

MEMORANDUM

February 6, 2015

TO: MEMBERS, PORT COMMISSION
Leslie Katz, President
Willie Adams, Vice President
Kimberly Brandon
Mel Murphy
Doreen Woo Ho

FROM: Monique Moyer
Executive Director

SUBJECT: Informational Presentation regarding Lease L-10432 and various Settlement Agreements with Sinbad's Pier 2, Inc.

DIRECTOR'S RECOMMENDATION: No Action

At its January 13, 2015 meeting, Vice President Willie Adams requested staff to provide a history of the tenancy of Sinbad's Pier 2, Inc. (Sinbad's). Pursuant to a Settlement Agreement between the Port and Sinbad's, Sinbad's is required to vacate its leasehold at Pier 2 no later than March 21, 2015. Pursuant to the SF Bay Conservation and Development Commission's (BCDC) Special Area Plan and BCDC's Permit No. 2012.001.05 (AC34), the Port is required to remove the building atop Pier 2 by March 31, 2015.

Background

Beginning in 1974, brothers Thomas and Charles Stinson converted an existing single story office building (originally used as a drafting studio for engineers constructing the BART tunnel) to use as a bar and a restaurant, adding a kitchen, an outdoor patio and public access. A few years later, a banquet room was added. In 1983, the outdoor eating area was enclosed and the restaurant was converted to its present state. For the past 31 years, brothers Thomas and Duane Stinson have operated Sinbad's as a full service restaurant, including a bar and event space, at Pier 2. Sinbad's employs approximately 32-48 people depending upon the high/low season, most of whom are members of Unite Here! Local 2 hospitality workers. A map of Sinbad's premises is attached hereto.

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On October 27, 1980, upon action of the Port Commission, the Port entered into Lease L-10432 (Lease) with Sinbad's to allow the operation of a first class restaurant and lounge at Pier 2, between the Ferry Building and the Agricultural Building. The Lease had a 20-year term and expired on September 30, 2000. Sinbad's has been a month-to-month holdover tenant ever since (180 months) pursuant to Section 31 of the Lease. Under the terms of the Lease, either the Port or Sinbad's can terminate without cause upon thirty days' prior written notice. Sinbad's operation at Pier 2 also is governed by BCDC Permit No. M81-17 and subject to BCDC enforcement procedures.

Sinbad's also holds Port Parking Permit 00199 (Parking Permit) with the Port. The Parking Permit has been effective since October 1, 2005 and allows Sinbad's to use 8 parking spaces on the south and north side of the Agriculture Building. The Parking Permit is revocable by the Port upon 24 hours' notice. Sinbad's also holds a Parking License, issued May 2002, allowing a parking operation in the lot adjacent to the restaurant. It also is revocable by the Port upon written notice.

Sinbad's reported \$2 million in annual gross sales for the 12 months ended September 30, 2014, which is lower than most other equivalent Port restaurants. Sinbad's pays the Port \$23,548.28 in monthly rent (\$282,579.36/annually) which is inclusive of both the restaurant space and the parking areas. This amount represents Base Rent only. Throughout much of the 31 year period that Sinbad's has been a tenant of the Port, their percentage of gross receipts¹ has rarely exceeded the monthly minimum rent due to the Port. As such, the Port has not received any payment from Sinbad's above the minimum base rent since approximately 1988.

As described more fully below, Sinbad's has not been a Tenant in Good Standing as it frequently has been in default of its Lease for failure to pay rent.

Throughout much of Sinbad's tenancy, Sinbad's has been a Habitual Late Payer and has caused numerous payment issues including checks returned for Insufficient Funds. As a result, Port staff have expended much time and effort managing Sinbad's lease accounts. Port staff frequently worked with Sinbad's to craft a number of payment plans to bring them current. In 2012, the Port and Sinbad's entered into a settlement agreement as more fully described below. At that time, Sinbad's was over \$220,000 in arrears in payment of its rent (equivalent to approximately 10 months of non-payment). Sinbad's payment problems have resulted in the Port's issuance of numerous Notices of Default during Sinbad's tenancy. In the most immediate 10 year period, the Port has issued Sinbad's 10 separate Notices of Default either for non-payment or non-sufficient funds to support payment. Beginning in 2012 (and continuing through the present), Sinbad's is required to make all rent payments via cashier's check. In February 2001, in response to the Port's attempts to evict Sinbad's, the City Attorney won a Stipulated Judgment against Sinbad's which conferred upon the Port a judgment for immediate possession of Sinbad's premises upon notice in return for Sinbad's occupancy of Pier 2 as a month-to-month tenant. Such Stipulated Judgment was terminated as part of the Port's 2012 Settlement Agreement with Sinbad's, as discussed more fully below.

¹ Sinbad's Food and Beverage percentage rent rate is 6.5% and 8.5% for Other Sales

Finally, throughout their tenancy, Sinbad's has deferred improvements to the plumbing and sewer infrastructure of the building, therefore causing numerous plumbing and sewer issues to arise throughout the years. Some issues have been addressed with simple repairs; others required the Department of Public Health (DPH) to shut the restaurant down. In the last 6 years the Port has had to report 5 sewer leaks to the State of California due to sewer discharge into the bay including one just reported on January 29, 2015. All 5 were traced back to Sinbad's restaurant. All plumbing repairs have been made by Sinbad's as per the requirements of the Lease.

BCDC Requirements

In April 1975, BCDC adopted the San Francisco Waterfront Special Area Plan (SAP) to articulate a "practicable attainable" vision of the future of the San Francisco Waterfront. Points of emphasis within the SAP include (1) "important Bay Views along the Embarcadero and level inland streets should be preserved and improved" and (2) "greater amounts of ... open water and public access along the shoreline are essential to full realization of the potential for public enjoyment of the Bay."

The SAP has been amended upon occasion and was amended in April 2012, in part to address activities of the 34th America's Cup. As part of the 2012 Amendment, Pier 2 is scheduled to be demolished no later than March 2015. Specifically, the SAP states:

"By March 2015, remove the existing shed at Pier 2 after the 34th America's Cup Event project to improve Bay views and public access. Remove the northern portion of Pier 2 as part of the Downtown Ferry Terminal Phase 2 development project"

Additionally, in connection with the 34th America's Cup, BCDC issued Permit 2012.001.05² to the Port and the City and the America's Cup Event Authority. Permit 2012.001.05 (Permit 2012) granted permission for the use of numerous properties along the San Francisco waterfront, including Port properties, within BCDC's jurisdiction. To mitigate impacts of these uses, the Permit requires the Port to (1) remove fill at Pier ½, Pier 64 and Pier 2; (2) repair, use and maintain the south apron of Pier 19 and the north apron of Pier 23 for permanent public access; (3) build and permanently maintain a low float at the existing Pier 52 public boat launch facility; (4) construct and maintain the Jefferson Street Public Realm; and (5) remove dilapidated fill and construct and maintain Bayview Gateway, a new public open space. The Port has removed Pier ½, all of Pier 64's wood piles, repaired Piers 19 & 23, augmented Pier 52, completed Phase 1 of the Jefferson Street Public Realm and is completing design for Bayview Gateway. The Port is on schedule to perform the Pier 2 work following vacation of the property by Sinbad's.

Specifically with respect to Pier 2, the Permit states:

"Pier 2. By March 2015, remove the existing shed building at Pier 2 to improve Bay views and public access."

² Permit 2012.001.05 was originally issued June 2012 and subsequently was amended five times through March 2014

Additionally, the Permit also cross-references the BCDC SAP as follows:

“SAP Amendment Requirements. By March 1, 2013, as required by Amendment 4-11 of the San Francisco Waterfront Special Area Plan, the permittees shall remove approximately 21,034 square feet (0.48 acres, 273 cubic yards) of the Pier ½ structure and improve the marginal wharf area with seating and trash receptacles. By December 1, 2014, the permittees shall remove approximately 14,454 square feet (0.33 acres, 18,790 cubic yards) of the remnant piles and pier structures at Pier 64. Removal shall be done pursuant to Special Condition TI-N. By March 1, 2015, the permittees shall remove the building located at Pier 2 to improve Bay views and public access at this location.”

Amendment of the SAP and issuance of the Permit required several public hearings and action by the BCDC Commission. The Stinson brothers appeared before the BCDC Commission to request the ability to stay at Pier 2 until 2015. Excerpts of the minutes for the February 12, 2012 and April 5, 2012 minutes are included as Attachment B hereto (full transcripts are available from BCDC). In both appearances before the BCDC Commission, Mr. Stinson acknowledges the need for the restaurant to close and his gratitude for an extension to 2015.

Pursuant to its law and regulations, BCDC has the authority to enforce its permits by: (1) revoking applicable permits, (2) issuing Cease and Desist Orders, and (3) imposing Civil Penalties. Such enforcement may be undertaken directly by the Executive Director or by action of the full BCDC Commission. Additionally, BCDC may refer violations of any permit to the Attorney General. If violations are not cured within 35 days of written notification, BCDC may assess penalties against the permittees through its standardized fine process. Such penalties range from \$1,000 up to \$30,000 per violation, depending how quickly the violation is resolved.

Downtown San Francisco Ferry Terminal Expansion Project

The San Francisco Bay Area Water Emergency Transportation Authority (WETA) is a regional public transit agency tasked with operating and expanding ferry service on the San Francisco Bay. WETA also coordinates the water transit response to regional emergencies. WETA carries over 1.8 million passengers annually throughout San Francisco Bay. The Downtown San Francisco Ferry Terminal Expansion Project (Downtown Terminal) is being developed by WETA to expand and improve facilities at the Downtown Terminal. WETA is working in close partnership with the Port to implement the project in support of WETA's Implementation and Operations Plan, which calls for the expansion of ferry service throughout the San Francisco Bay Area. The Downtown Terminal project also is critical to WETA's Emergency Water Transportation Management Plan, which sets forth the framework for WETA's emergency operations in the event of a regional disaster.

The Downtown Terminal project includes construction of up to three new ferry gates, one of which will be constructed where Pier 2 and Sinbad's currently sit. The Downtown Terminal project also includes installation of amenities such as weather-protected areas for queuing, improvements to pedestrian circulation, and covering of the current

"lagoon" area immediately west of Sinbad's for future use as a staging area for evacuees in the event of a major catastrophe. The long queues of ferry riders during the recent BART strikes underscore the need for these improvements.

The Downtown Terminal project is subject to environmental review at the State and Federal levels. The Federal Transit Administration has issued a Record of Decision completing the Federal environmental review (NEPA) requirements. At its October 2, 2014 meeting, the Board of Directors of WETA certified the Environmental Impact Report (EIR) for the Downtown Project. The EIR contains several references to Pier 2, including the disclosure that "*as part of the America's Cup project, Pier ½ has been removed. Additionally, the building that currently houses Sinbad's Restaurant on Pier 2 is to be vacated and removed by March 2015.*"

According to WETA, the Downtown Terminal project has entered an approximately 12-month final Design & Engineering phase, at the conclusion of which it will advertise its construction contract. Construction is estimated to begin in Spring, 2016 and conclude in Summer 2017.

Settlement Agreements with Sinbad's

In December 2012, the Port and Sinbad's entered into a Settlement Agreement (Settlement Agreement), as approved by the Port Commission. As of December 2012, Sinbad's owed the Port \$220,065.89 of back rent, plus interest and late fees. As incentive for Sinbad's to vacate Pier 2 by December 2014, the Port credited Sinbad's with 4 months of back rent equaling \$85,305.60. The Settlement Agreement required Sinbad's to:

1. pay the Port, in twenty-four equal payments (January 1, 2013 to December 31, 2014), its back rent with interest in a combined amount of \$141,498.30,
2. vacate Pier 2 by December 31, 2014, and
3. waive any claims including claims for relocation benefits.

In exchange, the Port agreed to waive its unilateral rights to terminate the holdover lease and associated parking agreements before December 31, 2014 for failure to pay the back rent accrued prior to the effective date of the Settlement Agreement (January 1, 2013), provided that Sinbad's strictly complied with all terms and obligations of the Settlement Agreement. The Port reserved its right to terminate the lease and associated parking agreements for any other uncured defaults of the lease and associated parking agreements, not associated with the payment of back rent. The Port entered into the Settlement Agreement in good faith in reliance on Sinbad's representation that it will vacate Pier 2 regardless of when WETA moves forward with its Downtown Terminal project. Additionally, Sinbad's agreed to indemnify the Port for any costs or liabilities resulting from Sinbad's delay in vacating Pier 2.

In June 2014, Sinbad's requested an extension of the vacation of its premises from December 31, 2014 to an unspecified date which would be tied to WETA's commencement of the Downtown Terminal project. On December 12, 2014, the Port Executive Director, in consultation with the City Attorney as required by the Port Commission's prior approval, granted Sinbad's a one-time extension to vacate Pier 2

until March 21, 2015. Sinbad's accepted the extension and represented that "Sinbad's acknowledges that there will be no further extension of the [vacation date], regardless of whether the [Downtown Terminal project] is delayed, extended or otherwise changed."

On December 22, 2014, just 10 days following the Port's extension, Mr. Thomas Stinson sent another request to the Port for a 9-month extension contradicting Sinbad's previous commitment not to request further extensions. In their December 22, 2014 request, Sinbad's again offers its commitment not to seek any further extensions if this new request for an extension to 2016 is granted. Sinbad's paid its back rent with interest as required by the Settlement Agreement.

Next Steps

In accordance with its obligations under the BCDC SAP and Permit, Port staff is developing plans and specifications for building demolition, removal and disposal. The work includes hazardous material removal. In September 2014, an asbestos and lead survey was conducted confirming the presence of both asbestos and lead.

Port staff also is in the process of retaining a contractor to perform the demolition, removal and disposal work. Port staff is using the San Francisco Public Works' (SFPW) as-needed contracting pool to select the contractor. On December 24, 2014 bids were received for the work with AMG of CA, Inc. as the low bidder. The entire work, including the contractor's fee, the SFPW costs and the survey costs is estimated at approximately \$110,000.

Additionally, staff of the Office of Economic and Workforce Development (Workforce Development) are prepared to work with Sinbad's employees to assist them as they need. In the event of a layoff, Workforce Development provides no cost outplacement services through Rapid Response and Job Transition Assistance Services. These programs help affected employees to quickly connect with Unemployment Insurance, COBRA, and job transition services such as job counseling, training opportunities, and job placement assistance. The layoff services, run through a Federal program called Rapid Response, help ensure the company is compliant with state and Federal WARN Act requirements, and aids employees in quickly transitioning to new employment, which may minimize the length of their unemployment insurance claims.

Prepared by: Monique Moyer, Executive Director
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Attachments

- A. Map of Sinbad's Premises including Parking Areas
- B. Excerpts from BCDC public meetings (February 22, 2012 and April 5, 2012)

Attachment A – Map of Sinbad’s Pier 2 Premises

Attachment B – Excerpts of BCDC Public Meeting Minutes

February 2, 2012 public hearing

Mr. Stinson addressed the Commission: You all should have copies of our position before you. This accelerated schedule became known to us as a very unwelcomed surprise. Most significant to our position is our recessed pier itself. Clearly, the facility will not provide a view of the race event. The job loss to our employee would be devastating. This wonderful event being a one-time only event should not displace a long-term tenant (39 years).

Our counter-proposal is that the building be removed more reasonably in January of 2015 which would seem much more fair to our operation. Our counter-proposal is far more important with the goal of WETA which seems to be the most important issue here. Should it be necessary, our parking area can be used during the event for crowd needs.

What we seek is a mitigated responsible solution that gives reasonable time to prepare ourselves for the future. We feel a fully-integrated approach should be entertained and it is our hope this Commission will invite the staff to redraft a fair and reasonable proposal.

Commissioner Gibbs further inquired: Are you interested in staying beyond 2015 if possible?

Mr. Stinson replied: I would be interested in staying until eternity but, of course, that would certainly be, not reasonable on our part. WETA is in my view a wonderful project which is a long-term permanent part of our Bay. When we get to that time period, I'm sure that we can find other means to give a good planning process and get one in place.

April 5, 2012, after changing the requirement to December 31, 2014.

Mr. Tom Stinson spoke: I wish to express our gratitude to the Commission for not turning its back on small business while tackling such larger matters. Sinbad's would like to be very helpful in any way should you need us.