



## Legislation Details (With Text)

**File #:** 2021-0377    **Version:** 1    **Name:**  
**Type:** Action Item    **Status:** Passed  
**File created:** 10/20/2021    **In control:** Board of Port Commissioners  
**On agenda:** 11/9/2021    **Final action:** 11/9/2021  
**Title:** CALIFORNIA YACHT MARINA - CHULA VISTA, LLC LOCATED AT 640 MARINA PARKWAY, CHULA VISTA:

A. RESOLUTION CONSENTING TO THE ASSIGNMENT AND ASSUMPTION OF THE LEASEHOLD INTEREST FROM CALIFORNIA YACHT MARINA - CHULA VISTA, LLC TO SHM SOUTH BAY, LLC DBA SAFE HARBOR SOUTH BAY; AND,

B. ORDINANCE GRANTING AN AMENDED AND RESTATED LEASE TO SHM SOUTH BAY, LLC DBA SAFE HARBOR SOUTH BAY TO UPDATE LEASE TO CURRENT TERMS.

**Sponsors:**

**Indexes:**

**Code sections:**

**Attachments:** 1. 9. 2021-0377 Attachment A, 2. 9. 2021-0377 Attachment B, 3. 9. 2021-0377 Attachment C, 4. 9. 2021-0377 Attachment D, 5. 9. 2021-0377A Draft Resolution, 6. 9. 2021-0377B Draft Ordinance

Date	Ver.	Action By	Action	Result
11/9/2021	1	Board of Port Commissioners	adopted	

**DATE:** November 9, 2021

**SUBJECT:**

**CALIFORNIA YACHT MARINA - CHULA VISTA, LLC LOCATED AT 640 MARINA PARKWAY, CHULA VISTA:**

**A. RESOLUTION CONSENTING TO THE ASSIGNMENT AND ASSUMPTION OF THE LEASEHOLD INTEREST FROM CALIFORNIA YACHT MARINA - CHULA VISTA, LLC TO SHM SOUTH BAY, LLC DBA SAFE HARBOR SOUTH BAY; AND,**

**B. ORDINANCE GRANTING AN AMENDED AND RESTATED LEASE TO SHM SOUTH BAY, LLC DBA SAFE HARBOR SOUTH BAY TO UPDATE LEASE TO CURRENT TERMS.**

**EXECUTIVE SUMMARY:**

California Yacht Marina - Chula Vista, LLC, a California limited liability company ("California Yacht Marina") operates a marina at 640 Marina Parkway, Chula Vista and is a tenant in good standing. California Yacht Marina's lease with the District expires June 30, 2032 (the "Existing Lease"). California Yacht Marina is proposing to assign its rights and obligations under the Existing Lease to SHM South Bay, LLC dba Safe Harbor South Bay, a Delaware limited liability company ("SHM South Bay").

SHM South Bay is a subsidiary of Safe Harbor Marinas, LLC (“Safe Harbor”), which is well known within the recreational boating industry for its successful portfolio of both marinas and boatyards.

The Existing Lease requires the Board of Port Commissioners’ (“Board”) to consent to the Assignment and Assumption of Lease (“Assignment”), attached hereto as Attachment A. As a condition of granting consent to the Assignment, the District may adjust rent to market and update the terms and provisions of the Existing Lease. SHM South Bay has agreed to an Amended and Restated Lease in the form attached hereto as Attachment B (the “Restated Lease”) with the District’s current standard lease terms, which includes, among other provisions, the following items not present in the existing Lease: updated rent; District participation in refinance proceeds not reinvested in District tidelands; participation in proceeds resulting from a future assignment or sale of the leasehold interest; and a demolition and remediation fund to pay for any improvements the District elects to have SHM South Bay remove at the end of the lease term as well as to fund any required environmental remediation. Safe Harbor will execute a Continuing Guaranty to guaranty all of SHM South Bay’s obligations under the Restated Lease and will be required to maintain a net worth of no less than \$250,000,000 throughout the term of the Restated Lease.

In light of the foregoing benefits, staff recommends the Board consent to the Assignment of the Existing Lease from California Yacht Marina to SHM South Bay and grant the Restated Lease in order to update the terms as noted above.

#### **RECOMMENDATION:**

- A. Adopt a Resolution Consenting to the Assignment and Assumption of the leasehold interest from California Yacht Marina - Chula Vista, LLC to SHM South Bay, LLC dba Safe Harbor South Bay.
- B. Adopt an Ordinance Granting an Amended and Restated Lease to SHM South Bay, LLC dba Safe Harbor South Bay.

#### **FISCAL IMPACT:**

The proposed Board action would grant a new Restated Lease that includes set percentage rental rate increases in the boat slip category as detailed below:

Rental Period 2021-2026	15% (Existing Rate)
Rental Period 2026-2031	16%
Rental Period 2031-2032	17%

#### **COMPASS STRATEGIC GOALS:**

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

- A vibrant waterfront destination where residents and visitors converge.
- A financially sustainable Port that drives job creation and regional economic vitality.

#### **DISCUSSION:**

## Background

The California Yacht Marina leasehold is comprised of 162,741 square feet of land and 625,594 square feet of water area located at 640 Marina Parkway, in the City of Chula Vista (as shown on Attachment C: Location Map). The marina includes 353 boat slips, an excursion boat facility, office space, a parking lot, a two-story pavilion building which serves as an event center available for rent to the public, and other marina amenities. The Existing Lease commenced July 1, 1989 and has a term of 43 years, which expires on June 30, 2032.

California Yacht Marina entered into an Agreement of Purchase and Sale with SHM South Bay on July 19, 2021 and has requested District consent to the Assignment. Pursuant to Article 9 of the Existing Lease, upon a consented-to assignment, the District has the right to update the lease to include current standard language and to adjust rental rates to market. Staff's proposed action includes the execution of a Restated Lease pursuant to the terms detailed below.

## Safe Harbor

SHM South Bay's parent company, Safe Harbor, is well known within the recreational boating industry for its successful portfolio of marinas and boatyards. Safe Harbor was recently acquired by Sun Communities Operating Limited Partnership ("SCOLP"); SCOLP, in turn, is controlled by Sun Communities, Inc. ("Sun"), a Maryland real estate investment trust which owns and operates RV parks (including the RV park on the Chula Vista Bayfront dba Sun Outdoors San Diego Bay). In addition to the RV park on the Chula Vista Bayfront, Safe Harbor owns three other entities that currently have leases on District tidelands. Such entities include SHM Sunroad, LLC dba Safe Harbor Sunroad, SHM Cabrillo Isle, LLC dba Cabrillo Isle Marina, and SHM Shelter Island, LLC dba SHM Shelter Island. Attachment D details the ownership structure of SHM South Bay and its parent companies as it would exist following the Assignment (see Attachment D: Proposed Ownership Structure). If the Board consents to the Assignment, staff anticipates that Safe Harbor's management team, together with SCOLP and Sun's well-capitalized structure, will allow for investment into the leasehold.

## Amended and Restated Lease

District staff has negotiated the Restated Lease to include updated lease language which reflects the District's current standard lease provisions and a market rent adjustment. The Existing Lease provides that as a condition of consent to an assignment, rent shall be set at the current market rate and the lease provisions may be updated to current District standard.

The following table outlines a few of the important terms that have been negotiated and agreed upon between the District and SHM South Bay.

	Existing Lease	Restated Lease
Boat Slip Percentage Rental Rate	15%	2021-2026: 15% 2026-2031: 16% 2031-2032: 17%
Assignment Participation Fee	N/A	2.5%
Encumbrance Participation Fee	N/A	2.5%

Continuing Guaranty and Net Worth Requirement	N/A	Includes Continuing Guaranty from Safe Harbor and obligation to maintain a net worth of no less than \$250,000,000 throughout the lease term
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It is the District's standard practice, as provided in the Existing Lease, that Minimum Annual Rent (MAR) be set at not less than 75% of the average rent paid by the tenant in the prior three accounting years. During the three-year period from July 1, 2018 through June 30, 2021, California Yacht Marina paid an average of \$299,795 per year in percentage rent. The current MAR of \$228,727 exceeds 75% of the average rent paid, and therefore, staff recommends no change to MAR.

The District's primary revenue stream from marinas is generated by percentage rent on the gross income from the rental of boat slips. Historically, boat slip rates in the South Bay have been significantly lower than those in the North Bay. The disparity in boat slip rates is due to South Bay marinas consistently having lower occupancy rates than North Bay marinas. South Bay marinas have more difficulty attracting boaters due to their greater distance from the mouth of the Bay and from boat fueling stations, none of which are located south of Harbor Island. Currently, marinas in the North Bay pay a boat slip percentage rent rate of 22%, while California Yacht Marina and Chula Vista Marina pay 15%, and Pier 32 Marina in National City pays 14%. With future redevelopment projects anticipated to bring more visitors to the South Bay, District staff have negotiated a step increase for boat slip percentage rent rates with SHM South Bay, as shown in the table above.

The Existing Lease does not contain the District's most updated lease provisions, and, staff has negotiated the Restated Lease to update the language to include terms such as District's participation in refinance proceeds at 2.5%, assignment participation fee at 2.5%, a demolition and remediation reserve fund, as well as updated indemnity and prevailing wage language.

In addition, Safe Harbor, as parent company of SHM South Bay, will execute a new Continuing Guaranty as part of the Restated Lease (see Exhibit F to the Restated Lease included on Attachment B: Form Amended and Restated Lease), pursuant to which Safe Harbor will guaranty all of SHM South Bay's lease obligations. Further, the Restated Lease contains a covenant requiring Safe Harbor to maintain a net worth of at least \$250,000,000 throughout the term of the Restated Lease.

### ***Conclusion and Recommendation***

The proposed assignment from California Yacht Marina to SHM South Bay will provide for the renewed success and performance of the marina operation and has the ability to increase the marina's revenue over time. Additionally, staff anticipates Safe Harbor's management team, together with SCOLP and Sun's well-capitalized structure, will allow for continuing strong performance and potential future improvements. Further, Safe Harbor has an excellent reputation in the marine recreation industry, with a proven track record of quality services and experiences for its guests, and the District expects this to continue following the transfer. The proposed transfer is consistent with BPC Policy No. 355 and will enable the District to enter into the District's most current lease form in the Restated Lease, which includes more District-protective provisions. Therefore, staff recommends the Board consent to the assignment from California Yacht Marina to SHM South Bay and authorize the Restated Lease with SHM South Bay in the form of Attachment B to this Agenda Sheet.

### **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, a resolution consenting to the assignment and assumption of an existing lease and an ordinance granting an amended and restated lease, does not constitute a “project” under the definition set forth in California Environmental Quality Act (CEQA) Guidelines Sections 15352 and 15378 because no direct or indirect changes to the physical environment would occur. CEQA requires that the District adequately assess the environmental impacts of projects and reasonably foreseeable activities that may result from projects prior to the approval of the same. Any project developed as a result of the proposed Board action that requires the District or the Board’s discretionary approval resulting in a physical change to the environment will be analyzed in accordance with CEQA prior to such approval. CEQA review may result in the District, in its sole and absolute discretion, requiring implementation of mitigation measures, adopting an alternative, including without limitation, a “no project alternative” or adopting a Statement of Overriding Consideration, if required. The proposed Board action in no way limits the exercise of this discretion. Therefore, no further CEQA review is required.

The proposed Board action allows for the District to implement its obligations under Section 35 of the Port Act, which authorizes the Board to do acts necessary and convenient for the exercise of its power. 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, PMP, 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.

### **PREPARED BY:**

Amy Tigri  
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### **Attachment(s):**

Attachment A: Assignment and Assumption of Lease  
Attachment B: Form Amended and Restated Lease

Attachment C:      Location Map  
Attachment D:      Proposed Ownership Structure