



File #:2023-0019

DATE: December 5, 2023

SUBJECT:

ADOPT AN ORDINANCE FINDING THE BOARD ACTION EXEMPT UNDER THE CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA), INCLUDING, BUT NOT LIMITED TO, CEQA GUIDELINES SECTION 15301, AND GRANTING LEASE AMENDMENT NO. 2 TO SHM CABRILLO ISLE, LLC, A DELAWARE LIMITED LIABILITY COMPANY DBA "SAFE HARBOR CABRILLO ISLE," AMENDING THE USE PROVISION WITH RESPECT TO CHARTER VESSELS, AMENDING PERCENTAGE RENT PROVISIONS, AND ADDING PROVISIONS ON DIVERSITY, EQUITY, AND INCLUSION

EXECUTIVE SUMMARY:

The District entered into a Second Amended and Restated Lease (Lease) with SHM Cabrillo Isle, LLC (SHM Cabrillo) for a recreational marina located at 1450 Harbor Island Drive, in the City of San Diego (Attachment A - Location Map). The Lease to SHM Cabrillo has a term of forty (40) years commencing on March 1, 2004 and expiring on February 29, 2044.

As a part of the implementation of Port Code Section 4.37 for the Regulation of Charter Vessel Operations in San Diego Bay and District Tidelands, the District has been encouraging charter business at marinas by updating leases where necessary in order to make them consistent with Section 4.37, to clarify what charters operations are permitted, and to better define percentage rent applicable to various charter and boat rental categories. During that process, staff noted that the Lease did not contain a specific percentage rent category for rentals of bare boats less than 20 feet in length,² and that the percentage rental rate applicable to yacht club membership dues set forth in the Lease was too high. The proposed Lease Amendment No. 2 (Second Amendment) (see Attachment C - Amendment No. 2 to SHM Cabrillo Isle LLC) would add a specific percentage rent category for rental of boats under 20 feet, correct the rate applicable to yacht club memberships to align with established rates, more clearly define permitted charter vessel uses for consistency with Port Code Section 4.37, and add provisions with respect to diversity, equity, and inclusion.

While the proposed Second Amendment would lower the percentage rate applicable to yacht club memberships from the current rate set forth in the Lease, the District would not receive less rent as SHM Cabrillo has been paying rent in accordance with the rates that were intended for the Lease, which rates are being charged across the Bay with respect to charters and yacht clubs. In order to make the percentage rates set forth in the Lease consistent with those being paid across tideland marinas and to clarify permitted charter operations from the leasehold, staff recommends amending the Lease as further described in the Discussion section below.

RECOMMENDATION:

Adopt an Ordinance finding the Board action exempt under the California Environmental Quality Act (CEQA), including, but not limited to, CEQA guidelines Section 15301, and granting Lease Amendment No. 2 to SHM Cabrillo Isle LLC, a Delaware limited liability company dba "Safe Harbor Cabrillo Isle," located at 1450 Harbor Island Drive, in the City of San Diego, amending the use provision with respect to charter vessels, amending percentage rent provisions, and adding provisions on diversity, equity, and inclusion.

FISCAL IMPACT:

This item has no fiscal impact. During the term of the Lease, SHM Cabrillo has continued to pay the intended percentage rental rates for the two categories, so if the proposed amendment is approved resulting in the specified percentage rental rates, it will not result in reduced or increased rent payments to the District.

COMPASS STRATEGIC GOALS:

This agenda item supports the following Strategic Goal(s).

- A Port that the public understands and trusts.
- A financially sustainable Port that drives job creation and regional economic vitality.

DISCUSSION:

Background

SHM Cabrillo operates a recreational marina on approximately 123,538 square feet of land area and 704,902 square feet of water area located at 1450 Harbor Island Drive in the City of San Diego. The Lease to SHM Cabrillo has a term of forty (40) years which commenced on March 1, 2004 and expires on February 29, 2044. The District's original lease with Cabrillo Isle Marina, L.P. a California limited partnership was amended, encumbered, and assigned several times over the years, and was ultimately assigned to SHM Cabrillo in 2016 under a new Amended and Restated Lease (District Clerk Document No. 65099).

In 2020, the indirect ownership of SHM Cabrillo was transferred to Sun Communities Operating Limited Partnership, and as part of District consent to the change of ownership, SHM Cabrillo and the District entered into the current Second Amended and Restated Lease.

Amendment

As part of District efforts to implement Port Code Section 4.37 for the Regulation of Charter Vessel Operations, staff has been amending various marina leases to make the use provisions with respect to charter vessel operations consistent with the Port Code and to clarify potential ambiguity on what charter operations are permitted from the leaseholds. These efforts are important to help marinas to comply with Port Code Section 4.37 and to encourage entrepreneurship and maximize opportunities

for visitor serving charter operations around the Bay.

The Lease was originally amended in 2021 to remove limitations on the number of vessels allowed to operate charters.³ The proposed Second Amendment explicitly references Port Code Section 4.37 with respect to permitted charter operations, clarifies that any sportfishing charters are limited to “Six-Pack Charters,” or those that can service no more than six passengers at any given time, and prohibits any sportfishing charters (other than Six-Pack Charters) and commercial fishing charters of any type.

The Second Amendment also provides a specific percentage rental category for bare boat charters less than 20 feet in length and revises the rate applicable to yacht club membership dues to what was originally intended. Due to a scrivener’s error, the Lease listed yacht club membership at 22%; however the current market rate for this category that was intended to be included in the Lease is 10%. During the term of the Lease, SHM Cabrillo has continued to pay the intended percentage rental rates for these two categories, so a change to the percentage rental rates will not result in reduced or retroactive rent payments to the District.

Last, the Second Amendment also adds the District’s most up to date language on diversity, equity, and inclusion requirements, including reporting requirements to document SHM Cabrillo’s commitments to non-discrimination and DEI.

For a comparison between the terms of the Lease as it currently exists and the terms of the Second Amendment, see Attachment B - Existing and Proposed Lease Information Summary.

Conclusion

The proposed Second Amendment includes corrections, updates, and clarifying revisions to the Lease that will benefit SHM Cabrillo as well as the District moving forward. For these and the other reasons stated in this Agenda Sheet, staff recommends the Board adopt the Ordinance as outlined in the Recommendation section above.

General Counsel’s Comments:

The Office of the General Counsel has reviewed this Agenda Sheet and the attachments as presented to it and approves the same as to form and legality.

Environmental Review:

The proposed Board action, including without limitation, granting Lease Amendment No. 2 to SHM Cabrillo Isle, LLC a Delaware Limited Liability Company dba “Safe Harbor Cabrillo Isle,” amending charter vessel use provision and related percentage rent provisions, is Categorically Exempt pursuant to California Environmental Quality Act (CEQA) Guidelines Section 15301 (Existing Facilities) and/or 3.a. of the District’s Guidelines for Compliance with CEQA because the project would consist of a lease amendment to continue to allow charter uses at an existing marina that would involve no expansion of use beyond that previously existing. The District has determined none of the six exceptions to the use of a categorical exemption apply to this project (CEQA Guidelines Section 15300.2). The project was previously determined to be exempt from CEQA on September

22, 2021. Pursuant to Section 15378(c) of the CEQA Guidelines, the term “project” refers to the activity being approved, which may be subject to several discretionary approvals of governmental agencies and does not mean each separate governmental approval. Accordingly, the proposed Board action is a subsequent discretionary approval of a previously approved project. No further action under CEQA is required.

The proposed Board action complies with Section 87 of the Port Act, which allows for the establishment, improvement, and conduct of small boat harbors, marinas, aquatic playgrounds, and similar recreational facilities, and for the construction, reconstruction, repair, maintenance, and operation of all works, buildings, facilities, utilities, structures, and appliances incidental, necessary, or convenient for the promotion and accommodation of any of those uses, including, but not limited to, snack bars, cafes, restaurants, motels, launching ramps, and hoists, storage sheds, boat repair facilities with cranes and marine ways, administration buildings, public restrooms, bait and tackle shops, chandleries, boat sales establishments, service stations and fuel docks, yacht club buildings, parking areas, roadways, pedestrian ways, and landscaped areas. The Port Act was enacted by the California Legislature and is consistent with the Public Trust Doctrine. Consequently, the proposed Board action is consistent with the Public Trust Doctrine.

The proposed Board action is considered excluded development pursuant to Sections 8.a. (Existing Facilities) of the District’s Coastal Development Permit Regulations because the project would consist of a lease amendment that would continue to allow charter uses at an existing marina and would involve a negligible expansion of use beyond that previously existing. A categorical determination of exclusion and notice of approval was previously issued for this project on September 22, 2021 and became effective 10 working days after notification to California Coastal Commission staff, since no appeals were received. Therefore, issuance of a Coastal Development Permit or subsequent exclusion is not required for the proposed Board action.

Diversity, Equity, and Inclusion Program:

This Agenda Sheet has no direct DEI impact on District workforce or contract reporting at this time. Staff notes that the proposed Second Amendment would result in the Lease containing the District’s up-to-date provisions regarding diversity, equity, and inclusion, which include a requirement that tenants document their efforts toward such matters.

PREPARED BY:

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Attachment(s):

- Attachment A: Location Map
- Attachment B: Existing and Proposed Lease Information Summary
- Attachment C: Lease Amendment No. 2 to SHM Cabrillo Isle, LLC