

## **R-26**

September 14, 2021

HONORABLE MAYOR AND CITY COUNCIL  
City of Long Beach  
California

### RECOMMENDATION:

Authorize the City Manager, or designee, to engage in negotiations with the Harbor Department for the transfer of the operation and control of "Pier H" from the City Council to the Harbor Department. (District 2)

### DISCUSSION

On April 6, 2021, the City Council approved a recommendation to discuss the possible transfer of the operation and control of "Pier H" from the City Council to the Harbor Department. The recommendation included a request to the Harbor Department to review and consider acceptance of the transfer of Pier H as outlined in the memorandum from the City Attorney, dated March 10, 2021, and requested 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. In response to City Council direction, staff from the City Manager and Harbor Departments worked closely to review historical financial, operational, and engineering reports associated with Pier H, and surrounding properties and returned to the City Council with an initial report on July 20, 2021. Since that time, additional review requested by the City Council has been initiated or completed.

The purpose of this recommendation is to request City Council authority for the City Manager to begin negotiations with the Harbor Department for the transfer of the operation and control of Pier H, and surrounding properties, and to return to the City Council with proposed terms and conditions for such transfer.

#### *Review Process*

Although historical information regarding Pier H was extensive, City Manager and Harbor Departments staff commissioned additional studies from several subject matter experts to support the review process and to update information about opportunities and costs associated with the operation of Pier H. The following section describes some of those studies conducted by outside experts to assess conditions, answer key questions, and recommend potential uses for Pier H requested by the City Council and Harbor Department.

### *Engineering Studies*

On April 28, 2021, the Elliott Bay Design Group, a naval architecture and marine engineering firm hired by the City, completed a brief visual inspection of the Queen Mary to assess the status of repairs identified in the Historic Preservation Capital Investment Plan (HPCIP), and estimated potential costs for making recommended repairs. Although further survey and design work was strongly recommended, Elliott Bay Design Group estimated potential critical repairs for the Queen Mary to be approximately \$23 million. On May 20, 2021, the City Manager published a written update to the City Council regarding the inspection report completed by the Elliott Bay Design Group and on June 8, 2021, the City Council took action authorizing the City Manager to execute a contract with Moffatt & Nichol, a local engineering firm, to provide as-needed engineering design services for critical repair work on the Queen Mary, up to \$500,000.

In addition to the critical repairs, Moffatt & Nichol was also asked to study alternatives for the Queen Mary including the estimated costs and the following potential scenarios: (a) immediately retiring or recycling the Queen Mary, (b) performing basic maintenance and allowing the Queen Mary to retire naturally over 25 years or more, or (c) investing in a dry dock solution to preserve the Queen Mary for up to 100 years or more. Initial estimated costs for these scenarios ranged from \$105 million to \$240 million but additional environmental, engineering, and design work is still needed to assess feasibility and establish actual construction costs.

### *Real Estate Assessments*

On July 12, 2021, R.P. Laurain & Associates, Inc., a local real estate appraiser completed a market value and market rental value study of the Queen Mary site land area estimating the total market value of the Queen Mary site at approximately \$77 million and the market rental value at approximately \$5 million per year. The subject site appraised included approximately 43 acres of land area, approximately 18 acres of which is encumbered with existing subleases. The remaining 25 acres of unencumbered land was assumed to be available for development, representing an opportunity for either the City Manager or the Harbor Department to recommend uses to generate additional revenue to offset the operation and maintenance costs of the Pier H area.

Additionally, to assess challenges, opportunities, and solutions associated with Pier H and the Queen Mary, the Harbor Department hired Aegir Port Property Advisers and Drewry Maritime Advisors, international specialists in port real estate, maritime, and shipping consultancy, who provided recommendations as part of the report back to the City Council on July 20, 2021.

### *Report Back to City Council*

As follow-up to the original recommendation, the City Council conducted a special meeting to receive a report back from City Manager and Harbor Departments staff on July 20, 2021. The study session included reports from the City Manager, Harbor Department Executive Director, and key consultants; and, provided the City Council with an opportunity to ask questions and communicate priorities for further study. Although additional study was requested, no formal action was taken at the study session.

### **Issues to be Negotiated**

There are several issues recommended for negotiation as part of a transition agreement for Pier H. These include issues identified in both the City Attorney memorandum to the City Council dated March 10, 2021 (Attachment), as well as issues identified by the City Council at its special meeting on July 20, 2021. A summary of recommended issues to be negotiated by the City Manager and the Harbor Department includes, but is not limited to, the development of the following activities and plans:

- Transition plan for transfer of Pier H including the organizational structure, key staff (i.e. City Manager, Harbor Department, contractor, etc.), proposed budget, funding sources, timeline, and communications plan to communicate progress back to the City Council, Harbor Department, and members of the public;
- Management plan for the transition of existing lease agreements including Carnival Cruise Lines, Catalina Express, and all other tenants of Pier H;
- Maintenance and security plan for publicly accessible areas including bike paths, parks, roadways, and parking lots;
- Activation plan for Pier H to promote recreation, special events, and public access as defined in the Public Trust Doctrine and consistent with the Port Master Plan Update 2020;
- Construction management plan for the completion of ongoing capital improvement projects and critical repairs identified in recent engineering inspection reports and approved by the City Council for Pier H and the Queen Mary;
- Business plan for the implementation of the Queen Mary Conservation Management Plan (CMP), collaboration with the nonprofit Queen Mary Heritage Foundation, and partnership with local nonprofit education, museum, and preservation institutions including California State University, Long Beach (CSULB);
- Scope of work, timeline, and funding plan for the completion of feasibility studies for the long-term preservation of the Queen Mary identified by the City Council;
- Negotiation of short-term operating agreements required for the reopening of the Queen Mary hotel and event spaces for education, public access, and cultural tourism;
- Development of a management plan for any additional 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; and,
- Delineation of any future role of the City and City Council with regard to Pier H and the Queen Mary, including financial responsibilities.

If the recommendation is approved by the City Council, City Manager staff will begin negotiations with Harbor Department staff to develop short-term and long-term collaborative solutions amenable to the Harbor Department and return to the City Council for review and approval of final agreements.

This matter was reviewed by Deputy City Attorney Richard F. Anthony and Budget Management Officer Rhutu Amin Gharib on September 2, 2021.

TIMING CONSIDERATIONS

City Council action is requested on September 14, 2021, to begin negotiations of the terms and conditions for the transfer of the operation and control of "Pier H," including the Queen Mary, to the Harbor Department.

FISCAL IMPACT

This recommendation requests the City Manager to engage in negotiations with the Harbor Department to draft the terms and conditions and supporting management plans described above for the transfer of the operation and control of Pier H, including the Queen Mary. A detailed fiscal impact associated with the recommended actions both short-term for transition) and long-term (post transition) will be presented to the City Council and the Harbor Department as negotiations progress and recommendations are brought back to the City Council for review and approval.

The requested action is anticipated to require a significant impact on staff hours for both City Manager and Harbor Departments staff beyond the budgeted scope of duties and a significant impact on meeting other City Council and Harbor Department priorities for the impacted departments. The requested action is anticipated to require 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. Additional costs may be incurred as negotiations may require some expertise to resolve issues and will be charged to the Tidelands Area Fund Group. Due to the impacts on the fund from the COVID-19 pandemic, it is likely the Tidelands Area Fund Group may not cover these costs and a transfer from the Tidelands Operational Fund Group may be needed. Any costs that exceed existing budget will be handled in a future budget adjustment and brought to City Council for approval. There is no local job impact associated with the recommendation.

SUGGESTED ACTION

Approve recommendation.

Respectfully submitted,



JOHN KEISLER  
DIRECTOR OF  
ECONOMIC DEVELOPMENT

APPROVED:



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THOMAS B. MODICA  
CITY MANAGER



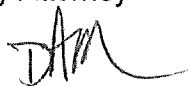
**City of Long Beach**  
*Working Together to Serve*

Memorandum

**Office of the City Attorney**

**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

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**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.<sup>1</sup> (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

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<sup>1</sup> 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.<sup>2</sup> 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

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<sup>2</sup> 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 revisions<sup>3</sup> 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

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<sup>3</sup> 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.

DAM:arh