



Legislation Details (With Text)

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Title: ORDINANCE GRANTING LEASE AMENDMENT NO. 19 PROVIDING FOR A 9-YEAR LEASE EXTENSION TO THE CHULA VISTA MARINA, LP, DBA CHULA VISTA MARINA FOR THE CHULA VISTA MARINA LOCATED AT THE NORTHERN MARINA IN THE CHULA VISTA MARINA BASIN WITHIN THE CHULA VISTA BAYFRONT

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Attachments: 1. 10. 2021-0456 Attachment A, 2. 10. 2021-0456 Attachment B, 3. 2021-0456 Draft Ordinance

Date	Ver.	Action By	Action	Result
1/11/2022	1	Board of Port Commissioners	adopted	

DATE: January 11, 2022

SUBJECT:

ORDINANCE GRANTING LEASE AMENDMENT NO. 19 PROVIDING FOR A 9-YEAR LEASE EXTENSION TO THE CHULA VISTA MARINA, LP, DBA CHULA VISTA MARINA FOR THE CHULA VISTA MARINA LOCATED AT THE NORTHERN MARINA IN THE CHULA VISTA MARINA BASIN WITHIN THE CHULA VISTA BAYFRONT

EXECUTIVE SUMMARY:

Chula Vista Marina is located at 550 Marina Parkway at the intersection of Marina Parkway and Sandpiper Way in the Harbor District of the Chula Vista Bayfront, as identified on the attached map (Attachment A). In 1981, Chula Vista Marina, LP, a California limited partnership (Tenant), entered into a 40-year ground lease with the San Diego Unified Port District (District) for a 507-slip marina, restaurant and marina services buildings (Ground Lease). The Ground Lease has been amended eighteen (18) times. Paragraph 44 of the Ground Lease, which was added pursuant to Amendment 18, contains a procedure setting forth an agreement regarding a conditional lease extension to be documented in a new lease for the leased premises.

Over the course of negotiations and discussions with Tenant on a potential new lease pursuant with the terms of Amendment 18, a disagreement arose over the parties' respective rights and obligations under such amendment. In order to fully resolve any claims related to the terms of Paragraph 44 and Amendment 18, the parties agreed, subject to Board approval, to enter into an Amendment 19 in the form attached hereto as Attachment B that provides the following:

- Extension of the Ground Lease term for nine (9) additional years;

- Deletion of Paragraph 44, which was added pursuant to Amendment 18;
- Mutual waiver and release of any and all claims, known and unknown, related to Paragraph 44 and Amendment 18, including a waiver of California Civil Code Section 1542; and
- Acknowledgement by Tenant that the effect of the aforementioned release is that any future extension of the Ground Lease and/or decision to enter into a new lease for the leased premises is within the sole and absolute discretion of the Board, and may be granted or denied for any or no reason.

Staff believes that Amendment 19 is in the District's best interests as it would allow for the continued operation of the leased premises under the Ground Lease and associated payment of rent as well resolve any and all outstanding claims related to Amendment 18 and Paragraph 44 of the Ground Lease.

RECOMMENDATION:

Adopt an Ordinance granting Amendment No. 19 providing for a 9-Year Lease Extension to the Tenant for the Chula Vista Marina.

FISCAL IMPACT:

The proposed Board action would maintain the existing percentage rental rates under the Ground Lease. The Chula Vista Marina currently pays approximately \$725,000 in annual rent to the District.

COMPASS STRATEGIC GOALS:

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

- A vibrant waterfront destination where residents and visitors converge.
- A Port with a healthy and sustainable bay and its environment.
- A Port with a comprehensive vision for Port land and water uses integrated to regional plans.

DISCUSSION:

Chula Vista Marina is located at 550 Marina Parkway at the intersection of Marina Parkway and Sandpiper Way in the Harbor District of the Chula Vista Bayfront, as identified on the attached map (Attachment A) (Leased Premises). In 1981, the Tenant entered into a 40-year Ground Lease with the District for a 507-slip marina, restaurant and marina services buildings. Since the Ground Lease's commencement in 1981, the Tenant has operated Chula Vista Marina, the marina services buildings, a limited-service restaurant, and a full-service restaurant. Also since its commencement, the Ground Lease has been amended eighteen (18) times. Paragraph 44 of the Ground Lease, which was added pursuant to Amendment 18, contains a procedure setting forth an agreement between District and Tenant regarding a conditional lease extension to be documented in a new lease for the Leased Premises.

A disagreement has arisen between District and Tenant regarding each party's respective rights and obligations under Amendment 18 and Tenant's right to a new lease for the Leased Premises. The parties were unable to resolve the outstanding issues prior to the Ground Lease's expiration date of November 30, 2021, and Tenant has since been on a month-to-month holdover pursuant to the terms

of the Ground Lease. During the holdover period, staff and Tenant have come to terms on a new Amendment 19 in the form attached hereto as Attachment B that would extend the Ground Lease's term from November 30, 2021 through November 30, 2030 and resolve any and all claims related to Amendment 18 and Paragraph 44. Proposed Amendment 19 also: (i) deletes Paragraph 44 from the Ground Lease; (ii) contains a release and waiver whereby District and Tenant each release one another from any and all present and future claims, whether known or unknown, related to Amendment 18 and Paragraph 44; and (iii) includes a Tenant acknowledgement that any future decision to extend the term of the Ground Lease or enter into a new lease for the Leased Premises is within the sole and absolute discretion of the Board, and may be granted or denied for any or no reason.

As noted above, staff believes that Amendment 19 is in the District's best interests as it would allow for the continued operation of the Leased Premises and associated payment of rent as well resolve any and all outstanding claims related to Amendment 18 and Paragraph 44 of the Ground Lease.

General Counsel's Comments:

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

Environmental Review:

The proposed Board action, including without limitation, an ordinance granting a lease extension to Chula Vista Marina, is Categorically Exempt pursuant to California Environmental Quality Act (CEQA) Guidelines Sections 15301 Existing Facilities, and Section 3.a of the District's Guidelines for Compliance with CEQA because the project would consist of a lease extension to an existing tenant that would involve no expansion of use beyond that previously existing. The District has determined none of the six exceptions to the use of a categorical exemption apply to this project (CEQA Guidelines Section 15300.2). No further action under CEQA is required.

The proposed Board action complies with Sections 21, 35, and 87 of the Port Act, which allow the Board to pass resolutions and to do all acts necessary and convenient for the exercise of its powers, and which authorizes the use of tidelands for all commercial and industrial uses and purposes, and the construction, reconstruction, repair, and maintenance of commercial and industrial buildings, plants, and facilities. The Port Act was enacted by the California Legislature and is consistent with the Public Trust Doctrine. Consequently, the proposed Board action is consistent with the Public Trust Doctrine.

The proposed Board action does not allow for "development," as defined in Section 30106 of the California Coastal Act, or "new development," pursuant to Section 1.a. of the District's Coastal Development Permit (CDP) Regulations because it will not result in, without limitation, a physical change, change in use or increase the intensity of uses. Therefore, issuance of a Coastal Development Permit or exclusion is not required. However, development within the District requires processing under the District's CDP Regulations. Future development, as defined in Section 30106 of the Coastal Act, will remain subject to its own independent review pursuant to the District's certified CDP Regulations, Port Master Plan, and Chapters 3 and 8 of the Coastal Act. The proposed Board action in no way limits the exercise of the District's discretion under the District's CDP Regulations. Therefore, issuance of a CDP or exclusion is not required at this time.

Diversity, Equity, and Inclusion Program:

This agenda sheet has no direct DEI impact on District contracting or employment reporting at this time.

PREPARED BY:

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Attachment(s):

Attachment A: Location Map
Attachment B: Amendment 19