer than five years within 30 days after submission to Council, the contract will be deemed approved.

MAS:ABN:10120114

Attachments