



Agenda Item: Discuss and Consider Concessionaire Partner Program Financial Policies

Background: At the September Board Meeting, Trustees voted to change the Bylaws allowing a First Right of Refusal approach in lieu of a required public bid.

For the concessionaire program to develop consistency in the agreements, provide a smoother administrative process and deliver a leveled market-based methodology, fundamental changes to how the program was previously administered are necessary.

Staff held two information sessions to which all concessionaire partners were invited. Staff shared the change to the Bylaws, First Right of Refusal method, Standards of Operation, Standards of Excellence, point of sale requirements and agreement terms. Overall, these standards and terms were well received.

Staff proposes the following for any newly executed concession agreements for returning or first-time partners:

Length of Contract

As of March 2012, Park Board Bylaws dictate the length of agreement possible with the following terms:

- A small concession that has up to \$20,000 in gross sales each year may have a term of two years
- A medium concession that has between \$20,000 and \$79,000 in gross sales each year may have a term of three years
- A large concession that has over \$79,000 in gross sales each year may have a term of five years

Fees

Agreements will include two mechanisms for collecting fees.

Annual Administration Fees will be applied to each agreement. The fees are calculated using the Park Board's administration costs to manage the concessionaire partner program. These costs include time spent, resources used, maintenance of lease agreement with the General Land Office, maintenance of seaweed permit, beach maintenance and costs associated with beach nourishment projects which directly benefit beachfront businesses. The total fee also reflects the size of the area of operation, i.e., the number of blocks along the Seawall or linear feet of a beach park, and the anticipated area attendance.

In addition to Annual Administration Fees, concessionaire partners will pay a percentage of gross sales, not to include required sales tax. Sales tax is the responsibility of the concessionaire partner to remit.

An application fee of \$500.00 is required for each application and proposal submitted. This fee helps offset costs of legal fees, background checks and credit checks. Applications that are declined receive a refund of \$250.00.



Payment Terms

To align and simplify payment dates among all agreements, the Annual Administration Fee will be due on or before March 1 each year. The percentage of gross sales payment will be due monthly. Payment is due no later than the 20th day of the month following collection.

Point of Sale (POS) System and Reporting Requirements

A Point of Sale (POS) system will be required for use by Concessionaires and must be able to record all transactions, whether by cash, credit, or debit card. The POS must also provide reports that track all transactions, including cancelled and zero/no sale transactions. At a minimum, reports must show total sales by day and for the reporting period and be made available to Park Board staff upon request. The reports must also be included as supporting documentation when making percentage of gross sales payments to the Park Board.

Auditing

Agreements will include language giving the Park Board or its agent(s) the right to audit. "Concessionaire shall allow access to Park Board or its agent(s) to review financial books, sale receipts, tax returns and other records as necessary with or without prior notice." Audits can occur at any time for any reason; they may be random, or they may be administered if any anomaly in record keeping is found.

Late Payments

Late payments will be addressed as follows:

- Late payment of Administration Fee – concessionaire receives notice that no operation may begin until payment is received
- 15 days past due - the payment is in default and 10% of the payment amount will be charged as a late fee;
- 30 days past due –a notice will be issued to immediately remit payment + a percentage of the payment or cease operation
- 60 days past due – the Park Board may issue a notice of termination of the agreement

Administrative Process

The finance team will send invoices for the annual administration fees due on March 1. An email notice will be sent as a payment reminder for the percentage of gross sales payments due. To follow best practices for tracking receipt of payment, payments will be accepted as checks issued by a bank or by credit or debit card. The finance team will track payments and alert the Guest Experience Manager for any late payments. In turn, the Guest Experience Manager will follow up, in writing, with the concessionaire partner about the late payment.

Staff Recommendation: Staff recommends approving the financial policies of the concessionaire partner program as presented.

Funding Source (if applicable):