

CITY OF SANTA BARBARA WATERFRONT DEPARTMENT

MEMORANDUM

Date: July 16, 2020
To: Harbor Commission
From: Mike Wiltshire, Waterfront Director
Subject: **Waterfront Department Slip Assignment Policy**

RECOMMENDATION:

That Harbor Commission receive a presentation from staff on the Waterfront Department Slip Assignment Policy and, as appropriate, provide direction to staff.

BACKGROUND:

The Waterfront Department has had a slip assignment policy in place for decades in order to effectively manage the transfer of slips from one permittee to another. City Council first adopted a policy to manage slip permit transfers in 1975. Although there have been some changes over the years, the general foundation and intent of the policy has remained the same.

What is a Slip Permit Transfer

A slip permit transfer occurs when a slip permittee sells or acquires an equity ownership interest in a vessel and requests the new owner of the vessel be assigned their slip permit. Alternatively, a vessel owner may add a new partner to the vessel title and apply to the Waterfront Department to add the new partner to the slip permit. After a certain period, the original partner and original slip permittee may leave the partnership giving the new partner sole rights to the slip permit. Once the new partner has sole rights to the slip permit, they are free to bring in a different vessel. The details of the slip assignment process are codified under Santa Barbara Municipal Code 17.20.005. The Slip Assignment Policy municipal code section has been provided as an attachment to this report.

Slip Permit Transfer Fees

One of the most significant changes to the slip assignment policy was the addition of a slip permit transfer fee in 1982. Resolution 82-118 established a slip permit transfer fee of \$10 per foot imposed whenever a slip permit transfer occurred. In 1985, Resolution 85-092 outlined an incremental increase in the slip permit transfer fee over time and was raised to \$50 per foot by 1987. Both Resolution 82-118 and 85-092 have been provided as attachments to this report.

One of the key reasons for implementing, and increasing, the slip permit transfer fee is outlined in Section 5.B. of the attached *1982 Report on Santa Barbara Trust Lands*

prepared by the State Lands Commission. This report found two potential problems with the allowance of slip permit transfers:

1. *“The allowance of slip transfers limits the availability of berths and moorings through a waiting list procedure and prevents equal access to the general public.”*
2. *“Slip transfers may result in private financial gain with little or no monetary benefit to the trust-owned property”*

The imposition of slip permit transfer fees arose from the reality of point 2 above. Due to limited supply and huge demand for slips in the Santa Barbara Harbor the issuance of a slip permit has intrinsic value. This value is reflected in the private market value that is exchanged when slip permits are transferred. The 1982 Report on Santa Barbara Trust Lands recommended the *“imposition of a substantial transfer fee, reflective of the value of the slip transfer”* as one means of alleviating this concern. The report also recommends that *“this fee policy should be reviewed to determine whether it assures the trust a fair return in the event this practice is continued in any form in the future.”*

The Waterfront Department has continued to impose, and increase, the slip permit transfer fee in an attempt to counter balance the monetary value of the slip transfer and to protect the public trust asset. The Waterfront Department monitors private market values of slips annually and attempts to adjust slip permit transfer fees accordingly. As of 2020, the slip permit transfer fees are as follows:

Slip Length	Transfer Fee	Estimated Market Value	Status
20'	\$200/ft	\$6,000	Frozen
25'	\$350/ft	\$20,000	Frozen
28'	\$400/ft	\$28,000	Frozen
30'	\$400/ft	\$42,000	Frozen
35' – 100'	\$525/ft	\$70,000 - \$750,000	Adjust

Table 1: 2020 Slip Permit Transfer Fees

Slip permit transfer fees for smaller slips (30-feet and under) have been frozen as an economic balance has been reached where there is limited ability to privately profit off the transfer of slips. For larger slips (35-feet and above) the slip permit transfer fee was increased by \$25/ft in fiscal year 2020 as it has been found there is still room for significant private profit from the buying and selling of slip permits.

As the market value of slips increases it is the intent to increase the slip permit transfer fee to ensure a fair return to the trust-owned property as opposed to profits to the slip permittee.

It should be noted that slip permit transfer fees make up roughly 6% to 8% of the overall Waterfront operating budget. If slip permit transfer fees were to be removed, reduced, or changed there would be impacts and budget adjustments required to ensure sufficient revenue to cover expenditures.

The Public Trust Doctrine

The Public Trust Doctrine was developed in common law to protect the public's right to use navigable waters and the lands underlying them for the purpose of navigation, commerce and fisheries. The State of California acquired title as trustee to such lands and waterways upon its admission to the union. The Tidelands are held in trust for the public. All Tidelands within two miles of any incorporated city, city and county, or town in this State, and fronting on the water of any harbor, estuary, bay, or inlet used for the purposes of navigation, shall be withheld from grant or sale to private persons, partnerships, or corporations.

The terms of the Tidelands Trust are contained in the grant to the City of Santa Barbara from the State of California, which provides in pertinent part:

"The Tidelands Trust granted to the City all of the right, title and interest in and to all of the Tidelands and submerged lands (filled and unfilled) in that portion of the Pacific Ocean known as Santa Barbara Channel lying between the mean high tide and pier head line in the bay, to be forever held by the City in trust for the uses and purposes upon the following express conditions which include the following: that the lands shall be used by the city and its successor for the purpose in which there is a general statewide interest as follows:

(b) The City, shall not at any time, grant, convey, give or alienate such lands, or any part thereon, to any individual, firm or corporation for any purposes whatever, provided that the City may grant franchises not exceeding 66 years for purpose consistent with the trust upon which the lands are held by the state, and with the requirements of commerce and navigation and collect and retain rents and other revenue for such leases, franchises and privileges."

The State Lands Commission is the State body tasked with ensuring that public trust tidelands retain that fundamental character of being a public asset.

SUMMARY:

Over the years the slip assignment policy, and more specifically, the imposition of slip permit transfer fees has drawn significant interest from the public. As a result, the slip assignment policy and slip permit transfer fees have been reviewed numerous times by the Harbor Commission, City Council, Grand Jury, and State Lands Commission. This item is, again, being brought forth to Harbor Commission for review and public input. Should the Harbor Commission determine further analysis is warranted concerning slip assignments or related fees, a request for further study and recommendations could be made to staff and revisited at a future Harbor Commission meeting.

Attachments: 1. Slip Assignment Policy (Municipal Code Section 17.20.005)
 2. Resolution 82-118
 3. Resolution 85-092
 4. 1982 Report on Santa Barbara Trust Lands

Prepared by: Mike Wiltshire, Waterfront Director

17.20.005 Slip Assignment Policy.

A. PURPOSE.

1. Generally. The purpose of the Slip Assignment Policy is to provide regulations for the primary purpose of the Harbor, which is to provide in-water storage for commercial and recreational vessels actively used for their intended purpose.
2. Limited Secondary Use. As a limited secondary use, a slip permittee may be permitted to reside aboard a vessel by obtaining a permit from the Waterfront Department pursuant to the Santa Barbara Municipal Code.

B. SLIP PERMITS.

1. Slip Permit. Before any vessel is allowed in a Slip in the Santa Barbara Harbor, a permit must be issued pursuant to the Santa Barbara Municipal Code for that vessel by the Waterfront Department. Slip Permits, as approved by the Waterfront Director, shall be revocable month-to-month licenses. Slip permittees shall comply with applicable ordinances and resolutions, including fee provisions, adopted by the Santa Barbara City Council. No such Slip Permit shall be transferable after death of the slip permittee or by inheritance. A Slip Permit may, however, be assigned to a deceased slip permittee's surviving spouse or domestic partner registered with the City Clerk in accordance with Chapter 9.135 of the Santa Barbara Municipal Code pursuant to Section 17.20.005.D.2.b herein.
2. Ownership of Vessel Required. A slip permittee must at all times have an equity ownership interest in the vessel assigned to the Slip Permit.
 - a. Proof of Ownership Required. An equity ownership interest in a vessel must be demonstrated at the time a Slip Permit is issued to a slip permittee or transferred in accordance with Section 17.20.005.D herein by submitting any of the following documents to the Waterfront Department: (i) State vessel registration listing the prospective slip permittee as an owner; (ii) federal documentation listing the prospective slip permittee as an owner or; (iii) a notarized bill of sale in the name of the prospective slip permittee. If proof of vessel ownership is a notarized bill of sale, a fully completed state registration or federal documentation with all slip permittees listed as vessel owners must be provided to the Waterfront Department within 90 days of the submittal of the Slip Permit application. The Slip Permit shall be subject to termination if proof of ownership is not provided to the Waterfront Department within 90 days.
 - b. Permitted Types of Ownership. Corporations, limited liability corporations, partnerships, non-profit organizations, trusts, governmental agencies or individuals may own vessels. If a vessel is owned by an entity other than an individual, non-profit organization or governmental agency, the Slip Permit applicant(s) or slip permittee(s) must submit to the Waterfront Department either a partnership agreement or articles of incorporation which establishes that each slip permittee is either a general partner or an officer of the entity with the authority to legally bind the ownership entity. If the vessel is owned by a governmental agency or non-profit organization, the agency or organization must designate in writing a representative from the agency or organization who will be responsible for all aspects of the Slip Permit. Changing the name of the person so

designated shall require payment of a slip transfer fee pursuant to Section 17.20.005.D herein, unless waived by the Waterfront Director.

3. Replacement Vessel. If the vessel assigned to the Slip Permit is sold, donated, stolen, destroyed or otherwise permanently removed from its Slip, its owner must notify the Waterfront Department within 15 days of such event. The slip permittee must place a replacement vessel in the Slip assigned to the slip permittee within 180 days after the occurrence of the event causing the removal of the vessel assigned to the Slip Permit, unless granted a written exemption from the Waterfront Director. Failure of timely reporting of a sold, donated, stolen, destroyed or otherwise permanently removed vessel, or timely assignment of a replacement vessel, shall be grounds for termination of the Slip Permit.
4. Slip Fees. The slip permittee shall pay one month's Slip Fee, in advance, plus applicable fees and deposits when the Slip Permit application is submitted to the Waterfront Department. Slip Fees shall be established by resolution of the City Council.
5. Commercial Fishing and Aquaculture. The City Council may by resolution establish exclusive or preferential uses within all, or within certain areas of, the Harbor for use by vessels employed in commercial fishing and/or aquaculture. For purposes of this section, a commercial fishing vessel or vessel employed in aquaculture is a vessel in use pursuant to a valid and current commercial fishing or aquaculture permit issued by the California Department of Fish and Game. Such a vessel shall be a continuing source of income pursuant to the appropriate California permits, in accord with regulations adopted from time to time by resolution of the City Council.
6. Sub-License. It is unlawful for any person issued a Slip Permit to rent (whether or not compensation is paid or other value is received) the Slip Permit to any other person or entity.

C. SLIP WAITING LISTS.

1. Master Waiting List. The waiting list for the assignment of Harbor marina slips, as created by City Council Ordinance, is renamed the "Master Waiting List." The Master Waiting List is divided into categories according to slip length. Applicants on the Master Waiting List have designated a category of slip length from which they seek a slip assignment. Applicants may not change their designated category of slip length and no new applicants shall be added to the Master Waiting List.
 - a. Procedure for Slip Assignment to Master Waiting List Applicants. When a slip becomes available, it shall be offered for assignment according to whether the slip is a designated commercial fishing slip or whether it can be utilized for either commercial or recreational purposes. For purposes of this section, commercial fishing slip means a slip that is specially designated by the Waterfront Director as a slip reserved for qualified commercial fishermen ("Commercial Fishing Slip"). If the slip is designated as a Commercial Fishing Slip, it shall be assigned according to subsection C.5 herein to a qualified commercial fisherman. If it is not so designated, it shall be offered for assignment to the applicant in the slip-length category of the available slip with the earliest chronological application date on the Master Waiting List. The available slip shall be offered to each applicant in turn on the Master Waiting List within the slip-length category of the available slip until the slip is either accepted by an applicant or declined by all applicants for that slip-length category.

b. Procedure for Accepting or Declining a Slip Assignment Offer.

i. Acceptance of Slip Assignment Offer. Notification of slip availability shall be mailed by the Waterfront Department to the applicant at the applicant's most recent address on file in the Waterfront Department. Acceptance of the slip assignment offer must be submitted by the applicant in writing to the Waterfront Department within 30 days of the date of mailing the notice of slip availability.

ii. Completing Slip Assignment. An applicant who accepts a slip-permit offer shall have 90 days from the date of the offer to place a vessel in a designated slip and meet all associated requirements and obligations to complete that slip assignment, as described in this section.

iii. Declined Slip Offer. Failure of an applicant to accept a slip assignment offer within 30 days of the date of mailing of such offer by the Waterfront Department shall be considered a declined offer. Declining a slip offer will result in removal of the applicant's name from the List and in the loss of all fees paid by the applicant.

c. Unassigned Slips from the Master Waiting List. If an available slip is offered and declined by all applicants on the Master Waiting List registered for the slip-length category of the available slip, or if a slip-length category on the Master Waiting List is depleted of applicants, the slip shall be referred for assignment to a Sub-Master Waiting List in accordance with subsection C.2 herein.

2. Sub-Master Waiting List. All applicants in all slip-length categories on the Master Waiting List shall also be applicants on the Sub-Master Waiting List. The Sub-Master Waiting List shall be ordered chronologically, according to application date, and not divided into slip-length categories. The applicant on the Master Waiting List with the earliest chronological application date, regardless of designated slip-length category, shall be the first applicant on the Sub-Master List. The applicant on the Master Waiting List with the second earliest chronological application date shall be the second applicant on the Sub-Master List, and so on.

a. Procedure for Slip Assignment to Sub-Master Waiting List Applicants. A slip that becomes available for assignment to the Sub-Master Waiting List shall be offered to the first applicant on the Sub-Master Waiting List. If the slip offer is declined, it shall be offered to the second applicant on the List, and so on, until the slip is either accepted by an applicant or declined by all applicants on the Sub-Master List.

b. Procedure for Accepting or Declining a Slip Assignment Offer.

i. Acceptance of Slip Assignment Offer. Notification of slip availability shall be mailed by the Waterfront Department to the applicant at the applicant's most recent address on file in the Waterfront Department. Acceptance of the slip assignment offer must be submitted by the applicant in writing to the Waterfront Department within 14 days of the date of mailing the notice of slip availability.

ii. Declined Slip Offer. Failure of an applicant to accept a slip assignment offer in writing within 14 days of the date of mailing of such offer by the Waterfront Department shall be considered a declined offer. Declining a slip offer from the Sub-Master List will not result in removal of the applicant's name from the Master

or Sub-Master Waiting lists, loss of any fees paid, or change in the applicant's position on either List.

c. Unassigned Slips from the Sub-Master Waiting List. If a slip assignment offer is declined by all applicants on the Sub-Master Waiting List, or if there are no applicants on the Sub-Master Waiting List, the slip shall be referred for assignment to a Lottery List in accordance with subsection C.3 herein.

3. Lottery List. Any slip that remains unassigned after being offered for assignment to the Master Waiting List and Sub-Master Waiting List, or if the Sub-Master Waiting List is depleted of applicants, shall be offered for assignment to a Lottery List. The Lottery List shall be comprised of applicants selected by lot by the Harbor Commission Chair at a public meeting. Procedures for formation of the Lottery List shall be established by the Waterfront Department Slip Waiting Lists regulation adopted by resolution of the City Council.

a. Procedure for Placement on the Lottery List.

i. Qualification for Placement on the Lottery List. To qualify for placement on the Lottery List, all applicants must timely submit a Lottery List Participation Request in accordance with the Slip Waiting Lists regulation containing the applicant's name, telephone number and address. An individual may submit only one Lottery List Participation Request.

ii. Notification of Ranking and Potential Placement on Lottery List. Within five business days after the Harbor Commission Lottery List drawing, the Waterfront Department shall mail notification to each applicant whose Lottery Participation Request was selected by the Harbor Commission of their ranking and potential placement on the Lottery List. Notification shall be provided by certified mail, return receipt requested, to the applicant at the address shown on the Lottery List Participation Request form. A Lottery List Acceptance Form shall accompany the notification. Applicants not selected for ranking in the Lottery List drawing shall be notified in writing that their Lottery List Participation Request was not selected. The Waterfront Department shall discard the Lottery List Participation Requests not selected.

iii. Procedure to Accept Placement on the Lottery List.

(A) Within 30 days of the date of mailing notification of Lottery List rankings, selected applicants ranked numbers one through 50 shall return the completed Lottery List Acceptance Form and the Lottery List Placement Fee in an amount established by resolution of the City Council to the Waterfront Department. Any such applicant failing to return the Acceptance Form and Lottery List Placement Fee to the Waterfront Department within the required 30 day period shall not have a position on the Lottery List, and their Lottery Participation Request shall be discarded by the Waterfront Department.

(B) Should any applicant ranked numbers one through 50 fail timely return of the Lottery List Acceptance Form and the Lottery List Placement Fee, notification will be sent to the next-ranked applicant for potential placement on the Lottery List as provided by resolution of City Council. Any such

applicant ranked numbers 51 through 70 offered potential placement on the Lottery List shall, within 14 days of the date of such mailing, return the completed Lottery List Acceptance Form and the Lottery List Placement Fee in an amount established by resolution of the City Council to the Waterfront Department. Any such applicant failing to return the Acceptance Form and Lottery List Placement Fee to the Waterfront Department within the required 14 day period shall not have a position on the Lottery List, and their Lottery Participation Request shall be discarded by the Waterfront Department.

b. Procedure for Slip Assignment to Lottery List Applicants. A slip that becomes available for assignment to the Lottery List shall be offered for assignment to applicants on the Lottery List according to their rank on the Lottery List. If a slip assignment offer is declined by all applicants on the Lottery List, the slip shall be held in the Waterfront Department's visitor slip inventory for a period of six months. After six months, the slip assignment shall be re-offered individually to applicants on the Lottery List in the same order as the slip assignment was initially offered. If the slip remains unassigned after the re-offer, the procedure shall be repeated every six months until the slip assignment offer is accepted.

c. Procedure for Accepting or Declining a Slip Assignment Offer from the Lottery List.

i. Acceptance of Slip Assignment Offer. Notification of slip availability shall be mailed by the Waterfront Department to the applicant at the applicant's most recent address on file in the Waterfront Department. Acceptance of the slip assignment offer must be submitted by the applicant in writing to the Waterfront Department within 14 days of the date of mailing the notice of slip availability. Acceptance must be submitted to the Waterfront Department in writing.

ii. An existing marina slip permittee, or spouse or legally registered domestic partner of a slip permittee, who is offered a slip assignment from the Lottery List shall relinquish an existing Slip Permit assigned to that permittee or that permittee's spouse or legally registered domestic partner to the Waterfront Department prior to, and as a condition for, an assignment from the Lottery List.

iii. Declined Lottery List Assignment Offer. Failure of an applicant to accept a slip assignment offer in writing within 14 days of the date of mailing of such offer by the Waterfront Department shall be considered a declined offer. Declining a slip assignment offer will not result in removal of the applicant's name from the Lottery List, loss of the applicant's Lottery List Placement Fee, Lottery List Renewal Fee, or change in the applicant's position on the Lottery List.

d. Lottery List Eligibility. An applicant whose name is on the Master Slip Waiting List is not eligible for inclusion on the Lottery List.

4. Slip Waiting Lists Fees.

a. Master Waiting List Renewal Fee. An annual non-refundable Master Waiting List renewal fee in an amount established by resolution of the City Council shall be paid by each applicant on the Master Waiting List prior to the first day of November each

year. Failure to timely pay the annual renewal fee shall cause removal of the applicant's name from the List.

b. Lottery List Placement Fee and Renewal Fee.

i. Lottery List Placement Fee. Each applicant selected for placement on the Lottery List shall return the Lottery List Acceptance Form along with a non-refundable Lottery List Placement Fee in an amount established by resolution of the City Council. Failure to timely pay the Lottery List Placement Fee shall cause the applicant's name to not be placed on the Lottery List.

ii. Lottery List Renewal Fee. An annual non-refundable Lottery List Renewal Fee in an amount established by resolution of the City Council shall be paid prior to the first day of November each year. Failure to timely pay the annual Lottery List Renewal Fee shall cause removal of the applicant's name from the Lottery List.

iii. Lottery List Assignment Fee. A Lottery List Assignment Fee shall be paid by the applicant at the time a Lottery List slip assignment is made in an amount established by resolution of the City Council. Failure to timely pay the Lottery List Assignment Fee shall be deemed a declined offer.

c. Slip Waiting Lists Transfer Fee.

i. Slip Waiting Lists Transfer Fee. Any slip permittee assigned a slip from either the Master Waiting List, Sub-Master Waiting List or Lottery List shall pay a Slip Waiting List Transfer Fee in an amount established by resolution of the City Council to transfer the slip within five years of the date of the slip assignment. After five years, a standard Slip Transfer Fee shall be paid in an amount established by resolution of the City Council. A slip transfer shall be accomplished in accordance with subsection D herein.

ii. Exemptions from Slip Waiting Lists Transfer Fee. Mooring Licensee Priority Assignment. Payment of the Slip Waiting Lists Transfer Fee shall not be required for the transfer of a slip permit by a slip permittee who obtained a permit to occupy a slip pursuant to a mooring licensee priority assignment as provided in the Marina One and Four Expansion Slip Assignment Policy and Procedures Document. A standard Slip Transfer Fee is required.

iii. Hardship Waiver/Appeal. The Waterfront Department, Waterfront Director, Harbor Commission or City Council shall not accept or consider any slip permittee's appeal or request for a waiver from payment of the Slip Waiting Lists Transfer Fee.

5. Commercial Fishing/Aquaculture Slip Assignment. Commercial Fishing Slips shall be offered for assignment only to qualified commercial fishermen. Prior to assignment of a Commercial Fishing Slip from either the Master Waiting List, Sub-Master Waiting List, or the Commercial Fishing Slip Lottery, a commercial fisherman must demonstrate to the satisfaction of the Waterfront Department that the commercial fisherman possesses the following minimum qualifications: (i) a commercial fishing or aquaculture permit issued by the California Department of Fish and Game; (ii) a Fish and Game permit for the vessel that is to be moored in the Commercial Fishing Slip as a commercial fishing vessel; and (iii) satisfaction

of the terms and criteria to qualify as a qualified commercial fisherman, as established by City Council resolution, including the requirement for earnings from commercial fishing in years prior to the pending Commercial Fishing Slip assignment (“Qualified Commercial Fisherman”).

- a. Master Waiting List. Commercial Fishing Slips that become available for assignment to commercial fishermen on the Master Waiting List shall be offered for assignment to the commercial fisherman registered in the slip-length category of the available slip with the earliest chronological application date. If there are no commercial fishermen registered on the Master Waiting List in the slip-length category available, the slip shall be referred to the Sub-Master List.
 - i. Acceptance of Commercial Fishing Slip Assignment Offer. A Commercial Fishing Slip offered for assignment to a commercial fisherman from the Master Waiting List shall be accepted in accordance with the procedures for acceptance of a slip from the Master Waiting List set forth in paragraph 1.b.i. of this subsection C. Prior to assignment of the Commercial Fishing Slip, the commercial fisherman must demonstrate to the satisfaction of the Waterfront Department that he or she is a Qualified Commercial Fisherman.
 - ii. Declined Slip Offers. Failure of an applicant to accept a slip assignment offer in writing within 30 days of the date of mailing of such offer by the Waterfront Department shall be considered a declined offer. Declining a Commercial Fishing Slip offer shall result in removal of the commercial fisherman’s name from the Master Waiting List and loss of all fees paid by the commercial fisherman.
- b. Sub-Master Waiting List. Commercial fishermen registered for commercial slips on the Master Waiting List shall also be applicants on the Sub-Master Waiting List. The commercial fisherman registered for a commercial slip on the Master Waiting List with the earliest chronological application date shall be the first-ranked commercial fisherman on the Sub-Master List. If a commercial slip offer is declined by all commercial fishermen registered for commercial slips on the Sub-Master List, it shall be referred to the Commercial Fishing Slip Lottery process for assignment.
 - i. Acceptance of Commercial Fishing Slip. A Commercial Fishing Slip offered for assignment to the Sub-Master Waiting List shall be accepted according to the procedures for acceptance of a slip from the Sub-Master Waiting List set forth in paragraph 2.b.i. of this subsection C. Prior to assignment of the Commercial Fishing Slip, the commercial fisherman must demonstrate to the satisfaction of the Waterfront Department that he or she is a Qualified Commercial Fisherman.
 - ii. Declined Commercial Fishing Slip Offers. Failure of the applicant to accept the slip in writing within 14 days of the date of mailing of such offer by the Waterfront Department shall be considered a declined offer. Declining a slip offer will not result in the commercial fisherman’s name being removed from the List, loss of the applicant’s fees, or change in the applicant’s position on the List.
- c. Commercial Fishing Slip Lottery. A Commercial Fishing Slip that remains unaccepted after being offered to all commercial fishermen registered for commercial slips on the Sub-Master List shall be offered for assignment according to a single lottery

process called the Commercial Fishing Slip Lottery. Procedures for formation of the Commercial Fishing Slip Lottery shall be established by the Waterfront Department Slip Waiting Lists regulation adopted by resolution of the City Council. To qualify for participation in the Commercial Fishing Slip Lottery, all applicants must timely submit a Lottery Participation Request in accordance with the Slip Waiting Lists regulation containing the applicant's name, telephone number and address. An individual may submit only one Commercial Fishing Lottery List Participation Request.

i. Procedure for Assignment from Commercial Fishing Slip Lottery.

(A) Offer of Commercial Fishing Slip Assignment. A Commercial Fishing Slip that becomes available for assignment in accordance with the Slip Waiting Lists regulation shall be offered for assignment to an applicant according to his or her rank in the Commercial Fishing Slip Lottery. The applicant ranked in the first position shall be offered the available Commercial Fishing Slip. If the first-ranked applicant declines the offer or fails to meet the requirements for a Qualified Commercial Fisherman, the second-ranked applicant shall be offered the Commercial Fishing Slip assignment, and so on.

(B) Acceptance of Commercial Fishing Slip. Acceptance of the slip assignment offer must be made in writing and submitted to the Waterfront Department within 30 days of the date of mailing notice of slip availability. The acceptance form shall include the necessary information to verify qualification for a Commercial Fishing Slip. Any applicant failing to submit the required information to verify eligibility, or any applicant failing to meet the eligibility requirements set forth in this paragraph 5 for a Qualified Commercial Fisherman, shall be removed from consideration for slip assignment during that Lottery.

(C) Declined Commercial Fishing Slip Offer. Failure of an applicant to accept the Commercial Fishing Slip assignment offer in writing within 30 days of the date of mailing of such offer by the Waterfront Department shall be considered a declined offer. Declining a slip offer, or failing to meet the requirements for a Qualified Commercial Fisherman shall result in removal of the applicant's name for slip assignment in that Lottery.

(D) An existing marina slip permittee who is offered a Commercial Fishing Slip assignment shall relinquish an existing slip permit to the Waterfront Department prior to, and in exchange for, a Commercial Fishing Slip assignment from the Commercial Fishing Slip Lottery.

ii. Unassigned Commercial Fishing Slips. If a Commercial Fishing Slip assignment offer is declined by all applicants selected in the Commercial Fishing Slip Lottery, or if no selected applicants meet the requirements of a Qualified Commercial Fisherman, the Commercial Fishing Slip shall be held in the Waterfront Department's visitor-slip inventory for a period of six months. After six months, the Commercial Fishing Slip assignment shall be offered to applicants in a new Commercial Fishing Slip Lottery. If the Commercial Fishing Slip remains

unassigned, this procedure shall be repeated every six months until the Commercial Fishing Slip is assigned.

D. TRANSFER OF SLIP PERMITS.

1. Procedure. The permittee of a slip may transfer the Slip Permit to a new or changed vessel owner upon the sale or transfer of an equity ownership interest in a vessel if all the following conditions are met:
 - a. A written application for the transfer of a Slip Permit is filed within 15 days after the sale or transfer of the equity ownership interest in the vessel.
 - b. The slip permittee shall notify the Waterfront Department in writing within 15 days of the sale or transfer of an equity ownership interest, whether in whole or in part, of a vessel to an individual, entity, non-profit or governmental agency and specify if the Slip Permit is to be transferred or retained by the permittee.
 - c. Every permittee must supply proof of ownership of a permitted vessel pursuant to the requirements of subsection B.2 of this section within 15 days of any change, in whole or in part, in the equity ownership of the vessel.
 - d. The Transfer Fee or waiting list Transfer Fee and all other fees and deposits are paid in full within 15 days after the sale or transfer of interest, in whole or in part, of the vessel.
 - e. The owner must bring an operable vessel to the Administration Dock for verification of length. If the vessel is not operable, the Waterfront Director may waive these requirements for not more than 90 days for the purpose of repair.
 - f. A slip permittee must be in good standing with the Waterfront Department at the time that the Slip Permit transfer application is submitted to the Waterfront Department. A slip permittee is in good standing with the Waterfront Department if, at the time of submittal of the Slip Permit transfer application, both of the following are true and correct: (i) all fees or charges owed to the Waterfront Department by the slip permittee have been paid in full; and (ii) the Waterfront Department has not issued a written notice to terminate the Slip Permit, whether such notice of termination has been received by the slip permittee or not.
2. Death of Slip Permittee.
 - a. Death of Sole Slip Permittee.
 - i. No Transfer of Slip Permit After Death. No Slip Permit may be transferred after the death of a sole slip permittee.
 - ii. Notification of Death. Not later than 30 days after the date established on the death certificate as the date of death of the slip permittee, the administrator or executor of the estate of the slip permittee shall notify the Waterfront Department in writing of the death. If such notification is not received by the Waterfront Department within 30 days of the date shown on the death certificate as the date of death, the Slip Permit shall be deemed to be terminated 60 days after such date. Upon termination of the Slip Permit, permission to berth shall be denied by the Waterfront Director, and the administrator or executor of the estate of the deceased

slip permittee shall remove the vessel from the Harbor District immediately. Failure to immediately remove the vessel from the Harbor may, at the option of the Waterfront Director, result in the assessment of visitor fees at the visitor fee rate then in effect.

iii. Removal of Vessel. If notification of death as required in paragraph ii above is received by the Waterfront Department, the estate of the deceased slip permittee may have a period of time not exceeding 120 days after the date established on the death certificate as the date of death of the slip permittee to remove the vessel from the Slip. All regular Slip Fees are due and payable by the estate during this period.

b. Death of Slip Permittee with Spouse or Registered Domestic Partner at Time of Death.

i. Assignment of Slip Permit After Death. Subject to compliance with the requirements below, a Slip Permit may be assigned to the surviving spouse or domestic partner (registered with the City Clerk in accordance with Chapter 9.135 of the Santa Barbara Municipal Code) of a slip permittee after the death of the slip permittee.

ii. Notification of Death. Not later than 30 days after the date established on the death certificate as the date of death of the slip permittee, the administrator or executor of the estate of the slip permittee or the slip permittee's surviving spouse or registered domestic partner shall notify the Waterfront Department in writing of the death of the slip permittee. The notification to the Waterfront Department shall also state whether the spouse or legally registered domestic partner seeks assignment of the Slip Permit. Assignment of the Slip Permit to the surviving spouse or registered domestic partner will be approved by the Waterfront Director only if: (A) the surviving spouse or registered domestic partner can satisfactorily demonstrate an equity ownership interest in the vessel as provided in subsection B of this section; and (B) either proof of marriage to the slip permittee at the time of the slip permittee's death is provided to the Waterfront Department or proof of registration on the domestic partnership list as the slip permittee's domestic partner at the time of the slip permittee's death is provided to the Waterfront Department. If notification is not received by the Waterfront Department within 30 days after the date established on the death certificate as the date of death of the slip permittee, or the surviving spouse or legally registered domestic partner does not qualify for assignment of the Slip Permit, the Slip Permit shall be deemed to be terminated 60 days after the date established on the death certificate as the date of death of the slip permittee. Upon termination of the Slip Permit, permission to berth shall be denied by the Waterfront Director and the surviving spouse, registered domestic partner or estate of the deceased slip permittee shall remove the vessel from the Harbor District immediately. Failure to immediately remove the vessel from the Harbor may, at the option of the Waterfront Director, result in the assessment of visitor fees at the visitor fee rate then in effect.

iii. Removal of Vessel. If notification of death as required in paragraph ii above is received by the Waterfront Department and the slip permittee's surviving spouse or

registered domestic partner does not seek assignment of the Slip Permit, or does not qualify for assignment as provided herein, the estate of the deceased slip permittee, surviving spouse or registered domestic partner shall have a period of time not exceeding 120 days after the date established on the death certificate as the date of death of the slip permittee to remove the vessel from the Slip. All regular Slip Fees are due and payable by the surviving spouse, registered domestic partner or estate of the deceased slip permittee during this period.

c. Death of Slip Permittee with Multiple Slip Permit Partners.

i. Slip Permit Remains Valid. Upon the death of one of the slip permittee partners, subject to compliance with the requirements herein, a Slip Permit held by multiple Slip Permit partners remains valid in the names of the remaining Slip Permit partners.

ii. Notification of Death. Not later than 30 days after the date established on the death certificate as the date of death of the slip permittee, either the administrator or executor of the estate of the deceased slip permittee or the deceased slip permittee's surviving spouse or registered domestic partner or one of the remaining Slip Permit partners shall notify the Waterfront Department in writing of the death of the slip permittee. Such notification shall also state whether the spouse or registered domestic partner seeks assignment of the Slip Permit in the deceased slip permittee's partnership position or not. To become a Slip Permit partner, the surviving spouse or registered domestic partner must satisfy the requirements set forth in paragraph b.ii above.

E. YACHT BROKERAGES.

1. Definitions.

a. For the purpose of this section, "yacht brokerage" means a business entity that deals in the sale of vessels in compliance with applicable State, Federal and local laws and regulations, and conducts the brokerage upon real property in the Harbor Area in accordance with a current and valid lease agreement with the City.

b. For the purpose of this section, "yacht brokerage slip" means any slip assigned to a yacht brokerage.

2. Number of Slips. No yacht brokerage may validly hold permits to more than 15 slips at any given time in the Santa Barbara Harbor. No more than 30 yacht brokerage slips shall be assigned at any time. Any assignments exceeding these limits are void.

3. Slip Assignments. Yacht brokerage slip assignments will be registered with the Waterfront Department and the appropriate fee paid. Yacht brokerage slip assignments shall not extend beyond one year. The Waterfront Director retains the discretion to assign vacated slips, temporarily cancelled slips, visitor slips, end ties and side ties as yacht brokerage slips.

4. No Overnight Stays. Use of any yacht brokerage slip for overnight stays is illegal at all times and under all circumstances, unless expressly authorized during emergencies by the Waterfront Director.

5. Payment. Yacht brokerages will pay full monthly rental rates when due to the City on all slips and will not charge slip rates in excess of that charged by the City in the current Resolution of the City Council establishing mooring and slip fees in the Santa Barbara Harbor.

F. TEMPORARY CANCELLATION.

1. Temporary Cancellation. A slip permittee may request temporary cancellation of the slip permit. The Waterfront Department may grant the request for temporary cancellation of a slip permit to a slip permittee desiring to take an extended cruise for a period of not less than 90 days. During the period of temporary cancellation, the permittee shall pay a reduced slip fee equivalent to 25% of the normal slip fee. In the event the permittee's vessel returns before expiration of the 90 days, the full monthly slip rate will be reinstated and shall be charged for the entire period of time that the permittee's vessel was absent from the Harbor.
2. Ownership of Vessel on Temporary Cancellation. A slip permittee must be and remain at all times an owner of the vessel registered to the slip permit that is issued temporary cancellation status by the Waterfront Department. Relinquishing ownership of the vessel for any reason shall be cause for termination of temporary status and reinstatement of the full monthly slip fees beginning on the date ownership of the vessel is relinquished. In the event that the vessel is destroyed by fire or other natural causes, reinstatement of monthly slip fees shall be determined by the Waterfront Director in his or her sole discretion.
3. Removal of Personal Belongings Prior to Temporary Cancellation. Prior to beginning temporary cancellation status, all skiffs, kayaks, boat lines, fenders, dock steps and all other appurtenances or equipment must be removed from the slip berthing the vessel whose owner requests temporary cancellation and from the dock adjacent to the slip berthing the vessel whose owner requests temporary cancellation.
4. Temporary Cancellation Exceeding One Year. Slip permittees with vessels absent for more than one year on extended cruise shall advise the Waterfront Department if the slip permittee intends to continue on extended cruise status on or before the end of the one-year period and shall provide the Waterfront Director with proof of ownership of the vessel. Lack of annual notification or verification of vessel ownership is grounds for revoking temporary cancellation status.

G. VISITOR SLIP ASSIGNMENTS. The Waterfront Department retains the right to utilize vacant slips and slips with temporarily canceled slip permits for transient slip assignments. No more than 30 visitor slips, exclusive of temporary cancellations and endties and sideties, shall be maintained for transient vessels.

H. EXCHANGE OF PERMITS. Slip permittees utilizing comparably sized slips may exchange (trade) slips with one another upon approval of the Waterfront Director. A processing fee or the slip transfer fee shall be charged upon the exchange of permits as provided by City Council resolution. A permittee subject to the Waiting List Transfer Fee (see subsection C of this section) who exchanges a permit pursuant to this section shall remain subject to the Waiting List Transfer Fee. If the Waiting List Transfer Fee is charged following the exchange, it will be charged according to the fee applicable to the slip originally assigned. For purposes of the Waiting List Transfer Fee, the time the permittee holds the exchanged permit shall be added to the time the original permit was held. No exchanges will be permitted unless all rents, fees and deposits due are paid.

I. WATERFRONT DIRECTOR TERMINATION OF SLIP PERMITS. The Waterfront Director may terminate a Slip Permit upon 30 days prior written notice of termination (except for the longer notice period provided in paragraph 2 of this subsection) to the slip permittee for any of the following reasons:

1. Late Payment of Monthly Slip Fees. Monthly Slip Fees are due and payable on the first day of the month with or without receipt of billing, and monthly Slip Fees are delinquent after the 15th day of the month. After the 15th day of the month, a late charge, in an amount established by resolution of the City Council, will be assessed and added to the Slip Fees which are delinquent. Failure to pay monthly Slip Fees, together with all accumulated late charges, may result in termination of the Slip Permit. Termination of a Slip Permit due to late payment of Slip Fees may also result in termination of a live-aboard permit that may have been issued to a slip permittee of the terminated Slip Permit.
2. Death of a Sole Slip Permittee. A Slip Permit shall terminate 60 days after the date of death of a slip permittee under circumstances where the slip permittee has no surviving spouse, registered domestic partner or Slip Permit partners at the time of death.
3. Failure to Meet Requirements for Commercial Fishing Earnings. Failure of a person with a specially designated Commercial Fishing Slip Permit issued in accordance with subsection B of this section to meet the requirements for commercial fishing earnings, as such earnings requirement is established by resolution of the City Council, may result in termination of the Commercial Fishing Slip Permit.
4. Failure to Maintain Berthed Vessel in Operable Condition. Failure of a slip permittee to continuously maintain a vessel berthed in a Slip in an Operable condition may result in termination of the Slip Permit.
5. Failure of Slip Permittee to Comply With Waterfront Department Rules and Regulations. A slip permittee's or slip permittee's guest, visitor or invitee's failure to comply with all applicable local, state and federal laws and all Waterfront Department Rules and Regulations may result in termination of the Slip Permit.
6. Failure of Slip Permittee or guests or invitees to comply with standards of health, safety and welfare in the use of Slips, Vessels and the Harbor.

J. APPEAL. If the Waterfront Director terminates a Slip Permit, the slip permittee may request a waiver of the termination from the Waterfront Director. To request a waiver, the slip permittee must file a written waiver request setting forth the grounds upon which the waiver is requested with the Waterfront Director within 10 days of the date that the Slip Permit is terminated. If the Waterfront Director denies the waiver, the slip permittee may appeal the Waterfront Director's decision to the Harbor Commission. The appeal shall be filed in writing with the City Clerk within 10 days of the date of the Waterfront Director's decision. The Harbor Commission's decision on the appeal shall be final. If no waiver request is filed, the slip permittee may appeal the Waterfront Director's decision to terminate the Slip Permit to the Harbor Commission. The slip permittee must file a written appeal setting forth the grounds upon which the appeal is based with the City Clerk within 10 days of the date that the Slip Permit is terminated. The Harbor Commission's decision on the appeal shall be final.

K. VESSELS IN THE HARBOR MUST BE OPERABLE.

1. Vessels Assigned to a Slip Permit Must be Maintained as Operable Vessels. Vessels assigned to a Slip Permit must be continuously maintained in an Operable condition. If, at any time, based upon the appearance of the vessel, inspection by the Waterfront Director, or other facts, the Waterfront Director determines that a vessel is not Operable, the Waterfront Director shall give notice to the slip permittee requiring the slip permittee to demonstrate that the vessel is Operable within 15 days of the date of the notice. If the slip permittee does not demonstrate Operability of the vessel within the 15-day period, the Slip Permit may be terminated and the vessel shall be removed from the Harbor.

Exception - Vessels Not Operable. Vessels that had assigned slips in the Santa Barbara Harbor on September 9, 1980, and which, on that date, were not Operable, shall be exempt from the operation of this section until transfer of the Slip Permit, after which time the Operability is required.

2. Vessels in the Harbor Must be Operable. Vessels in the Harbor must be continuously maintained as Operable Vessels. It is unlawful to berth a vessel in the Harbor that is not Operable.

L. ISSUANCE OF SLIP PERMIT AFTER TERMINATION. A slip permittee whose Slip Permit is terminated as provided herein may not apply for another Slip Permit until one year after the date upon which the Slip Permit is terminated. The Waterfront Director shall have the sole discretion to decide whether to issue another Slip Permit or not. The Waterfront Director's decision shall be final. (Ord. 5901, 2019; Ord. 5767, 2016; Ord. 5528, 2010; Ord. 5500, 2009; Ord. 5458, 2008; Ord. 5453, 2008; Ord. 5420, 2007; Ord. 5386, 2006; Ord. 5377, 2005; Ord. 5347, 2005; Ord. 5273, 2003; Ord. 5206, 2001; Ord. 5140, 2000; Ord. 5109, 1999; Ord. 5023, 1997; Ord. 4757, 1992)

RESOLUTION NO. 82-118

A RESOLUTION OF THE COUNCIL OF THE CITY
OF SANTA BARBARA ESTABLISHING MOORING AND
SLIP FEES IN THE SANTA BARBARA HARBOR AND
REPEALING RESOLUTION NO. 81-082.

BE IT RESOLVED BY THE COUNCIL OF THE CITY OF SANTA BARBARA that fees for the privilege of mooring, anchoring, or tying up vessels in any part of the Harbor or for using City Harbor facilities or services identified herein shall be as follows:

A. Mooring and Slip Fees

The following rate and fee schedule shall apply to vessels having assigned moorings or mooring slips in the Harbor.

1. Open Water Moorings
Per foot of vessel length per month: \$.85
2. Fishermens Floats One and Two
Per foot of vessel length per month: 1.45
3. Skiff Row One
Per boat per month: 3.00
Provided that the area is intended for the tying of skiffs, tenders, and row boats associated with commercial vessels on mooring in the Harbor.
4. Marina Slips and End Ties
Per foot of vessel length or slip length, whichever is greater, per month: 3.05
Where end ties are divided into more than one account, the charges shall be for the length of vessel in each account.
5. Marina and Skiff Row Side Ties
Per foot of vessel length per month: 2.30
6. The length of a vessel shall be the overall length from stem to stern including bowsprits, bumkins and other permanently affixed projections, but excluding sheer.
7. No person shall anchor, moor or tie up a vessel in the Harbor unless a month-to-month permit agreement has been executed and the permittee pays the first months rent plus security deposit equivalent to two (2) months rent.
8. Vessels occupying slips shall be at least 80% of the length of the slip but shall not project into the adjacent fairway so as to create a navigational hazard as determined by the Harbor Director.

B. Visiting or Transient Vessel Fees

Visiting berths, slips and moorings are intended to accommodate boats enroute to and from their home port. There shall be a charge for visiting boats not having a regularly assigned slip, mooring, end tie, or designated mooring space subject to monthly charges as provided above in this resolution.

1. The base visiting rates for such vessels utilizing visiting slips or moorings will be assessed a daily charge for the first fourteen (14) days in the Harbor as follows:

up to 24'	\$ 5.75
25' to 30'	7.25
31' to 40'	8.75
41' to 50'	10.00
51' to 60'	11.50
61' and over	13.00
2. The maximum stay for visiting vessels at the above rates shall be for a period not to exceed fourteen (14) consecutive days. Such vessels that remain in the Harbor for a period of more than fourteen (14) consecutive days will be required to pay two times the base visiting fee. A new fourteen (14) day consecutive period at the base transient rate shall start to run if the vessel is absent from the Harbor for more than five (5) consecutive days or two (2) days in the case of commercial vessels actively engaged in fishing.
3. The Harbor Department may, however, waive such increase in the rate for a period in excess of the fourteen (14) day period in the event of prolonged storms, natural disaster, or on satisfactory proof of a need for additional time to effect emergency repairs.
4. For the purpose of this subsection, a day shall be deemed to be a twenty-four hour period commencing at twelve noon. All fees are due and payable in advance. No portion of transient dock fees is refundable.
5. The mooring fees as herein established shall be due and payable in advance. Payment of such fee shall entitle the owner of a vessel for which mooring fee is paid to moor for the paid up period. Provided, however, that on the occasion of public Harbor celebrations, invitation regattas, or similar nautical events, the City Council may, upon recommendation of the Harbor Commission, suspend such fees for visiting boats and vessels for a period not to exceed three (3) days.

C. Penalties for Delinquent Payment

1. A penalty in the amount of ten dollars (10.00) per month shall be added to permanent mooring or slip fees which are delinquent for fifteen (15) days.
2. A penalty in the amount of one dollar (1.00) per day shall be added to visitor slip fees for every day such fees are delinquent.

D. Processing Fee

An administrative processing fee of fifteen dollars (15.00) shall be charged for the processing of slip trades or exchanges between permittees.

E. Slip Transfer Fee

A fee in the amount of ten dollars (10.00) per foot of vessel length or slip length, whichever is greater, shall be charged:

1. Upon the sale of a permit registered vessel on the transfer of the permit to the new owner or,

2. Upon the addition of a partner or partners to a slip permit.

F. Gate Key Cards

1. The charge for gate key cards sold to authorized permittees shall be five dollars (5.00) per card. Such charges are non-refundable.
2. A deposit of ten dollars (10.00) shall be required for each gate key card issued to visiting boats. Such deposit shall be refundable for a period not to exceed thirty (30) days from the date of issuance.

G. Launching Ramp Fees

1. A fee of two dollars (2.00) will be charged for launching and retrieving vessels in the Harbor. Launching and retrieving will be considered to be one operation. The fee will be collected at the entrance.
2. A fee of two dollars (2.00) will be charged for an overnight parking permit in the parking lot for the launching ramp. The permit shall be prominently displayed on the vehicles' rear view mirror or affixed to the boat trailer.

H. Catamaran Beach Storage Permits

A permit fee of fifty dollars (50.00) per vessel per season shall be charged for the privilege of storing catamarans within the designated area on Leadbetter Beach. Permits shall be sold on a seasonal basis. However, if a permit is purchased after the beginning of the season, a credit of seven dollars (7.00) per unused month will be given. The season shall be from the first day of March to the first day of December, annually. No vessels may be stored on the beach at other times or places. Permits shall be issued to a maximum of forty (40) vessels.

I. Wharfage and Dockage

1. Dockage rates shall be computed and assessed on a per tie up basis for each twenty-four (24) hours on the Navy Pier as follows: Vessel Length
up to 50' \$.10 per lineal overall foot
51' - 150' .20 per lineal overall foot
151' and over .30 per lineal overall foot
2. A fee of six dollars (6.00) per hour will be charged for the use of the City owned fish hoists commonly called Fish Hoists One and Two or use of the ice crusher. Tokens will be sold by the Harbor Department.
3. A fee of twelve dollars (12.00) will be charged for the use of the fish hoist commonly known as the Stiff-Leg Hoist.

J. Non-Emergency Fee

1. A fee shall be charged for Harbor Patrol services except for bonafide emergencies. The rate will be twenty-five dollars (25.00) an hour with a minimum of fifteen dollars (15.00) for any portion of an hour.

2. An impound fee of twenty dollars (20.00) shall be charged in addition to any applicable towing fee, storage fee, or other reasonable cost incurred in impounding a boat or vehicle. All fees charged will be payable prior to release of the impounded vessel.

K. Use of Harbor for Commercial Activity

In addition to any permit fees charged by the City, there shall be a separate charge for commercial activity in the Harbor as follows:

Movie Feature Filming	\$1,000 per day
TV, Movie or Commercial Filming	\$1,000 per day
Commercial Photography (still)	\$ 50 per day
Commercial Demonstrations	\$ 50 per day
Aquatic Activity or Exhibit	\$ 5 per day

L. Use of Harbor for Promotion of Boating

Use of the Harbor on a non-profit basis for the promotion of boating may be permitted without fee with the written approval of the Harbor Director.

M. Expenses for Employees

All costs, expenses and salaries of Department employees specifically incurred because of special activity permitted shall be borne by the permittee in addition to any permit fee. The hourly rate is based upon the cost of the services furnished and shall be determined by the Harbor Director.

N. Rescue or Special Incident Report

The Harbor Department will provide Harbor Patrol Rescue or Special Incident Reports for a two dollar and fifty cent (2.50) fee per report.

O. Effective Date

The rates set forth in this resolution shall be effective July 1, 1982.

Repeal of Resolution No. 81-082

Resolution No. 81-082 is hereby repealed on the effective date of this resolution. Any fees imposed by Resolution No. 81-082 at rates not consistent with this resolution shall be adjusted to reflect the rates set forth herein.

Adopted June 29, 1982

I, RICHARD D. THOMAS, City Clerk in and for the City of Santa Barbara, California, do hereby certify that the foregoing Resolution No. 82-118 was adopted by the City Council at the meeting held June 29, 1982, 9:00 A.M., by the following vote on roll call:

AYES: COUNCILMEMBERS:
H. CONKLIN T. ROGERS
G. DEWITT S. SMITH
L. REYNOLDS MAYOR S. LODGE

NAYS: COUNCILMEMBERS:
NONE

ABSENT: COUNCILMEMBERS:
J. GRAFFY

IN WITNESS WHEREOF, I have hereto set my hand and affixed the official seal of the City of Santa Barbara this 29th day of June, 1982.

(SEAL)


Barbara Kernick
Deputy City Clerk

I HEREBY APPROVE this Resolution this 29th day of June, 1982.

Sheldon Lodge
Mayor

RESOLUTION NO. 85-092

A RESOLUTION OF THE COUNCIL OF THE CITY
OF SANTA BARBARA AMENDING SECTION E OF
THE RATE AND FEE SCHEDULE OF THE SANTA
BARBARA HARBOR, RESOLUTION NO. 84-102.

WHEREAS, The Council of the City of Santa Barbara adopted
a mooring, slip, and service fee schedule for the Santa Barbara
Harbor by resolution number 84-102 on June 26, 1984; and

WHEREAS, Section "E" of said schedule provides that a slip
transfer fee of \$10.00 per lineal foot.

WHEREAS, The Harbor Commission of the City of Santa Barbara
has recommended certain amendments to section E of existing rate and
fee schedule pertaining to slip transfer fees as per attached amend-
ments marked " EXHIBIT A "; and

WHEREAS, The Council of the City of Santa Barbara has de-
termined to amend section E of the existing rate and fee schedule;

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City
of Santa Barbara that the attached amendments of section E of the
rate & fee schedule of the Santa Barbara Harbor marked "EXHIBIT A"
are hereby adopted.

Attachment:
Section E

E. Slip permit transfer fee:

1. Effective August 16, 1985, the slip transfer fee shall be \$20.00 per lineal foot of vessel or slip, whichever is greater.

2. Effective February 16, 1986, the slip transfer fee shall be \$30.00 per lineal foot of vessel or slip, whichever is greater.

3. Effective August 16, 1986, the slip transfer fee shall be \$40.00 per lineal foot of vessel or slip, whichever is greater.

4. The date by which the fee is determined shall be the date stamped on the fully completed transfer information packet when submitted to Waterfront Operations administration staff.

5. Transfer fees shall be charged:

a. Upon the sale of a permit registered vessel, upon the transfer of the permit to the new owner or,

b. Upon the addition of a partner or partners to a slip permit.

Adopted July 2, 1985

I, RICHARD D. THOMAS, City Clerk in and for the City of Santa Barbara, California, do hereby certify that the foregoing Resolution No. 85-092 was adopted by the City Council at the meeting held July 2, 1985, 9:00 A.M., by the following vote on roll call:

AYES: COUNCILMEMBERS:
H. CONKLIN T. ROGERS
G. DEWITT S. SMITH
J. GRAFFY MAYOR S. LODGE
L. REYNOLDS

NAYS: COUNCILMEMBERS:

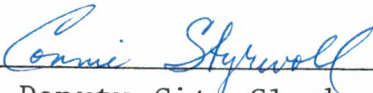
NONE

ABSENT: COUNCILMEMBERS:

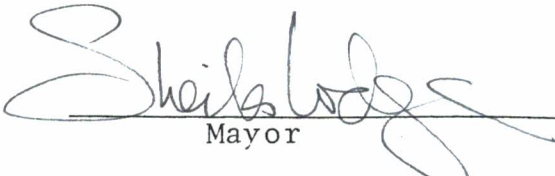
NONE

IN WITNESS WHEREOF, I have hereto set my hand and affixed the official seal of the City of Santa Barbara this 2nd day of July, 1985.

(SEAL)


Deputy City Clerk

I HEREBY APPROVE this Resolution this 2nd day of July, 1985.


Mayor

REPORT ON SANTA BARBARA TRUST LANDS

Prepared By

Staff of the State Lands Commission

and

Staff of the Attorney General

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REPORT ON SANTA BARBARA TRUST LANDS

I INTRODUCTION

Pursuant to inquiries by members of the public, Santa Barbara City officials, and the Santa Barbara Grand Jury, Staff of the State Lands Commission and the Attorney General's office have conducted a preliminary review of the practices of the City of Santa Barbara relative to its administration of its granted lands.

This preliminary review was concentrated in two basic areas:

- (1) Permissible use of revenues derived from or attributable to the granted lands; and
- (2) Permissible uses of the granted lands.

Specific matters studied included disposition of interest earned on granted lands trust accounts, and of revenues derived from the so-called "accreted lands"; accounting methods used to record revenues to and expenditures from the granted lands trust funds; use of the granted lands by live-aboard vessels and boat brokers; and slip transfers.

The study and the resulting comments which follow in this report serve to highlight some important issues concerning administration of the Santa Barbara grant, and as a basis for further discussions between the City and staffs of the State Lands Commission and the Attorney General's office. This report should not be considered a conclusive statement as to the propriety of the administrative practices of the City. Cooperation of Santa Barbara City officials and others contacted during the conduct of this study was excellent. This positive attitude aided in the review process.

II. BACKGROUND

By Chapter 78 of the Statutes of 1925, the Legislature purportedly granted to the City of Santa Barbara certain State owned sovereign tidelands and submerged lands. The effectiveness of this statute is questionable because the subject lands were to be bounded on the seaward side by a pierhead line which did not, and does not, exist.

By Chapter 13 of the Statutes of 1937, the Legislature amended the original granting statute in three important respects:

(1) It defined the granted area to be those tidelands and submerged lands within the City limits lying seaward of the mean high tide line as it existed in 1937 (this reference to the City limits established a seaward boundary and thus provided a complete description of the granted lands);

(2) It released those reclaimed, filled, and accreted lands within the city limits and seaward of the mean high tide line as it existed on April 25, 1925 from the land use restrictions of the grant; and then granted those lands to the City along with other tidelands and submerged lands within the city limits (see (1) above);*

(3) It authorized the City to convey a certain portion of the granted lands to the State for use as a stadium for Santa Barbara State College.

By Chapter 365 of the Statutes of 1937, the Legislature amended the earlier 1937 provisions to correct the description of the stadium parcel and to allow the City to lease or convey the stadium parcel to the State. A ninety-nine year lease was subsequently issued to the State on March 24, 1938.

By Chapter 9 of the Statutes of 1940, the Legislature authorized the City to lease another parcel to the United States Government for use as a site for a naval reserve armory.

*These reclaimed, filled, and accreted lands constitute a limited area generally located easterly of Santa Barbara Point and westerly of the Harbor.

By Chapter 193 of the Statutes of 1975, the Legislature amended the prior granting statutes to allow leases of 66 years (prior law restricted such leases to 25 years), and to specifically enumerate permissible uses of the granted lands. Section 6 of this legislation adds Section 4 to the grant, which expressly limits the use of revenues from the granted lands to trust purposes which are matters of "...statewide, as distinguished from local or purely private, interest and benefit," and then enumerates those uses.

III. TRUST REVENUES AND EXPENDITURES

Revenues derived from granted lands are themselves subject to the terms of the grant and the Public Trust, and may not be expended for general municipal uses.

This principle was firmly established in the case of City of Long Beach v. Morse (1947) 31 Cal.2d 254, and is expressly set forth in the granting statute, which clearly enumerates permissible uses of the revenues derived from the granted lands. Improper charges to or expenditures from the granted lands trust funds must be returned to the trust.

In addition, where the City has advanced monies to the trust and now seeks reimbursement of those amounts from the trust, further investigation will be necessary to determine the City's intent in this regard at the time of the original expenditures.

A. INTEREST EARNED ON TRUST ACCOUNTS

Interest earned upon trust fund deposits are "revenues accruing from. . .the granted lands. . .," as described in Section 6 of Chapter 193 of the Statutes of 1975 (Section 4 of the grant) and are thus subject to the trust and grant prohibition against use for purely local or private benefit.

Staff's preliminary review of City treatment of interest earned on trust funds reveals that some portion of the interest earned on the Harbor Fund is credited to the

City's General Fund. These interest transfers appear to have been, and continue to be, improper, and must be returned to the trust.

B. ACCRETED LANDS

Section 2 of the grant of tidelands and submerged lands to the City of Santa Barbara declares that all reclaimed or filled lands formed by artificial accretions lying between the 1925 and 1937 mean high tide lines have ceased to be tidelands and submerged lands, and are free from all trusts and restrictions imposed on these lands by the granting statute. (Stats. 1925, ch. 78; Stats. 1975, ch 193.)

By this language, the Legislature released the said filled and reclaimed lands ("accreted lands") from the trust use restrictions set forth in the granting statute. Such a provision allowing the use of granted lands for non-trust uses is valid only to the extent that it is incidental to and does not interfere with the paramount rights of commerce, navigation and fishery. The Legislature therefore required that the development of commerce, navigation and fisheries be the paramount trust purpose of the City's grant, and insured its primacy by providing that non-trust uses of the accreted lands were to be terminated if they interfered with trust uses of the other granted lands, and by prohibiting alienation of the accreted lands. (Stats. 1925, ch. 78, sec. 2; Stats. 1975, ch. 193, sec. 2.)

This allowance of the use of granted tidelands and submerged lands for uses unrelated to the common law trust did not purport to vest absolute ownership of these lands in the City, nor did it purport to authorize the use of revenue derived therefrom for general municipal purposes. Such an interpretation of Section 2 of the granting statute would violate the "gift clause" (Art. XVI, Sec. 6) of the State Constitution and would thus invalidate the statute.

1. Article XVI, section 6, provides:

The Legislature shall have no power . . . to make any gift or authorize the making of any gift, of any public money or thing of value to any individual, municipal or other corporation whatever; . . ."

(Mallon v. City of Long Beach (1955) 44 Cal.2d 199, 210.)

Therefore, in view of the intendments in favor of the constitutionality of a statute (Mallon v. City of Long Beach, supra, at p. 212; Jersey Maid Milk Products co. v. Brock (1939) 13 Cal.2d 620, 636), the City of Santa Barbara Trust Grant must be interpreted as simply allowing non-trust use of that portion of the granted lands that had previously been filled and reclaimed, but requiring that revenues generated by these lands be put to traditional trust uses.² Indeed, the City of Santa Barbara is, at the present time, properly depositing all such revenue in its granted lands trust accounts, telling evidence of the City's understanding of its grant.

Moreover, the granting statute in Section 4 provides a list of specific uses which expressly limits the uses that may be made of revenues accruing from or out of the use of all of the City's granted lands, including the accreted lands. Each of the uses enumerated is a trust use; no general municipal use is permitted to be made of any revenue produced from any of the land thereby granted to the City. Thus, while the Legislature has allowed the City to make non-trust use of a portion of its granted trust lands, this provision only applies to land use restrictions and has no application to revenues. Only trust uses may be made of the revenue generated directly or indirectly from all of the City's granted lands. The City must therefore continue to deposit all revenues produced by these lands, including that derived from the accreted lands, into its granted lands trust accounts.

2. Similar legislative authority has been given to the City of Long Beach in its grant. (Stats. 1959, ch. 1560, sec. 2) See also the Trust Grant to the City of Newport Beach (Stats. 1978, ch. 74, sec. 3) which requires that revenues from lands freed from the common law public trust themselves remain subject to the trust.

IV. ACCOUNTING METHODS AND RECORDS OF FISCAL MANAGEMENT OF TRUST FUNDS

A. Past Practices

Questions raised regarding the propriety of past charges to the Santa Barbara trust funds are as yet unresolved.

A limited review of the City's accounting procedures as related to its administration of the granted lands trust funds, revealed the following deficiencies.

1. There is no uniform system of accounts to accumulate cost information for various city departments which may be working on the same granted lands project, program or operational activity.
2. Cost accounting data generated by the various city departments are produced on an estimated basis and therefore, are not satisfactory.
3. Granted lands capital projects are not charged with uniform fringe benefits or overhead rates, and in fact most projects are not charged with either benefits or overhead.
4. There is no labor distribution system to determine the exact hours spent on any particular granted lands project, program, or activity.
5. Estimated amounts used to charge the granted lands trust fund for services rendered by the City's General Fund departments are not adjusted to the actual costs at the end of the fiscal year.

As a result of these deficiencies, it has been difficult to reconcile apparent discrepancies between budgeted and actual charges to the trust. Resolution of these outstanding issues will be necessary in order to determine the extent to which there has been compliance with the trust provisions.

Similar circumstances have arisen with regard to grants to the cities of Los Angeles, Redondo Beach, and Long Beach. In these cases, grantees have worked with the members of staffs of the Commission and the Attorney General to develop settlement agreements wherein major difficulties with past grant administration have been resolved and procedures for the future have been agreed upon. Such action is appropriate here.

B. Recommendations

Because proper administration of the Santa Barbara grant will require more detailed and accurate record keeping, Commission staff recommends the revisions in trust accounting procedures described below, and that these revisions be embodied in any settlement agreement entered into by the City and the Commission.

The City should establish an adequate system of cost accounting to ensure greater accuracy and completeness of the cost records. Such a system should include at least the following features.

1. Adequate Cost Accounting System.

An adequate cost accounting system compatible with the City's present general accounting system, should be developed. The system should have the capability to generate the cost information necessary to determine the total costs incurred in various granted lands projects and activities. (Applicable to Deficiencies 1 and 2.)

2. Adequate Work Order System For Granted Lands Projects.

Under this system all costs (labor, material, equipment, contract costs, overhead, etc.) related to specific projects, programs, or activities, would be

charged to the proper work orders. The system will serve not only a cost accumulating function but also as a management tool for control of costs. (Applicable to Deficiency 1.)

3. Capitalization of Project Related Expenditures.

Engineering costs, including benefits and overhead, associated with capital projects are an integral part of the capital expenditures and should be capitalized. (Applicable to Deficiency 1.)

4. Predetermined Rates for Fringe Benefits and Overhead.

Predetermined rates for fringe benefits and overhead should be developed to facilitate accurate estimating of various project costs. (Applicable to Deficiency 3.)

5. Adequate Time Records For Payroll Distribution and Labor Cost Determination.

These records would provide the basis for subsequent review and analysis as to the propriety and fairness of the costs incurred by the City for granted lands projects. Time sheets are currently maintained by the Public Works Engineering Division; however, they have yet to be used for cost distribution purposes. (Applicable to Deficiency 4.)

6. Year-end Adjustment of Estimates to Actual Costs.

A procedure should be established to adjust the estimated amount charged to the Harbor Fund for services rendered by the General Fund to actual costs as determined at the end of each fiscal year. This year-end adjustment should commence as of the 1981-82 fiscal year. (Applicable to Deficiency 5.)

V. TRUST USES

Certain uses of the granted lands presently permitted by the City of Santa Barbara may not maximize furtherance of the trust and grant purposes.

A. LIVE ABOARD VESSELS

The Santa Barbara Harbor Administration has recently estimated that of the 1008 boats maintained in the harbor, 252 are used as permanent residences for 424 individuals. Private residential use is not a public trust use, as demonstrated in the dissenting opinion of Justice Clark in City of Berkeley v. Superior Court (1980) 26 Cal.3d 515, 538 and in the concurring and dissenting opinion of Justice Clark in State of California v. Superior Court (Lyon) (1981) 29 Cal.3d 210, 235. (See also: Sax, "The Public Trust Doctrine in Natural Resource Law: Effective Judicial Intervention", 68 MICH. L. REV. 473, 543-544 (1970)). Such residential use is for a purely private purpose that is unrelated to, not dependent upon, and does not further, the particular purposes for which tidelands and submerged lands are uniquely suited. Mooring or berthing boats as long-term private residences does nothing to stimulate or foster such purposes as navigation, commerce, fisheries, recreation or the preservation of ecology and open space, all of which are within the range of proper trust uses.

In view of the tremendous needs of commercial fisheries and recreational boaters for additional space on limited granted lands, the continued use of 25% of the moorings and berths at Santa Barbara for residential use appears to be inconsistent with Public Trust principles and the intent of the granting statutes.

Since 1977 the State Lands Commission's staff has discussed this issue with Santa Barbara officials, commented on the Local Coastal Plan, written letters, and addressed local meetings where this issue arose. Guidance on live-aboard issues was given by the office of the Attorney General and stated in a letter to Senator Dennis E. Carpenter dated January 10, 1978.

Legislative grants to the City of Berkeley contain language similar to that in the Santa Barbara granting statutes. Commission staff, with the approval of the Office of the Attorney General, have advised the City of Berkeley that the leasing of 4% of the berths at its municipal marina for live-aboard cruising vessels would be neither inconsistent with the grant nor a substantial interference with the public's trust needs, given the limited number and location of live-aboards, and requirements that said live-aboard vessels be in fact navigable. It was also believed that a restricted number of live-aboards may discourage vandalism within the marina. In addition, all berths are rented on a month to month basis, and cruising vessels authorized as live-aboards are charged a higher rate than those not so designated. It should be noted also that the City of Berkeley has provided additional protection to the statewide Public Trust interest in the granted lands through the development of ordinances, resolutions and regulations and in their enforcement. (These data have been previously furnished to the City of Santa Barbara.)

It is noted that in September of 1980 the Santa Barbara City Council adopted Resolution 80-113, Slip Assignment Policy, which stated "the purpose of the Slip Assignment Policy is to provide regulations for the primary purpose of the Harbor which is to provide in-water storage for commercial and recreational vessels actively used for their intended purpose. As a limited secondary use, a slip permittee may be permitted to reside aboard a vessel by obtaining a permit from the Harbor Department pursuant to the Santa Barbara Municipal Code." Sections III and XII added certain provisions requiring navigability as a condition of berthing or mooring. (Note, however, that a non-navigable boat present in the marina in September 1980 has until 1985 to comply, unless sold prior to that date.)

Nevertheless, many problems associated with the live-aboard issue remain unresolved. There is no apparent restriction on the number of individuals who may be permitted to reside on live-aboards. So long as live-aboards are permitted on the granted lands under relatively

unrestricted conditions, their particularly high demand for services relative to health and safety will persist, resulting in a high economic demand on the trust, as well as a high potential for injury to the trust corpus. Additionally, live-aboard use may limit availability of berths and mooring sites to boaters through the waiting list procedure.

B. SLIP TRANSFERS

The City, pursuant to the Santa Barbara Municipal Code, permits the transfer of marina slips with the sale of the boat occupying the slip. As a result of high demand for boat slips in southern California, entitlement to use a slip carries an intrinsic value, which is reflected in the monetary consideration exchanged for the transfer of the boat and slip. This transfer practice may result in two problems.

First, the allowance of slip transfers limits the availability of berths and moorings through a waiting list procedure and prevents equal access to the general public. The City Council should consider discontinuation of its policy of permitting slip transfers. It may wish to implement such a change by providing a transition program such as the State Lands Commission has done in one instance, whereby present slip lessees may be allowed to transfer their slips once during a specified period of time. Thereafter, slips would be assigned only through a waiting list.

Second, slip transfers may result in private financial gain with little or no monetary benefit to the trust-owned property. Imposition of a substantial transfer fee, reflective of the value of the slip transfer, is one means of alleviating this concern. The City presently imposes a fee upon slip transfers. This fee policy should be reviewed to determine whether it assures the trust a fair return in the event this practice is continued in any form in the future.

C. BROKERAGES

Principles discussed under SLIP TRANSFERS, above, may be similarly applied to the City's practice of permitting boat brokers to display boats for sale in the marina. As one example, the City might consider imposition of a surcharge upon sale of a vessel so displayed, which surcharge may be related to the value of the sale.

VI. CONCLUSION

As stated above, this report should serve as a basis for further investigation and evaluation of the City's grant administration practices. It is hoped that the comments included in this report will be helpful to the City in formulating revisions to its grant administration practices which will be workable from the City's standpoint, and consistent with the principles of the Public Trust and the Santa Barbara granting statutes. Staff of the State Lands Commission and the Attorney General will be happy to meet with representatives of the City to discuss resolution of outstanding issues.