



## Legislation Text

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**File #:** 2019-0342, **Version:** 1

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**DATE:** October 8, 2019

**SUBJECT:**

**ORDINANCE AUTHORIZING THE DISTRICT'S EXECUTIVE DIRECTOR AND AUTHORIZED DESIGNEE TO GRANT FIVE (5) YEAR WAIVERS ON TENANT RENT PAYMENTS FOR ELECTRICITY CHARGES PASSED THROUGH TO SLIP RENTERS AT MARINAS AND YACHT CLUBS THAT ARE FULLY SUB-METERED**

**EXECUTIVE SUMMARY:**

The District's real estate portfolio includes 40 marinas and 6 yacht clubs. These leases are predominantly percentage rent leases through which the District receives certain percentages of the gross income generated by the master tenant from a variety of activities conducted on the leased premises. Currently, the gross income from marina and yacht club leases include payments made by boat slips renters for their use of electricity. At the May 8, 2018 Board meeting, concerns were raised by members of the Port Tenant's Association ("PTA") regarding the District's practice of including electricity payments in the calculation of gross income and subjecting the income to percentage rent.

Although the District's current practice is lawful, staff believes other important Board policy goals may be advanced by finding an equitable solution that encourages the installation and continued preservation of sub-metered slips. There is evidence, supported by State-sponsored studies, suggesting that sub-metered marinas use significantly less energy than marinas without sub-metered slips. Sub-metering slips allows a marina to pass on the full charge for each individual boater's energy use, as opposed to one charge for the entire marina, eventually being divided among the slips. By incentivizing marinas and yacht clubs to become fully sub-metered, the District will potentially reduce the overall amount of energy consumed by marinas and yacht clubs. If approved, this action would authorize the District's Executive Director and authorized designee to temporarily waive the District's right to collect rent on gross income from electricity pass-throughs for all marinas and yacht clubs that have fully sub-metered slips. The temporary waiver will result in a reduction in revenue to the District, which is estimated to be between \$155,000 and \$220,000 annually. However, staff believes the benefits gained from the waiver mitigate the estimated reduction in revenue.

**RECOMMENDATION:**

Adopt an Ordinance authorizing the District's Executive Director and authorized Designee to grant five (5) year waivers on tenant rent payments for electricity charges passed through to slip renters at marinas and yacht clubs that are fully sub-metered.

**FISCAL IMPACT:**

If the Ordinance is approved, the waiver will potentially reduce the District's revenue by approximately \$155,000 to \$220,000 annually from the collection of electricity use revenue received from District marinas and yacht clubs.

### **COMPASS STRATEGIC GOALS:**

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

- A Port with a healthy and sustainable bay and its environment.
- A Port that is a safe place to visit, work and play.
- A Port with an innovative and motivated workforce.

### **DISCUSSION:**

The District's marina and yacht club leases are percentage rent leases through which the District receives certain percentages of the gross income generated by a master tenant from a variety of activities conducted on the leased premises. The percentage rent payments are calculated by applying the percentage rent categories, as defined in the lease, to the gross income generated by the activity. Currently, most marinas are required to pay 10% of the gross revenue generated from the resale of electricity to the slip renters. The rate owed by yacht club leases varies between 11% and 12%.

#### May 8, 2018 Board Meeting

At the May 8, 2018 Board meeting, concerns were raised by members of the PTA regarding the District's practice of including shore power electricity charges in the calculation of percentage rent. PTA members expressed their objection to the District collecting rent on an income category that they claim tenants cannot fully recover from their subtenants due to their understanding of CPUC and SDG&E rules.

#### CPUC and SDG&E Charge

In accordance with the CPUC, as included in the SDG&E rules, electricity rates charged by marinas to a sub-metered slip renter cannot exceed the rates that would otherwise apply to those slip renters if they were a direct customer of the utility. Therefore, tenants are limited in the extent to which they can fold the cost of the rent to the District into the electricity charges, resulting in the tenant potentially taking a loss on that rent category.

#### Environmental Benefits of Sub-Metering

The CA State Division of Boating and Waterways ("DBW") conducted a study, dated May 1995, which tracked the electrical power consumption of both sub-metered and non-sub-metered marina facilities. Please see Attachment A - 1995 DBW Study Excerpt. The study determined that a sub-metered marina owner can expect to see an immediate reduction of 30-50% in the marina's total electricity bill. Additionally, a second study conducted by the DBW, dated 2005, found it is typical for a non-sub-metered marina to realize a 60-70% reduction in annual electricity usage after sub-meters were installed. Please see Attachment B - 2005 DBW Study Excerpt. It is assumed that individual slip renters become more conscious of their electricity usage when they are personally responsible for their electricity consumption and associated charges. Common practice for non-sub-metered marinas

is to divide the total utility bill by the number of slips in the marina, with some concessions being made for smaller boat sizes that use less electricity.

#### Environmental Incentive

It is estimated that over 25% of Tideland marinas and yacht clubs are not fully sub-metered. As presented in the DBW studies, staff believes that incentivizing marinas to sub-meter their slips would lead to a reduction of electricity usage if boaters become directly accountable for their electricity consumption.

#### Implementation

This action, if approved, would grant the District's Executive Director, or authorized Designee, the authority to temporarily waive electricity revenue received from slip renters from the accounting of marina and yacht club gross revenue, only if the tenant has fully sub-metered slips. "Fully sub-metered slips" shall be defined as 100% of outlets being sub-metered. There will be no lookback or refunds of rent paid to the District for marinas or yacht clubs that are already sub-metered.

It will be the responsibility of the tenant to provide proof that the facility complies with the definition of "fully sub-metered slips". Acceptable forms of proof will include and be limited to: (i) a utility bill, provided by the utility, showing individual meter readings for all power outlets, and/or; (ii) confirmation provided by a licensed professional qualified to verify the premises complying with the definition of "fully sub-metered slips". The licensed professional shall be hired at the tenant's sole expense, and/or; (iii) other means of proof approved in advance by the District's Executive Director or authorized designee. The District shall reserve the right to accept or reject the tenant's forms of proof in its sole discretion.

Contingent on the District receiving acceptable forms of proof that the premises has "fully sub-metered slips", a letter, signed by the District's Executive Director or authorized designee, may be provided to the tenant in the Executive Director or her authorized designee's sole discretion, confirming that electricity income will be waived from the tenant's gross income for a five (5) year period. A copy of the letter will be forwarded to the Office of the Port Auditor ("OPA"), allowing the waiver to be incorporated in the District's auditing practices. No lease amendments will be required to document the waiver.

Nearing the expiration of the waiver, each marina and yacht club may be re-evaluated to determine whether to grant additional waivers. Factors that may be considered in this process might include: (1) if sub-metering has demonstrated environmental benefits and appears to be worth continuing to incentivize; (2) if the waiver still applies to District marinas and/or yacht clubs, and; (3) if the tenant otherwise still qualifies for the waiver.

#### Stakeholder Outreach

On July 31, 2019, District staff held a stakeholder outreach meeting with key members of the PTA and several District marina tenant representatives. The objective of the meeting was to present staff's proposal and gather feedback. The proposal was well received by the stakeholders, with valuable insight and support being provided.

#### Financial Impact of the Incentive

The District currently collects approximately \$155,000 to \$220,000 a year as utility pass-through rent from all marina and yacht club leases. Though the temporary waiver would result in an incremental

reduction in revenue to the District, staff believes the benefits help mitigate reduction in revenue over a five-year period.

### Conclusion

District staff believes the temporary waiver will be an innovative advancement of important Board policy goals, including the progression of the District's goal of environmental stewardship. Additionally, the temporary waiver will be well received by District tenants and members of the public, solidifying the public's trust and support of the District and its practices.

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

The Office of the General Counsel reviewed this agenda and approved the proposed ordinance as presented to it as to form and legality.

### **Environmental Review:**

The proposed Board action, including without limitation, an ordinance granting five year waivers on tenant rent payments for shore power electricity charges passed through to slip renters at marinas and yacht clubs that are fully sub-metered does not constitute an "approval" or a "project" under the definitions 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 Board's action that requires the District or the Board's approval, including without limitation District proposed legislation or a request for funding 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.

In addition, this Board item complies with Section 87 of the Port Act, which allows for the establishment, improvement, and conduct of a harbor, and for the construction, reconstruction, repair, maintenance, and operation of wharves, docks, piers, slips, quays, and all other works, buildings, facilities, utilities, structures, and appliances incidental, necessary, or convenient, for the promotion and accommodation of commerce and navigation. 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, this Board item 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, the District's projects require processing under the District's CDP Regulations. If a project is formulated as a result of Board's direction, the Board will consider approval of the project and any improvements associated after the appropriate documentation under District's CDP Regulations has been completed and authorized by the Board, if necessary. The Board's direction in no way limits the exercise of the District's discretion under the

District's CDP Regulations.

**Equal Opportunity Program:**

Not applicable.

**PREPARED BY:**

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Attachment(s):

Attachment A: 1995 DBW Study Excerpt

Attachment B: 2005 DBW Study Excerpt