



Office of the City Manager

July 1, 2018

To: Honorable Mayor and Members of the City Council

From: Dee Williams-Ridley, City Manager

Re: General Information on Waterfront, and Update on Hs. Lordships, Vehicle Encampment in the Waterfront and the Marina Fund

Summary

As you prepare to consider item #1 on the July 2, 2018 Special City Council Meeting, this information is to assist you in making a well-informed decision. This memorandum provides a history of the Waterfront, specific information about Hs. Lordships Restaurant and the adjacent parking lot, the governmental agencies that help govern the Waterfront and the growing fiscal crisis facing the Marina Fund. As the Council considers action related to vehicle lodging and camping at Hs. Lordships parking lot, staff recognize that these are difficult challenges for our community, Council and staff and we hope to work with you to seek solutions.

Waterfront History

The area now comprising the Berkeley Waterfront was granted by the State of California to the City of Berkeley in 1913, in a Grant of State Tidelands, for the benefit of all of the people of California. A requirement of this grant is that revenue generated at the Waterfront be spent at the Waterfront. The Marina Enterprise Fund was set up to comply with this requirement, and is the City's vehicle for managing revenue and expenditures at the Berkeley Waterfront.

In 1962, the City obtained a state loan to develop the current marina with 1,000 slips, parking lots, launch ramps, restrooms, parks, and several commercial plots for lease. By 1966, fifteen boat dock systems were constructed. By 1970, two restaurants, a hotel, and an office building were developed. By 1980, the two sailing clubs and sailing docks, the boat yard, and a third restaurant were developed. By 1991, the City landfill at the Marina was capped and graded to become North Waterfront Park, renamed Cesar Chavez Park in 1996.

Currently, the City of Berkeley Waterfront operations include the 1,000 berth Marina; numerous facilities including: 4 restaurants, a 378-room hotel, 10,660 square foot commercial office building, marine center and full service boat yard, three small boat launches and hoists, 4 lane public boat ramp, 9 restrooms, 11 parking lots, a Yacht

Club, Shorebird Park Nature Center, Adventure Playground, bait shop; three parks taking up over 100 acres that include a 17 acre Off leash Area (OLA), Burrowing Owl Habitat, Solar Calendar, public art, seven miles of trails; 2 miles of roads encompassing 5 streets, and a variety of public and private recreation programs and special events. Recent traffic counts have estimated 1,246,000 vehicles enter the Waterfront each year. Adventure Playground alone has seen over 65,000 visitors this year while open on weekends and summers. The daily management of the Waterfront is like administering a “small city”. The \$6.2M in revenues that cover this operation come from boaters’ monthly slip fees (berth rental revenues), lease revenue from the Doubletree hotel, restaurants, and commercial and non-profit tenants; and other miscellaneous fees, including live aboard fees, dry storage fees, charter boat and ferry fees, locker rentals, program registration fees, special event parking fees, etc. Attachment 1 shows a map of the Waterfront.

History: Vehicle Encampment at the Waterfront

In the early 1980’s, informal bus and RV camping took place at the northeastern edge of North Waterfront Park (now Cesar Chavez Park). In 1985, the City removed a large volume of campers from the 5th Street area, and many campers went to North Waterfront Park, which then became known as “Rainbow Village”. In February of 1985, Council adopted an Urgency Ordinance authorizing people to dwell in motor vehicles on City land at the Waterfront for two months, until April 1985, (see Attachment 2a and 2b for reports documenting considerations at that time). There was space for up to 50+ vehicles (RV’s and car camping). The City provided a sink.

In response, the State Lands Commission sent a letter to the City stating the encampment was in violation of the Public Trust. In May 1985, Boykin Associates (the adjacent hotel owner), filed a legal action against the City and the State Lands Commission for violation of the Public Trust. In June 1985, a judge ordered the City to comply with the terms of the legislative trust grant within 270 days. In August 1985, a double homicide (by gunshot) occurred at the encampment. The City closed the encampment in 1986.

About 21 months ago, overnight vehicular camping in the Waterfront started to increase again. The presence of overnight van and car campers and RVs increased dramatically. Prior to 2016, there were commonly a few overnight vehicles at the Waterfront, with a small uptick in the summer months. Through most of 2017 and early 2018 these numbers began increasing, with the Waterfront parking lots averaging between 50-70 overnight campers per night. As staff started seeing an increase vehicles, we instructed our security company and monitors to make nightly vehicle counts of overnight vehicles. Overnight vehicles in the Waterfront are up to 400-450 per night and we are estimating that 200 of these vehicles are associated with overnight camping, with many of these being located at Hs. Lordships(this is discussed further below). In a response to numerous complaints from berthers and the Doubletree Hotel, in late May the City cleared out the meadow area and started signing two of our 11 parking lots (BCDE and FGHI) as berth only.

There is only one paid lot at the Waterfront: the launch ramp parking lot. In response to an audit recommendation, in March 2018 the City installed a gate arm system to restrict entry and ensure vehicles paid the \$15 fee. In the four months since the gate arm was installed, it has been broken and vandalized 11 times; and several cars and RVs continued to park there without paying the fee. In April 2018, the City began issuing administrative citations in the launch ramp lot. Citations have been effective at deterring unauthorized parking. Additionally, the City charges \$20 per car and \$50 for vehicles over 17 feet long for parking at large special events like the July 4th celebration and the Kite Festival.

Hs. Lordships: Current Lease and Facility Status

Hs. Lordships restaurant at 199 Seawall Drive was built in the late 1960s, and has been under the same ownership since that time. Hs. Lordships has a 50-year ground lease with the City, which expires August 31, 2019. Hs. Lordships owns the building and all improvements. The lease provides for the building to become City property upon termination.

State of existing lease negotiations

On May 17, 2018, Hs. Lordships notified the City of their intent to close the restaurant on July 2, 2018, and to surrender the building to the City on August 1, 2018. Their lease does not expire until August 31, 2019. Over the past year, the City and Hs Lordships had been discussing a potential 5-year extension. The notification of early closing came as a surprise. The City is working with outside counsel to negotiate Hs. Lordships early termination of the existing lease. Key issues to resolve include rent payment, property insurance, securing the building, and furniture, fixtures and equipment.

State of building

In 2015, the building was evaluated by Kitchell as part of their city-wide building condition assessment. Kitchell found that the building needed over \$3 million in repair work to bring it into good condition even though the facility is operational and meets all current codes. They estimated the replacement cost for the building to be \$21.4 million.

Insurance

The early termination of Hs. Lordships leaves the City in position in which we need to insure the property immediately to ensure adequate coverage of the building in the event that it is damaged. Alliant Insurance Services, which manages the City's property insurance program, has advised the City that when Hs Lordships is vacant, our carrier will only provide coverage if reasonable steps are taken to protect the property, including the removal of the encampment. Additionally, they recommend that if the area remains accessible, the City should consider, at least for the next several months, retaining a security firm to patrol the premises. If that is not done, the City's police department needs to perform regular patrols of the parking lot area.

Recruitment process of new tenant

The City has engaged the City's real estate consultant, Contra Costa County Real Estate Division, to assist us in identifying a commercial broker. We have toured the

property with six commercial brokers, and received proposals from three of them. Staff is in the process of entering into an agreement with a commercial broker. The selected broker will work with us to recruit a tenant that would be willing to enter into a 5-7 year lease with a 3-5 year option. This fairly limited duration is intended to give the City time to complete our Waterfront master plan process, which may envision a different or additional use for that area of the Waterfront. The City is seeking a tenant that will accept the building in as-is condition, be capable of funding and completing the repairs needed to operate the building, and at a minimum replace the revenue that Hs. Lordships brought in to the Marina Fund. The commercial brokers we have engaged are generally positive about recruiting a tenant quickly. However, they have said that the current state (encampment) of the parking lot will have a significant negative impact on the City's ability to recruit any tenant to this location.

Current state of parking lot

There is a 320-space public parking lot adjacent to Hs. Lordships. There has been a sharp increase in overnight parking at Hs. Lordships since late May. When the City closed the meadow area on May 28, 2018, many of the RVs that had been parking there moved to Hs. Lordships parking lot. Since that time, the number of overnight vehicles have nearly tripled, and the number of RVs has increased 5-fold.

Date	Overnight Parking at HS Lordships	
	Vehicles	RVs
17-May-18	39	n/a
24-May-18	46	6
31-May-18	56	13
4-Jun-18	72	16
9-Jun-18	91	24
12-Jun-18	108	27
19-Jun-18	115	31

Source: First Security vehicle counts, taken between 12am and 5am.

Waterfront –Regulatory Agency Authorities

The City's authority over the Waterfront is distinct from other parts of Berkeley given that the Waterfront is more heavily subject to multiple outside agencies' authority. These authorities are briefly described below:

State Lands Commission

The California State Lands Commission (CSLC) has advised that uses of Public Trust lands (e.g., the Berkeley Marina) must be related to water-dependent uses, such as navigation, commerce, and tourism, and must benefit the people of the state, and not just the local population (defined as "municipal use"), (see Attachment 4 for the 1913 Act and 1962 amendment granting state tidelands to Berkeley). Non-allowable uses of Public Trust Lands include uses for strictly municipal purposes, and also residential

housing uses. In 2017, CSLC provided a ruling to Berkeley that a proposed homeless encampment at the Berkeley Marina is a violation of Public Trust requirements because its purpose would be to meet a local municipal need (the local housing crisis) and it is not related to a water-dependent use (See attached letter to former City Attorney Zach Cowan, 04-18-2017, Attachment 3). Over the last few weeks the City has had several phone conversations with Sheri Pemberton, Chief of the External Affairs Division and Legislative Liaison from CSLC and she has referred us back to the 2017 and 1985 letters (see Attachments 2b and 3) and states that a homeless or RV encampment on state tidelands constitutes a “residential use” which is considered a private taking of public land, which is prohibited.

Regional Water Board

Any new construction (e.g., trenching for sanitary sewer, water line, electrical line, etc.) will likely require a storm water discharge permit. At present, neither the parking lot nor Seawall Drive treats storm water runoff to the Bay, since the lot existed prior to the development of storm water regulations. The current parking lot plus the Seawall Drive contain 190,000 SF of impervious surface (paved). The Water Board requires any project over 10,000 SF to implement storm water treatment.

San Francisco Bay Conservation and Development Commission (BCDC)

BCDC would require an Administrative Use Permit for potential residential use of the site; and also for construction of any utilities at the site.

Clean Marina Status

The City currently is certified as a “Clean Marina”, a state-wide non-profit program to protect the marine environment from pollution. In May, the Clean Marina program representative confirmed that Berkeley’s certification remains intact, but communicated, in part, the following concern:

This occupancy of Marina Areas is producing waste and hazardous materials near the water. So far, the waste hasn’t threatened the water itself based on my site inspections. Your status as a Clean Marina is intact. Our process focuses on what goes into the water, not how it gets there. Just keep the contamination away from the water. If the contamination reaches the water, that’s when your certification is at risk.

The program representative has begun monthly evaluations of the Berkeley Waterfront.

Marina Fund’s Growing Fiscal Crisis

As discussed in multiple recent reports¹, the City’s enterprise fund to manage the Berkeley Waterfront has a growing structural deficit with the Fund projected to soon exhaust all reserves. Recent data show continued declines in lease and berth revenue, which together comprise 89% of all revenue available for Waterfront operations, infrastructure, recreation programs, and special events. The gap between revenues and expenditures – estimated to be \$760,000 in FY19 and over \$1 million in the following

¹ See [11/7/17 Worksession report](#); [4/12/18 Off-agenda report](#), [5/8/18 Worksession report](#), and [5/8/18 Budget report](#)

years – will deplete the Marina Fund’s \$2.2 million in reserves within the next budget cycle. In the absence of improved berth and lease revenue, the City will need to identify \$1.2 million in expenditure reductions or additional revenue. This will have a considerable impact on Waterfront amenities and services enjoyed by the public.

There are multiple challenges contributing to the Marina’s growing fiscal crisis. As noted in recent reports, these include underinvestment in infrastructure leading to high costs and needs for repairs to streets, docks, and facilities: there is an immediate capital need of \$3.8 million. A second major issue has been increasing safety and security concerns that, while always a challenge at the Waterfront, seem to have escalated with the influx of larger numbers of people camping in their vehicles.

Staff are working in multiple directions to maximize revenues and minimize expenditures so to avoid potential changes to programs that keep the Waterfront vibrant and enjoyed by many. We are in negotiations with every major tenant: the Doubletree hotel (for a lease extension), Skates restaurant (lease expires Dec 2018), Hana Japan (lease is in holdover), 125-127 University office building tenants (leases are in holdover), and now Hs. Lordships (new tenant needed). While increased revenue is possible, their multiple complaints regarding safety and security in recent months undercut some of the City’s leverage in these negotiations.

We are working to retain existing berthers by upgrading restrooms, fixing finger docks, and establishing berther-only parking lots. We are working to attract new customers, including by offering referral discounts. Again, frequent berther complaints citing safety and security concerns undermine our ability to retain and attract this customer base.

The Marina Fund’s financial position also puts at risk the City’s application for a Division of Boating & Waterways (DBAW) loan. This \$5M loan is needed as soon as possible to address the aging infrastructure (docks, restrooms, etc.). In 2017, the City submitted an application for a loan and is awaiting next steps. DBAW will only provide us with a loan if our financials demonstrate we can make debt service payments. We will be unable to make the loan payments unless we immediately turn around revenue.

Safety and Security Complaints Received

The City has received numerous complaints about the overnight RV’s and vehicle Dwellers in the Waterfront from residents over the last year. City staff have been harassed, followed, and threatened verbally and physically by campers. The City’s security guards have been threatened, assaulted, and had their personal property damaged to the point where guards have been reassigned to safer locations and standard operating procedures have been revised to protect the security staff. Restaurant and hotel tenants have reported an increase in customer complaints. Marina berthers have reported multiple and increasing numbers of altercations and threats around use of the slip-holder restrooms and showers. Garbage, debris, and human waste have substantially increased. Restrooms have been repeatedly vandalized.

In the past several weeks, complaints about the impacts of the vehicle encampment from members of the public, tenants, slip-holders, vendors, staff, and Shorebird Park and South Cove user groups have sharpened. These complaints will be made available at Council's request.

Safety and security issues persist, despite staff efforts to better target private security, hire waterfront monitors, shift staff assignments to focus more on safety, increase garbage pickup, improve signage, re-set all electronic keys, and collaborate with berthers and tenants.

Summer Programming and Special Events

Summers are the busiest time in the Waterfront. Adventure Playground is open seven days a week, Shorebird Nature Center and Park is full with classes, multiple day camps including Berkeley Day Camp are hosted in the Waterfront daily, and up to 10 Charter fishing and touring boats and SF Prop and Tideline small-scale ferries are carrying between 400-500 boat passengers per day. This traffic combined with normal summer peak use of Cesar Chavez Park, the Marina and our restaurants/hotels create a hectic environment.

This busy environment is punctuated each summer by the City's two biggest special events, the July 4th celebration and Kite Festival (July 28-29). The July 4th celebration brings between 40,000 and 60,000 participants to the Waterfront to enjoy the day-long celebration that includes booths, musical performances on multiple stages, a carnival and lots of great food. The event is focused on the southern end of the Waterfront and finishes with a fireworks show just next to the Berkeley Pier. Both Highway 80 exits to University are closed for this event to keep traffic from backing up on the freeway. The Kite Festival is a two day event that is hosted in Cesar Chavez Park and brings between 15,000-20,000 participants. This event not only has the typical food, booths and entertainment, but very hands on events which encourages people to bring their own kites or watch one of the many kite competitions.

Conclusion

With Council's leadership, staff are working on the region's housing and homelessness crises on a number of fronts. The regional growth of people living in vehicles is another symptom of the larger problem and, as Council suggested Tuesday, may likely require and be best supported by a regional solution for these more mobile individuals. We remain compassionate and supportive of vulnerable populations within our community, and we look forward to working with the Mayor and Council as we address this and other issues.

Attachments:

- 1 – Waterfront Map
- 2 – (a) Council reports and materials documenting 1985 Rainbow Village considerations
- 2 – (b) Letters from State Lands Commission, 11-19-85 and 12-23-85
- 3 – State Lands Commission letter to Zach Cowan, 04-18-2017

4 – 1913 Act and 1962 Amendment granting State tidelands to the City of Berkeley

Cc: Jovan Grogan, Deputy City Manager
Ann-Marie Hogan, City Auditor
Mark Numainville, City Clerk
Scott Ferris, Director, Parks, Recreation & Waterfront
Teresa Berkeley-Simmons, Budget Manager
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