



R-18

Date: April 6, 2021

To: Honorable Mayor and Council

From: Councilwoman Cindy Allen, Second District
Councilwoman Suzie Price, Third District
Councilwoman Mary Zendejas, First District

Subject: Report Back on Possible Transfer of Operation and Control of Pier H from the City Council to the Harbor Commission

RECOMMENDED ACTION:

Discuss the possible transfer of the operation and control of "Pier H" (including the Queen Mary) from the City Council to the Harbor Commission. Request the Harbor Commission to review and consider acceptance of the transfer of Pier H as outlined in the memo from the City Attorney, dated March 10, 2021 and request the City Manager to work with Harbor Department staff on providing necessary information and documentation for review and to report back to the City Council in 60 days.

DISCUSSION:

The Mayor and City Council recently requested the City Attorney to prepare a memo which addressed whether there would be any legal impediments or restrictions that would prohibit the transfer of control over an area known as Pier H in the Long Beach Harbor District from the City of Long Beach to the Harbor Department of the City of Long Beach ("Harbor Department"). On March 10, 2021 the City Attorney submitted the requested memo to the Mayor and Council (Copy is attached).

As discussed in the memo, in 1992, the Harbor Department transferred control of approximately 230.9 acres of tide, reclaimed and submerged lands, commonly referred to as Pier H, to the City of Long Beach. The area had primarily been developed for hotel, restaurant, retail commercial, and recreational purposes. This transfer of control was subject to certain restrictions and limitations as set forth in the legislative grants of tide and submerged lands from the State to the City and certain provisions of the City Charter. The City had sought control over this area in order to develop a multi-faceted visitor serving destination centered around the Queen Mary which has been docked at Pier H since 1967.

Since the determination in 1992, two things have changed that support the transfer of Pier H back to the Harbor Department. First, a primary port use has been developed at



Pier H with the Carnival Cruise Ship facilities. Second, the Port Master Plan Update 2020 has increased the focus on visitor-serving and recreational uses provided within the Harbor District at the direction of the California Coastal Commission, and these are generally located in Pier H. In addition, basic efficiency in operations would support the transfer from the City back to the Port because currently the City and Port both exercise control over certain aspects of actions and activities at Pier H. For this and other reasons, it would be more efficient for one department to manage this property. Since the property is within the Harbor District and the Harbor Commission has jurisdiction over certain aspects of the maintenance and use of the property that cannot be delegated pursuant to the City Charter and applicable state laws, it would be more efficient if the Harbor Department was the sole department managing and controlling Pier H.

This matter was reviewed by Budget Manager Grace H. Yoon on March 29, 2021.

FISCAL IMPACT:

This recommendation requests the Harbor Commission to consider the acceptance of Pier H and also requests the City Manager to provide the necessary information and documentations to the Harbor Department and for the Harbor Commission to provide a report back on this subject to the City Council in 60 days. The requested action is anticipated to require significant level of staff hours on Harbor staff beyond the budgeted scope of duties and a significant impact on meeting other Harbor Commission priorities in order to meet the requested time frame. The requested action is also anticipated to require no more than a moderate level of staff hours for other impacted City departments, including the City Attorney's Office, beyond the budgeted scope of duties and is expected to have a moderate impact on existing City Council priorities. There is no local job impact associated with the recommendation.



City of Long Beach


Working Together to Serve

Office of the City Attorney

Memorandum

DATE: March 10, 2021

TO: Charles Parkin, City Attorney
Charles M. Gale, Supervising Deputy City Attorney

FROM: Dawn A. McIntosh, Deputy City Attorney 

SUBJECT: Potential Transfer of the Queen Mary/Pier H from the City of Long Beach to the Long Beach Harbor Department

Question Presented: A question has been raised as to whether there would be any legal impediments that would prohibit the transfer of control over an area known as Pier H in the Long Beach Harbor District from the City of Long Beach to the Harbor Department of the City of Long Beach ("Harbor Department"). I have examined this question based on controlling laws and regulations such as the tidelands trust and the California Coastal Act, but this analysis does not address any obligations, duties or restrictions that may be set forth in any leases, licenses, contracts, subcontracts or other legal instruments that govern operations, improvements or activities that are currently or may in the future be located on Pier H. Based solely on my preliminary and cursory review of controlling laws, the answer appears to be no.

Background: In 1911, the State legislature granted to the City in trust all right, title and interest of the State of California of tidelands within the City for the establishment, improvement and conduct of a harbor to use for the accommodation of commerce and navigation.¹ (See Ch 767 Statutes of 1911, attached hereto as Exhibit A.) The harbor authorized by this grant became the Port of Long Beach, the second largest port in North America. Until 1992, all land and submerged areas within the Port were managed and overseen by the Harbor Department and the Board of Harbor Commissioners pursuant to the provisions of Article XII of the City Charter and subject to the restrictions and limitations of the tidelands trust.

In 1992, the Harbor Department transferred control of approximately 230.9 acres of tide, reclaimed submerged and submerged lands, commonly referred to and hereinafter referred to as Pier H, to the City of Long Beach after making a determination that said lands within the Harbor District (also referred to herein as the Port of Long Beach), that

¹ Subsequent grants from the State legislature provided for other allowable uses of tidelands within the City in addition to the harbor and expanded the uses to also encompass fisheries. (See Ch 102 Statutes 1925 and Ch 158 Statutes 1935, attached hereto as Exhibit A.)

had primarily been developed for hotel, restaurant, retail commercial, and recreational purposes, were no longer necessary for port purposes or port development. (See Ordinance No. HD-1605, as amended by Ordinance Nos. HD-1619 and HD-1670, attached hereto as Exhibit B.) This transfer of control was subject to certain restrictions and limitations set forth in the legislative grants of tide and submerged lands from the State to the City and certain provisions of the City Charter. (See Ordinance No. HD-1605, Exhibit B.) The City had sought control over this area in order to develop a multi-faceted visitor serving destination centered around the Queen Mary which had been docked at Pier H since 1967.

Since this transfer, in the early 2000's, a cruise ship terminal and associated facilities were developed at Pier H. Cruise ship facilities are identified in both the current Port Master Plan Update and the proposed 2019 Draft Port Master Plan Update as a primary port purpose. (See 1990 Port Master Plan update, p. IV-1, and Draft Port Master Plan Update dated July 2019 (entitled and referenced herein as "Port Master Plan Update 2020"), pp. ES 8-9, attached hereto as Exhibit C.) The cruise ship facilities are located adjacent to the Queen Mary.

Tidelands Trust Obligations and Limitations: Pursuant to the granting statutes referenced above, all of the land within the Harbor District is subject to the tidelands trust, including Pier H. Tidelands trust limitations on use of trust lands that were identified specifically in the granting statutes were limited to commerce, navigation and fisheries; however, case law has interpreted the Public Trust Doctrine more broadly to also include recreation and public access as additional valid trust purposes. (See *Martin v. Smith* (1960) 184 Cal.App.2d 571.) Further, the municipality acting as trustee must manage the tidelands as a fiduciary on behalf of the State for the benefit of all the people of California and cannot use the trust's land, assets or revenues for its own local or municipal purposes. (See *Mallon v. City of Long Beach* (1955) 44 Cal.2d 199, 209.) Public Resources Code section 6009(d) requires trustees to manage the public trust lands "without subjugation of statewide interests, concerns, or benefits to the inclination of local or municipal affairs, initiatives or exercises." Section 6009.1(c)(6) and (7) further imposes on trustees the duty "to act impartially in managing the trust property," and "to not use or deal with trust property for the trustee's own profit or for any other purpose unconnected with the trust . . ." Municipalities who serve as trustees are not entitled to be treated as favored beneficiaries of the tidelands trust revenues.

Under the City Charter, the Board of Harbor Commissioners acts as the trustee for lands and submerged areas within the Harbor District and their derived revenue, all of which are subject to the tidelands trust. (*City of Long Beach v. Morse* (1947) 31 Cal.2d 254, 257.) In 1992, when control over Pier H was transferred from the Port to the City, the City was still obligated to manage the lands subject to tidelands trust limitations because the tidelands designation and accompanying restrictions do not change if a different municipal department is managing or controlling the property, they run with the land. The City's control of this property was further limited by the fact that the Board of Harbor

Commissioners has sole and exclusive authority over certain actions within the Harbor District pursuant to the City Charter, so the Board retained residual jurisdiction over certain actions at Pier H even after control of that area was ceded to the City.

If control over Pier H is subsequently transferred back to the Harbor Department, the Harbor Department would once again bear the full responsibility for managing the property in compliance with tidelands trust limitations and restrictions, just as it manages the rest of the lands and submerged areas within the Harbor District.² It will now be the Board of Harbor Commissioners rather than the City Council who is exercising its fiduciary responsibilities in overseeing the trust lands and submerged areas in Pier H and who will be held accountable to the state for any violations of that trust.

California Coastal Act Requirements: The California Coastal Act (Public Resources Code Section 30000 et seq.) controls and manages development within the coastal zone stretching the length of California to preserve the state's natural beauty for current and future generations and to ensure access to this precious resource for all Californians. Chapter 8 of the Coastal Act provides special provisions that control development at four seaports in California – the Port of Long Beach, the Port of Los Angeles, Port Hueneme and the San Diego Unified Port District. Chapter 8 recognizes the importance of these ports as essential elements in the national maritime industry and encourages these ports to modernize and construct additional facilities as needed to avoid the need to establish additional seaports in California. (See Public Resources Code Section 30701, attached hereto as Exhibit D.)

In furtherance of these goals, Chapter 8 requires all port-related developments to give first priority to use of land within the Port's boundaries for port purposes, including navigational facilities, shipping industries, and necessary support and access facilities. However, Chapter 8 also requires the Port to provide for other beneficial uses within the Port boundaries that are consistent with the Public Trust Doctrine, including but not limited to recreation and wildlife habitat uses where feasible. (See Public Resources Code Section 30708 (c) and (d), attached hereto as Exhibit D.) Finally, Chapter 8 requires the Port to develop and update as needed a port master plan that governs development in the port consistent with the requirements set forth in Chapter 8. (See Public Resources Code Section 30711, attached hereto as Exhibit D.)

Over the last few years, the Port of Long Beach has been developing an update to its Port Master Plan ("PMPU") as required by the California Coastal Act. The last Port Master Plan Update was adopted in 1990. The draft PMPU released for public review and comment in July of 2019 identifies as one of its four overarching goals to be "protecting and enhancing the coastal environment for the enjoyment of visitors to the waterfront" and one of the PMPU's Plan Elements is Public Access and Recreation, with most

² This memorandum does not address any responsibilities the City may retain under contractual agreements or leases for operations and activities at Pier H.

opportunities located in Pier H. (See Port Master Plan Update 2020, p. ES 3, Exhibit C.) The Port Master Plan Update 2020 also discusses the specific visitor-serving uses currently at Pier H as well as anticipated future plans for additional visitor-serving uses there. (*Id.* at pp. 5-1 to 5-2 and 6-40 to 6-43, Exhibit C.) Concentrating these uses at Pier H satisfies obligations under the Coastal Act to provide recreation and visitor-serving opportunities consistent with the Public Trust Doctrine within the Harbor District while separating them from heavy duty industrial primary port operations that dominate the remainder of the Harbor District. Therefore, if Pier H is transferred back to the control of the Harbor Department, there would be no legal constraints under the California Coastal Act, and no change in Port operations and no major revisions³ to the Port Master Plan Update 2020 would be necessary.

City Charter: Section 1203 of the City Charter sets forth the powers and duties of the Harbor Commission. One such power/duty is “to acquire in the name of the City by purchase, condemnation, gift, lease or otherwise take over and hold all lands, property, property rights, leases, or easements and personal property of every kind, necessary or convenient for the development and operation of the Harbor District, or for the carrying out of the powers herein granted to the Commission.” (Section 1203, subsection n.) Technically, Pier H is already property held in trust by the City and the land is within the boundaries of the Harbor District. However, control over that property is not currently held or exercised by the Harbor Commission and Harbor Department. In order for the Harbor Department to reassume control of Pier H, it will need to make a determination that taking over control of Pier H is necessary and convenient for the development and operation of the Harbor District.

One issue that will need to be addressed is the fact that when Pier H was transferred to the City’s control in 1992, the Harbor Department determined that the lands were no longer necessary for port purposes or port development. (See Ordinance No. HD-1605, Exhibit B.) In order for the Harbor Department to make the findings necessary to take control of those lands back from the City, it will need to explain what has changed since 1992 that would allow the Harbor Department to now make the finding that taking over control of Pier H is now necessary and convenient for the development and operation of the Harbor District. Since the determination in 1992, two things have changed that would support the transfer. First, a primary port use has been developed at Pier H with the Carnival Cruise Ship facilities. Second, the Port Master Plan Update 2020 has increased the focus on visitor-serving and recreational uses provided within the Harbor District at the direction of the California Coastal Commission and these are generally located in Pier H. In addition, basic efficiency in operations would support the transfer because right now the City and Port both exercise control over aspects of actions and activities at Pier H. It would be more efficient for one department to manage this property. Since the property is within the Harbor District and the Harbor Commission has jurisdiction over

³ Minor revisions that describe who has permitting authority and control over development in Pier H would need to be updated in the 2019 Draft Port Master Plan.

certain aspects of the use of the property pursuant to the City Charter and other state laws that cannot be transferred or delegated, it would more efficient if the Harbor Department was the sole department managing and controlling Pier H.

Procedure for Transfer: The City Charter sets forth the provisions that govern a transfer of control of City property to the Harbor Department. Section 1204 provides that “[t]he City Council may, subject to approval by the [Harbor] Commission, by ordinance confer upon and delegate to the Commission . . . any powers and duties which may be vested in it, and which it may deem necessary or convenient to carry out the general purposes of the Commission.” As set forth above, Section 1203 n. allows the Harbor Department to take over and hold land within the Harbor District if it is necessary or convenient for the development and operation of the Harbor District or for the carrying out of the powers granted to the Harbor Commission. Therefore, the City Council must prepare an ordinance delegating and conferring upon the Harbor Commission all authority it possesses over Pier H pursuant to the transfers effectuated in 1992, and the Harbor Commission must accept such delegation and control over Pier H via resolution, making all necessary findings set forth in Section 1203 n.

Conclusion: From a review of the granting statutes transferring the lands and submerged areas that govern Pier H and the legal constraints and requirements of the Coastal Act that are applicable to Pier H, it does not appear that there are any legal impediments at a state level that would prohibit the City from transferring control of Pier H back to the Harbor Department. Such a transfer would not implicate tidelands trust issues or violate the California Coastal Act.

When the property was originally transferred to the City, the Harbor Department made the determination that the land and submerged areas were not available or needed for port purposes or harbor development. However, since that time, a cruise ship facility was developed at Pier H which is a primary port purpose, and the Coastal Commission began requiring more opportunities, when possible, for visitor-serving recreational uses to be incorporated into Port design and operations. Therefore, the provisions of the City Charter that govern the acquisition and disposition of property by the Harbor Department would not preclude the Harbor Department from taking back control over that same property in this instance.

In order to effectuate this transfer, the City Council would delegate and confer all authorities it obtained in the 1992 transfers for Pier H back to the Harbor Commission and the Harbor Commission would accept the delegation and transfer of control and make the necessary findings required under the City Charter.

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