



Public Workshop September 28, 2021

FROM: James B. Pruett, General Manager

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SUBJECT: Public Workshop: Commercial Activity Permit/Potential Fees for Off the Boat Fish Sales

Issue:

On February 17, 2021, the Board directed Staff to conduct a public workshop to work with stakeholders to discuss issues, opportunities, enforcement, and constraints in the equitable collection of fees from commercial interests as they relate to direct Off the Boat Sales and bring back options for Board consideration.

The San Mateo County Harbor District has long supported direct to the public, Off the Boat Sales of seafood as an alternate avenue for fishermen to sell their catch and earn extra income. The Off the Boat Sales program has been highly successful and attracts tens of thousands (estimate) of customers to Pillar Point Harbor.

The burden on District facilities as a result of the large number of visitors coming to the Harbor to conduct business with Off the Boat Commercial Activity Permit holders is significant, including facility maintenance, restroom support (cleaning and supplies), trash, parking, & supervision. To cover the costs associated with supporting Off the Boat Sales, the District is exploring a new fee that would be imposed on permit holders. The fee would be integrated into the Commercial Activity Permit and will permit customers of the permit holders access to the Harbor for the purpose of purchasing seafood directly off the boats.

Cal. Code/SMCHD Code:

Cal. Harbors and Navigation Code § 6079 states that the board shall by ordinance fix the rate of wharfage charges and other charges which are appropriate for the use of any of the facilities owned and constructed or services furnished or provided by the district.

Chapter 3.10 of the SMCHD Ordinance Code states the District shall establish rates and fees for the use of facilities of the District and for services performed by the District. This schedule of rates and fees will be adopted by resolution of the Board of Harbor Commissioners. It shall be the responsibility of the employees of the District or their agents to collect said fees and charges.

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Chapter 5.10.010.C of the SMCHD Ordinance Code: Commercial activity permits – General: **Vessels within the harbor or marinas of the District shall not be used for any commercial purposes unless a permit is first obtained from the District.** In the case of a commercial fishing vessel the payment of berthing fees to the District and appropriate fishing permit fees to the State of California or the U.S. Government constitutes permission to conduct commercial fishing operations, **excluding any wholesale buying or retail selling of fish on premises, which requires a commercial activity permit issued by the District.**

Chapter 5.10.010.D of the SMCHD Ordinance Code: Commercial activity permits – General: In addition to payment of all prescribed fees, no vessel may operate under a commercial activity permit unless it complies with all requirements of the commercial activity permit as may be established by resolution of the Board of Harbor Commissioners, including the requirement for an additional license. In any event, all vessels shall comply with appropriate State and Federal regulations.

Chapter 5.10.020 of the SMCHD Ordinance Code: Limited commercial activity permits: Limited commercial activity permits may be issued to applicants whose commercial activities are of specified and limited duration. The limited commercial activity permit shall be issued only for the duration of specified activity. [Amended through codification process of 1995, Ord. 74-96. Code 1996 §5.2.2; prior code §5.403.]”

Background/Discussion:

Off the Boat Fish Sales:

The retail sale of fish from a fishing vessel on District property requires a Commercial Activity Permit. (See SMCHD Ordinance 5.10.010(C).

Currently, the District’s practice is to issue a Limited Commercial Activity Permit for Off the Boat Sales. The fee for a Limited Permit is currently \$290.00. The following chart shows the revenue generated from permit fees:

Limited Commercial Activity Permit Fees Collected		
Fiscal Year	Revenue	# of Permits Issued
2019/2020	\$11,592.00	42
2020/2021	\$18,768.00	68

The Off the Boat Sales Limited Commercial Activity Permit does not, at this time, require any additional fees, passenger fees, or percentage fees. (Attachment A).

Is a Limited Commercial Activity Permit the Correct Document:

Under District Ordinance 5.10.020, a Limited Commercial Activity Permit may not be the proper instrument to authorize Off the Boat Sales as they are currently

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conducted. A Limited CAP is intended for applicants whose commercial activities are of specified and limited duration. Many, if not all, permittees conducting Off the Boat Sales, conduct business year around, and are not limited in duration. It is Staff’s recommendation that for those vessels who conduct sales beyond one season (i.e. crab season, salmon season, groundfish) that a full Commercial Activity Permit be issued under the authority of Ordinance Code 5.10.010. For vessels participating in only one season, or visiting vessels, a Limited CAP is still a valid instrument.

Lessee Off the Dock Sales, Seafood Market, and Passenger Service Fees

This discussion is also peripherally related to the Passenger Service Fees, Seafood Market Percentage, and Off the Dock Sales Percentage, which the District charges for access and use of District facilities.

Pursuant to Cal. Harbors and Navigation Code § 6079 the Board **shall** fix the rate of wharfage charges and **other charges which are appropriate for the use of any of the facilities owned** and constructed or services furnished or provided by the district.

Lessee Of the Dock Sales: The Commercial Fish Buyer’s leasing space on the Johnson Pier Terminus also pay a percentage fee for access by their customers who purchase seafood off the dock. The percentage fee is 2.5% of gross sales for Off the Dock Sales to non-commercial buyers. The amount received by the District in percentage fees is listed below:

Off the Dock Lessee Percentage Revenues	
Fiscal Year	Revenue
2018/2019	\$298.31
2019/2020	\$411.50
2020/2021	\$158.22

Commercial Fish Market: The commercial fish market located in Pillar Point Harbor pays 3% of gross sales. In FY 2020/2021, that percentage fee equaled \$27,319.88.

Commercial Passenger Vessels: Passenger Service Fees

Currently, commercial passenger vessels pay a Commercial Activity Permit Fee of \$290.00, and a Passenger Service Fee of \$2.53 per passenger. The fees collected from the passenger vessels for the past three years are:

Passenger Vessel Fees		
Fiscal Year	Permit Fees	Passenger Service Fee
2018/2019	\$3,870.00	\$28,359.18
2019/2020	\$2,412.00	\$22,891.26
2020/2021	\$2,780.00	\$21,153.95

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Staff's Recommendations

It is Staff's recommendation that a charge of 2.5% be charged on gross sales of Off the Dock Sales. Staff makes this recommendation based on the following:

1. each fishermen conducting Off the Boat Sales must already record each sale on proper Department of Fish and Game receipts.
2. Boats that sell more product, have more customer, pay more in fee.
3. Percentage fee reflects the current market, in lean seasons, where less catch is available, the boat pays less in percentage fees.
4. Allows the fishermen to earn the income from the sale of the product before having to pay the percentage fee.
5. 2.5% is equal to what the Lessee Fish buyers pay in percentage fees based on Off the Dock Sales.

Staff also considered, but does not recommend, the fee for customer access be charged as a single charge on the Commercial Activity Permit. A single charge does not reflect the current market, as each vessel would pay a certain amount regardless of the catch. A single charge is also difficult to assess on visiting vessels conducting Off the Dock Sales. It would also force a fishermen to pay the fee up front before he or she receives payment for the catch.

A recommendation was received by the District from a fishermen at Pillar Point Harbor to cap the percentage fee at \$2000.00 per year. If the District were to adopt this recommendation, the District would receive between \$84,000 and \$136,000, assuming all Off the Boat Commercial Activity Permit Holders sell at least \$85,000 worth of catch.

The Commercial Activity Permit: What Form should it Take:

It is Staff's Recommendation that a Limited CAP be Issued to vessels visiting Pillar Point on a short-term basis to conduct Off the Boat Sales. A limited CAP is also suitable for a resident vessel conducting sales for only one season or species per year. A standard CAP would be appropriate for vessels conducting off the dock sales for multiple season/species.

A draft standard Commercial Activity Permit for Off the Dock Sales is attached as one possible path the District can take.

For visiting vessels, the Limited Commercial Activity Permit would be applicable with the addition of the 2.5% fee on gross sales.

Prop 218 (Cal. Cont. art. XII C, XII D)/Prop 26 (Cal. Cont. art. XIII C: Prop 218 (Right to Vote on Taxes Act) and Prop 26 (Supermajority Vote to Pass Certain New Taxes

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and Fees) are not applicable to the District fees associated with Off-The-Dock-Sales given the fees are not a “tax” as defined by Prop 26.

With respect to the permit fee, it is allowed as a charge that is imposed for the reasonable regulatory costs to a local government for issuing the permit and are therefore not defined as a “tax.” Cal. Cont. Art. XIII C §1e(3).

The fees charged by the District to issue a Commercial Activity Permit are permissible under Cal. Cont. Art. XIII C §1e(3) as an exception to the requirements of Prop 218 and Prop 26 as they are intended to cover the cost of issuing the permit.

The average cost to the District to issue/renew a permit is \$455.00.

Further, a charge imposed for entrance to or use of local government property, or the purchase, rental, or lease of local government property is not defined as a “tax.” Cal. Cont. Art. XIII C §1e(4).

The potential fees the District is considering with respect to Off the Boat Sales are permissible under Cal. Cont. Art. XIII C §1e(4) as an exception to the requirements of Prop 218 and Prop 26. The fee being considered is for entrance and use of public property in the commercial businesses of those holding a Commercial Activity Permit to conduct off the boat sales, and thus are not defined as a “tax” under Prop 26 (Cal. Cont. Art. XIII C §1e(4)).

Attachments:

1. [2020 Limited Commercial Activity Permit Document and Application](#)
2. [DRAFT 2022 Commercial Activity Permit for Off the Boat Sales](#)
 - a. [Exhibit A/Limited Commercial Activity Permit Document and Application Fish Sales from a Vessel](#)
 - b. [Exhibit B/Potential Off the Boat Fish Sale Commercial Activity Permit](#)