



## Legislation Details (With Text)

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**Title:** ORDINANCE GRANTING AMENDMENT NO. 1 TO LEASE WITH SOUTHWESTERN YACHT CLUB, LOCATED AT 2702 QUALTROUGH STREET, IN THE CITY OF SAN DIEGO TO SET FIXED SCHEDULED RENT INCREASES FOR THE REMAINDER OF THE TERM IN PLACE OF FUTURE RENT REVIEWS, AND UPDATE CERTAIN LEASE PROVISIONS

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**Attachments:** 1. 9. 2017-0371 Attachment A, 2. 9. 2017-0371 Attachment B, 3. 9. 2017-0371 Attachment C, 4. 9. 2017-0371 Draft Ordinance

Date	Ver.	Action By	Action	Result
8/8/2017	1	Board of Port Commissioners	adopted	

**DATE:** August 8, 2017

**SUBJECT:**

**ORDINANCE GRANTING AMENDMENT NO. 1 TO LEASE WITH SOUTHWESTERN YACHT CLUB, LOCATED AT 2702 QUALTROUGH STREET, IN THE CITY OF SAN DIEGO TO SET FIXED SCHEDULED RENT INCREASES FOR THE REMAINDER OF THE TERM IN PLACE OF FUTURE RENT REVIEWS, AND UPDATE CERTAIN LEASE PROVISIONS**

### EXECUTIVE SUMMARY:

Southwestern Yacht Club, a California non-profit mutual benefit corporation (SWYC), leases land and water from the District at 2702 Qualtrough Street in the City of San Diego pursuant to a Lease expiring December 31, 2048. SWYC consists of approximately 384 boat slips used for the promotion of San Diego harbor and navigation, and for State-wide public recreational activities.

Pursuant to the current lease, a rent adjustment is required for the ten-year period from January 1, 2017 through December 31, 2026 to be mutually agreed upon by Lessor and Lessee. Rather than only agree to a 10-year rent rate, District staff and SWYC have agreed to a proposed Lease Amendment No. 1 (Amendment) which sets the percentage rent rate by which gross income is multiplied for the remaining rental periods of the Lease in place of future rent reviews, states the calculation of Minimum Annual Rent (MAR), clarifies and limits certain deductions from gross income upon which percentage rent is based, and clarifies SWYC's responsibility for maintenance of the premises, including dredging.

### RECOMMENDATION:

Adopt an Ordinance Granting Lease Amendment No. 1 to Lease with Southwestern Yacht Club, Located at 2702 Qualtrough Street, in the City of San Diego to Set Fixed Scheduled Rent Increases for the Remainder of the Term in Place of Future Rent Reviews, and Update Certain Lease Provisions

### **FISCAL IMPACT:**

Under Lease Amendment No. 1, the percentage rent rate increases over the remainder of the Lease term from the current percentage. Certain allowable deductions from gross revenue are restricted, preventing unlimited reductions in overall rent paid by SWYC. Rent paid by SWYC will depend on SWYC gross revenue and capital spending.

This agenda item is not subject to Board Policy No. 106 - Cost Recovery User Fee Policy.

### **COMPASS STRATEGIC GOALS:**

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

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

### **DISCUSSION:**

SWYC leases certain land and water from the District at 2702 Qualtrough Street in the City of San Diego (Attachment A - Location Map). SWYC consists of approximately 384 boat slips, 45 dry storage spaces for boats, full service dining room, bar, and banquet area. The current lease commenced on January 1, 2009 with a 40-year term through December 31, 2048.

The Lease requires that rent for the 10-year period of January 1, 2017 through December 31, 2026 be established by mutual agreement. In place of future rent reviews, District staff and SWYC have agreed to set the percentage rent rate by which gross income is multiplied for the remaining rental periods of the Lease as follows:

- |   |        |
|---|--------|
| • January 1, 2017 through December 31, 2026 | 11.0%  |
| • January 1, 2027 through December 31, 2036 | 11.25% |
| • January 1, 2037 through December 31, 2046 | 11.35% |
| • January 1, 2047 through December 31, 2048 | 11.45% |

Setting the percentage rent rates and removing rent reviews through the full lease term provides certainty to both parties and reduces the administrative burden of the rent review process.

Pursuant to the Addendum to BPC Policy No. 355 - Administrative Practices Real Estate Leasing Report of Yacht Club Leasing Policy Ad Hoc Subcommittee, yacht club rents are set as a percentage of the total gross revenue with certain deductions allowed for capital investment and junior sailing programs. The language included in the SWYC lease regarding these deductions has been interpreted differently by the District and SWYC. The Amendment clarifies and limits certain deductions from gross income upon which the percentage rent rates are based and states the calculation of MAR. In addition, as part of the Amendment, SWYC's responsibility for maintenance of

the premises, including dredging, will be clarified.

As part of the rent review the District does not have the absolute authority to require new or revised lease provisions, although District staff did request certain new and revised lease provisions and SWYC declined to incorporate such provisions into the Amendment. The current lease and proposed Lease Amendment No. 1 are summarized in the attached Existing and Proposed Lease Information Summary (Attachment B).

### **General Counsel's Comments:**

Office of the General Counsel has reviewed and approved this agenda and the proposed Lease Amendment No. 1 (Attachment C) to the Lease of Southwestern Yacht Club as to form and legality.

### **Environmental Review:**

The proposed Board action does not constitute a "project" under the definition set forth in California Environmental Quality Act (CEQA) Guidelines Section 15378 because it will not have a potential to result in a direct or indirect physical change in the environment and is, therefore, not subject to CEQA. No further action under CEQA is required.

In addition, the proposed Board action allows for the District to implement its obligations under the Port Act and/or other laws. 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.

Finally, 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 Regulations. Therefore, issuance of a Coastal Development Permit or exclusion is not required.

### **Equal Opportunity Program:**

Not applicable.

### **PREPARED BY:**

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### **Attachment(s):**

Attachment A:	Location Map
Attachment B:	Existing and Proposed Lease Information Sheet
Attachment C:	Lease Amendment No. 1