

**STAFF REPORT FOR CALENDAR ITEM NO.: 12  
FOR THE MEETING OF: May 10, 2018**

**TRANSBAY JOINT POWERS AUTHORITY**

**BRIEF DESCRIPTION:** Adopt Rental and Fee Schedule for Fiscal Year 2018-19.

**EXPLANATION:**

The primary purpose of TJPA property is to provide a public transportation facility. TJPA expects that TJPA property will also provide an important service for passengers, neighbors, workers, and tourists, providing retail, professional services, commercial outlets; dining; as well as leisure, recreational, and other amenities.

TJPA staff believe, however, that certain limited areas and limited uses of TJPA property can be made available to individuals and entities for non-public rentals and uses without impairing TJPA's primary functions.

Non-public rentals include events sponsored by any entity other than TJPA, and which are closed to the public, invitation only, or open to the public only with purchase of a ticket or payment of an entrance fee, and where the renter has the temporary right to exclude the public from the rented space. By contrast:

- Small-scale private gatherings that do not include any right to exclusive/reserved use of any portion of the facility (like family picnics in the park) are generally permitted under TJPA's Park Rules and Code of Conduct without a permit or payment of a fee. Larger private gatherings may be required to secure a permit but no rental fee is required so long as there is no need for exclusive/reserved use of the facility.
- Proposed events and activities sponsored by any entity other than TJPA but which are free and open to the public are separately regulated under TJPA's promotional platform, which includes sponsorships, promotions, live advertisement, and experiential advertisement.
- Expressive activity is separately regulated under TJPA's Park Rules and Code of Conduct; certain expressive activity may require a permit but generally no rental or other fees are required.
- TJPA sponsored programming is not subject to these permit or rental requirements.
- Spaces available for rent under TJPA's retail and pop-up leasing program are separately regulated by TJPA.

This approach is consistent with numerous City-owned facilities such as City Hall; War Memorial & Performing Arts Center facilities (including Opera House, Davies Hall, Zellerbach Hall, Herbst Theater, Green Room, Veterans Building); and Recreation and Park Department open spaces and facilities (including Conservatory of Flowers, Palace of Fine Arts Rotunda, Golden Gate Park Polo Field, Civic Center Plaza, Mission Dolores Park). This approach is also consistent with that of other sister agencies such as BART (film and photo shoots in stations) and

Office of Community Investment and Infrastructure's Yerba Buena Gardens.

In keeping with its proprietary function as a provider of a public transportation facility, TJPA does not intend by accepting non-public rentals and uses to convert TJPA property into an open public forum for public discourse, debate, or expressive activity. Rather, TJPA's fundamental purpose is to provide a public transportation facility, and TJPA accepts such non-public rentals and uses as a means of generating revenue to support its primary functions.

TJPA staff recommend that any non-public rentals and uses of TJPA property shall be consistent with the following goals:

- (1) Prioritize the public transit purpose of TJPA property, TJPA programming designed to engage and serve the public, and public access to TJPA property over non-public rentals and uses.
- (2) In light of the public investment in TJPA property, and to minimize the need for public sources to pay for operations, ensure at least full cost-recovery from non-public rentals and uses of TJPA property, and, where appropriate, maximize revenue from non-public rentals and uses of TJPA property.
- (3) Maintain a safe and welcoming environment for passengers using TJPA property and riding the public transportation systems that use TJPA property.
- (4) Maintain TJPA's position of neutrality on issues not directly related to the Transbay Program, and avoid the appearance of the TJPA's involvement in favoring or opposing political parties, issues, or candidates.

In keeping with the above goals, TJPA staff recommend that only the specifically identified areas of TJPA property be made available for rental. In the future, TJPA staff may recommend to the TJPA Board that other portions of TJPA property be opened for rental. TJPA is not making the entirety of the rooftop park (or even a majority of the park) available for non-public rentals or uses.

TJPA staff recommend that non-public rentals and uses of TJPA property generally be made available to the public on a first-come, first-served basis, based on completion of all TJPA prerequisites. TJPA staff would prepare standard forms of application materials and contracts; establish application processing procedures; set damage deposit amounts; set minimum insurance specifications; develop facility usage requirements and prohibitions; and establish other matters as necessary and appropriate to protect TJPA and its property.

TJPA staff also recommends that TJPA expressly reserve the right to restrict or prohibit rentals and uses during such periods, on such days, or at such times that the Executive Director determines would conflict with TJPA's objectives to prioritize the public transit purpose of TJPA property, TJPA programming designed to engage and serve the public, and public access to TJPA property. TJPA and its asset manager are planning a robust level of public programming,

particularly in the rooftop park; TJPA staff recommends that such public programming take priority over non-public rentals and uses.

Public agencies are permitted to impose a charge for entrance to or use of local government property or the purchase, rental, or lease of local government property. Such charges for rental and use of government property are exempt from the state constitution's regulation of local government taxing authority (Proposition 26).

TJPA staff recommend that, at a minimum, rental rates and fees should be set to recover the full cost of the non-public uses of TJPA property (both direct and indirect fees and costs). In light of the substantial public investment in TJPA property, to minimize the need for public sources to pay for operations, and to prioritize public uses of TJPA property over non-public rentals and uses, TJPA staff recommends that, where appropriate, rental rates and fees for non-public uses of TJPA property should be set at a level that generates revenue for the Transbay Program. TJPA staff believes that the ability to use a portion of the public facility in an exclusive manner should have a justifying price tag. TJPA staff believes that adopting hourly rates, rather than a flat fee, will incentivize a shorter timeframe of non-public use. Finally, since TJPA property is not primarily designed to serve a rental function and public access to the facility should be prioritized, TJPA staff are not recommending any discounted rental rates for government or non-profit entities. This approach is similar to rentals of City Hall, where no discount is offered. TJPA staff are, however, recommending that TJPA waive film/photo shoot fees for news media, student, government, and nonprofit photo and film projects.

It is common for agencies to adopt schedules setting forth the rental rates and fees associated with non-public rentals and uses of public property. TJPA staff recommend that the Board adopt the attached Rental and Fee Schedule for Fiscal Year 2018-19. TJPA staff plan to present an annual update to the rental and fee schedule for TJPA Board approval as an attachment to the annual operating budget. The TJPA Board would reserve the right to update the rental and fee schedule at any time outside that annual schedule.

Finally, in keeping with the above goals and consistent with the recommended amendments to TJPA Board Policy No. 016, Advertising Policy, TJPA staff recommends that TJPA property not be made available for rentals or uses for certain purposes, including purposes that are reasonably likely to result in material risk to safety; that promote illegal goods or services, or unlawful behavior; that promote tobacco, firearms, or cannabis; that are adverse to TJPA or its public agency partners; or that promote or oppose a political party, ballot measure, or candidate.

#### **RECOMMENDATION:**

Adopt Rental and Fee Schedule for Fiscal Year 2018-19, in the form attached.

#### **ENCLOSURES:**

1. Resolution
2. Rental and Fee Schedule for Fiscal Year 2018-19

**TRANSBAY JOINT POWERS AUTHORITY  
BOARD OF DIRECTORS**

**Resolution No. \_\_\_\_\_**

WHEREAS, The Transbay Joint Powers Authority (TJPA) is a joint powers agency organized and existing under the laws of the State of California to design, build, and operate the Transbay Transit Center Program (“Transbay Program”); and

WHEREAS, Pursuant to the Joint Powers Agreement creating TJPA, dated April 4, 2001 (the "Agreement"), TJPA has the authority to, among other things, make and enter into contracts and exercise all powers necessary and proper to carry out the provisions of the Agreement; and

WHEREAS, The primary purpose of TJPA property is to provide a public transportation facility; and

WHEREAS, Certain limited areas and limited uses of TJPA property can be made available to individuals and entities for non-public rentals and uses without impairing TJPA’s primary functions; and

WHEREAS, Non-public rentals and uses of TJPA property shall be consistent with TJPA’s goals to prioritize the public transit purpose of TJPA property, TJPA programming designed to engage and serve the public, and public access to TJPA property over non-public rentals and uses; ensure at least full cost-recovery from non-public rentals and uses of TJPA property, and to generate revenue where appropriate; maintain a safe and welcoming environment for passengers; and maintain TJPA’s position of neutrality on issues not directly related to the Transbay Program; and

WHEREAS, In keeping with its proprietary function as a provider of a public transportation facility, TJPA does not intend by accepting non-public rentals and uses to convert TJPA property into an open public forum for public discourse, debate, or expressive activity; now, therefore, be it

RESOLVED, That the TJPA Board adopts the Rental and Fee Schedule for Fiscal Year 2018-19 in the form attached.

I hereby certify that the foregoing resolution was adopted by the Transbay Joint Powers Authority Board of Directors at its meeting of May 10, 2018.

\_\_\_\_\_  
Secretary, Transbay Joint Powers Authority

## NON-PUBLIC RENTAL AND FEE SCHEDULE

### I. Purpose

TJPA's transit center is a more than 1,250,000-square-foot public facility, spread over three city blocks, with four levels above ground and two levels below ground. The facility is designed to serve diverse purposes, including transit, recreation, commercial, and administrative purposes. More than 37,000 people are expected to visit and use the facility each week day when Phase 1 of the Transbay Program is fully operational. At completion, the Transbay Program is expected to connect eight Bay Area counties and the State of California through 11 transit systems.

The primary purpose of TJPA property is to provide a public transportation facility. TJPA expects that TJPA property will also provide an important service for passengers, neighbors, workers, and tourists, providing retail, professional services, commercial outlets, and dining; as well as leisure, recreational, and other amenities.

TJPA may choose to make limited, designated areas and limited uses of TJPA property available to individuals and entities for non-public rentals and uses.

In keeping with its proprietary function as a provider of a public transportation facility, TJPA does not intend, by accepting non-public uses, to convert TJPA property into an open public forum for public discourse, debate, or expressive activity. Rather, TJPA's fundamental purpose is to provide a public transportation facility, and TJPA accepts such non-public uses as a means of generating revenue to support its primary functions.

In furtherance of this discrete and limited objective, TJPA retains control over the nature of non-public uses of TJPA property. TJPA finds that certain restrictions on non-public uses will allow the TJPA property to fulfill its primary function as a public transportation facility; guard the health, safety, and security of the public; and promote revenue generation for the Transbay Program. Among other things, non-public uses shall be consistent with TJPA's goals to:

- (1) Prioritize the public transit purpose of TJPA property, TJPA programming designed to engage and serve the public, and public access to TJPA property over non-public uses.
- (2) In light of the public investment in TJPA property, and to minimize the need for public sources to pay for operations, ensure at least full cost-recovery from non-public uses of the facility and, where appropriate, maximize revenue from non-public uses of TJPA property.
- (3) Maintain a safe and welcoming environment for passengers using TJPA property and riding the public transportation systems that use TJPA property.
- (4) Maintain TJPA's position of neutrality on issues not directly related to the Transbay Program, and avoid the appearance of the TJPA's involvement in favoring or opposing political parties, issues, or candidates.

## **II. Non-Public Rentals**

Non-public rentals include events sponsored by any entity other than TJPA, and which are closed to the public, invitation only, or open to the public only with purchase of a ticket or payment of an entrance fee, and where the renter has the temporary right to exclude the public from the rented space. Proposed events and activities sponsored by any entity other than TJPA but which are free and open to the public are separately regulated under TJPA's promotional platform. Spaces available for rent under TJPA's retail and pop-up leasing program are separately regulated by TJPA.

### **A. Spaces Available for Rent**

TJPA has determined that the following areas of TJPA property may be available for non-public rent at the rental rates described herein, and subject to such other terms, conditions, and requirements as may be specified by and in the discretion of the Executive Director:

- (1) Amphitheater in Salesforce Park, and
- (2) Café Pad in Salesforce Park.

At this time, no other portions of TJPA property are available for non-public rental. TJPA may evaluate whether other portions of TJPA property are viable options for non-public rentals in the future, and TJPA reserves the right to change this determination in its sole discretion.

The specified TJPA property is generally available for non-public rental on a first-come, first-served basis, based on satisfaction/completion of all TJPA prerequisites (including contract signed and payment received). Notwithstanding the foregoing, TJPA expressly reserves the right to restrict or prohibit non-public rentals during such periods, on such days, or at such times that the Executive Director determines would conflict with TJPA's objectives to prioritize the public transit purpose of TJPA property, TJPA programming designed to engage and serve the public, and public access to TJPA property.

**B. Rental Rates**

TJPA has determined that the following rental rates apply to non-public rentals of TJPA property:

<b>Amphitheater in Salesforce Park Rental Rate</b>		
	<b>Stage + Lawn Only*</b>	<b>Entire Amphitheater Area</b>
1 – 250 attendees	\$1,200/hr	\$2,200/hr
251-500 attendees	\$2,600/hr	\$3,600/hr
501+ attendees	--	\$5,000/hr

\* Enclosed with barricades/stanchions, leaving west elevator, gardens, and walking path open to public.

<b>Café Pad in Salesforce Park Rental Rate</b>
\$500/hr

<b>Additional Rental Rates</b>
1.5 times the applicable hourly rate for each hour or portion thereof outside the reserved period

TJPA reserves the right to revise the above rental rates in its sole discretion. TJPA anticipates that the TJPA Board will update the rental rates each fiscal year.

**C. Fees and Expenses**

The non-public rental rates specified above include basic building services but do not include labor, insurance, equipment, security, and other charges. In addition to the above rental rates, TJPA charges the following fees and expenses:

<b>Fees and Expenses</b>	
Processing fee to cover administrative costs per event (for events with 501+ attendees)	\$500
Connectivity fee to cover costs for standard use of building power (for events greater than 4 hours)	\$500
Late fee where either (a) materials submitted less than 2 weeks prior to event (as required) (for rental of entire amphitheater), or (b) electrical plans submitted less than 5 days prior to event (as required)	\$250
Deactivation fee to cover costs where renter causes activation of facility life system alarm	\$5,000
Waste services fee where renter does not comply with obligation to appropriately segregate waste produced by its event	\$1,000
Amplified sound fee to cover additional processing and evaluation (as requested by renter)	\$560
Branded/promotional/commercial display fee (such as corporate sponsor banners or giveaways)	\$1,500

TJPA may charge additional fees and expenses as necessary to ensure full cost recovery associated with any non-public rental as specified by and in the discretion of the Executive Director. Such fees and expenses may include, but are not limited to: damage deposit; actual time of TJPA labor at established hourly rates, which may include overtime, night, weekend, or holiday rates (e.g., facility and event managers, engineers, laborers, electricians, security staff, sound monitors, janitorial, landscaping/grounds, dock master); services provided by/incurred by TJPA associated with the event to the extent the usage exceeds standard amounts or amounts specified above (e.g., waste disposal, electricity, water, security, Wi-Fi); equipment provided by TJPA associated with the event; special requests such as specialty lighting; and repair of damages associated with event.

TJPA may also impose conditions and requirements on non-public rentals which may result in additional costs for the permittee (e.g., requirement to maintain insurance; requirement to contract with Emergency Medical Technician; requirement to secure necessary permits; requirement to hire private security).

### III. Film & Photo

TJPA expressly reserves the right to restrict or prohibit film/photo shoots during such periods, on such days, or at such times that the Executive Director determines would conflict with TJPA's objectives to prioritize the public transit purpose of TJPA property, TJPA programming designed to engage and serve the public, and public access to TJPA property.

#### A. Professional Photographers and Videographers

TJPA requires all professional photographers and videographers to secure a film/photo permit from TJPA and pay the following film/photo fee prior to shooting on TJPA property:

Film/Photo Fees	
Still photography -- no exclusive use of TJPA property (e.g., wedding photography, family portraits)	\$100/day
Still photography -- requesting exclusive use of TJPA property (e.g., print advertising)	negotiated based on market value and extent of interference with public use
Commercial, corporate media, videos (including music videos, web videos, and short subject), TV series, movie, pilot, web series, documentary	negotiated based on market value and extent of interference with public use

TJPA reserves the right to revise the film/photo fees in its sole discretion.

In addition to the above film/photo fees, TJPA may charge fees and expenses as necessary to ensure full cost recovery associated with any film/photo shoot as specified by and in the discretion of the Executive Director. Such fees and expenses may include, but are not limited to: actual time of TJPA labor at established hourly rates (e.g., facility manager, engineers, laborers, electricians, security staff, sound monitors, landscaping/grounds); services provided by/incurred by TJPA associated with the event (e.g., waste disposal, electricity, water, security, Wi-Fi); equipment provided by TJPA associated with the event; and repair of damages associated with event.

TJPA may also impose conditions and requirements on film/photo shoots which may result in additional costs for the permittee (e.g., requirement to maintain insurance; requirement to contract with Emergency Medical Technician; requirement to secure necessary permits; requirement to hire private security).

## **B. News Media, Student, Government, and Nonprofit Projects**

TJPA requires all news media, student, government, and nonprofit projects to secure a film/photo permit from TJPA prior to shooting on TJPA property. As a courtesy to news media, students, government agencies, and nonprofits, TJPA will waive the film/photo fee; such entities will still be required to pay any fees/expenses as necessary to ensure TJPA's full cost recovery associated with the project and to meet TJPA's minimum conditions and requirements.

A "news media project" is defined as news reporting coverage conducted by credentialed media with issued press cards. A "student project" is defined as a class assignment that is covered under insurance coverage by a college/university; if the college/university is not able to provide the student project with the required insurance coverage, the standard film/photo fees apply. A "government project" is defined as a film/photo project created by or for a government entity and that advances specific government purposes. A "nonprofit project" is defined as a project created by or for a nonprofit corporation that is exempt from taxation under Section 501(c)(3) of the Internal Revenue Code, and that is directed to the general public or a significant segment of the public. Proof of nonprofit status may be required.

## **IV. Prohibited Uses of TJPA Property**

TJPA property is not available for non-public rentals or film/photo shoots for the following purposes:

- (1) Safety and Security. Rentals for events or film/photo shoots that TJPA determines are reasonably likely to result in material risk to safety and security of participants, or TJPA property.
- (2) Illegal Goods or Services, or Unlawful Behavior. Rentals for events or film/photo shoots that advocate or promote the use of illegal goods or services, or unlawful conduct, or otherwise conflicts with the requirements of TJPA's funding partners, including the U.S. Department of Transportation.
- (3) Tobacco, Firearms, or Cannabis. Rentals for events or film/photo shoots that advocate or promote tobacco, firearms, or cannabis products, businesses, or services.
- (4) Adverse to TJPA or Public Agency Partners. Rentals for events or film/photo shoots that are directly adverse to the commercial or administrative interests of TJPA or its public agency partners, or that tend to disparage the quality of service provided by TJPA or its public agency partners, or that tend to disparage public transportation generally.
- (5) Political Events. Rentals for events or film/photo shoots that either (a) promote or oppose a political party; a state or local ballot measure; or the election of any candidate or group of candidates for federal, state, judicial, or local government offices; or (b) solicit, accept, or reward donors for contributions of any funds that the person or organization soliciting or accepting the funds will use, directly or indirectly, to support or oppose any of the items specified in (a).