

**City of Huntington Beach
Memorandum**

TO: HUNTINGTON BEACH HARBOR COMMISSION

FROM: OLIVER CHI, CITY MANAGER
CHRIS SLAMA, DIRECTOR OF COMMUNITY SERVICES

DATE: DECEMBER 11, 2019

SUBJECT: **CALLING FOR A SPECIAL HARBOR COMMISSION MEETING TO
CONSIDER THE ISSUANCE OF A TEMPORARY PERMIT FOR WAGNER
CHARTERS TO CONDUCT HARBOR TOURS**

BACKGROUND

There currently exists one public dock in Huntington Harbour (Dock), located adjacent to the Huntington Harbour Yacht Club at 3821 Warner Avenue. Historically, the City has never had a formal and comprehensive process for the issuance of permits to allow for private commercial business use of the Dock. Given that factor, when the City was approached by a company called Prince Charters requesting utilization of the Dock for operation of their private charter tour boat business, the City in 2017 did issue a permit.

Subsequent to the issuance of that permit, it has been observed by City staff that private commercial operators have been utilizing the Dock without a permit. A gondola operator was asked to cease operations from the Dock a few years ago, as was a private charter fishing boat operator called Wagner Charters.

From a regulatory perspective, the City's Municipal Code is very clear on two points regarding commercial operations in the Huntington Harbour, with those points being 1) A permit is required for any commercial operation in the Harbor; and 2) Fishing charters are prohibited from operating in the Harbor.

13.32.040 Permit for Commercial Activities Required

- A. No person shall engage in or carry on any commercial activity on the waters of harbors within the City without first having applied for and obtained a permit for such activity from the director.
- B. **Exceptions.** The requirement to obtain a commercial activity permit is not applicable to persons operating commercial fishing vessels or private vessels chartered primarily for use outside harbors within the City. Said activity shall be prohibited and considered a violation of this chapter and zoning regulations.
(2374-7/79)

Given these factors, when it was discovered that a gondola operator and Wagner Charters were operating in the Huntington Harbour without a permit, staff contacted both entities and requested that they cease operations. In addition, the City Attorney's office also issued a cease and desist letter to Wagner Charters requesting that they stop operating in Huntington Harbour without a permit.

Of note, after receiving the cease and desist letter from the City Attorney, the owner of Wagner Charters reached out to City, and sent the following email.

“Currently ‘Wagner Charters’ functions as a commercial four person fishing charter. I have been researching the possibility of providing harbor boat tours as an additional business opportunity, but my research at this point seems to indicate that there is no public interest in touring the harbor in a small craft when larger vessels dedicated to this purpose and duffy boats rentals are available.

Our clients are primarily from out of state, here on business or pleasure. They normally choose to stay in Huntington Beach, which allows them to squeeze in a quick day of deep sea fishing and viewing sea life, before resuming their activities elsewhere in state. Touring the harbor doesn’t seem to provide enough excitement for them. Wagner Charters is current with Coast Guard credentials, commercial permits and business license for fishing, but has not operated as a harbor tour vessel. Being the optimist that I am I haven’t given up on the possibility of harbor tours generating additional business. With that said, can you tell me what the requirements, and or restrictions, are for obtaining city permit or contract to operate as harbor tour service using a city dock?”

Given the fact that the City had previously issued Prince Charters a permit to use the Dock, coupled with the additional request by Wagner Charters, it was clear that the City lacked a formal defined process regarding permit issuance practices and requirements for commercial use of the Dock. In addition, staff had also heard and identified parking lot and boat access concerns related to how increased commercial Dock usage might impact the operations at the Huntington Harbour Yacht Club.

Based on these factors, staff made the decision to temporarily cease the issuance of any new permits so as to provide the City and the Harbor Commission the time needed to research and review options related to access of the Dock moving ahead.

HARBOR COMMISSION REVIEW

As part of the Dock permit process review, on September 26, 2019, staff informed the Harbor Commission that there would be a temporary moratorium on the issuance of any new permits for commercial operations in the Harbor, and also asked for the creation of a subcommittee of the Harbor Commission to assist with the overall review. The approach that was presented included having the subcommittee bring back any recommendations to the full Harbor Commission, and that ultimately, the City Council would review and approve of any Dock permitting process moving ahead.

After hearing the proposal, the Harbor Commission concurred with the approach identified by staff, and formed a subcommittee to review Dock permitting issues, with the first meeting of the subcommittee held on October 29, 2019.

Prior to that subcommittee meeting, at the Harbor Commission’s October 24, 2019, meeting, representatives from Wagner Charters attended and indicated an interest in obtaining a permit to utilize the Dock for the purpose of providing tours of Huntington Harbor. Staff reminded the Harbor Commission that evening that the City had placed a temporary moratorium on the issuance of any permits, and that the subcommittee would be meeting to discuss the matter the following week.

SUBCOMMITTEE REVIEW

The subcommittee met on October 29, 2019, and during their meeting, worked to address the following questions.

- Should the City issue permits for commercial use of the Dock?
 - There is no question that legally the City is able to issue permits for commercial operations at the Dock, unless they are fishing charters. The question for the subcommittee to discuss is, in light of multiple requests, should the City continue to issue commercial permits for what is potentially limited space?
- If yes, then
 - 1) What should the process be for selecting the businesses that would be allowed to operate;
 - 2) Should there be blackout dates in deference to high demand activities at the Huntington Harbour Yacht Club and for special events (like the Philharmonic Cruise of Lights);
 - 3) Should the City receive a percentage of revenue as is the case with other commercial use of public property;
 - 4) Who would be charged with monitoring the use;
 - 5) Are there any perceived safety issues;
 - 6) Are there any changes that would be needed to the current municipal code?
- If no, then what would the City's rationale be for a recommendation to not allow any further commercial use of the Dock?

At the meeting, the subcommittee determined that they needed further information before they could bring forward a recommendation for the full Harbor Commission to consider. To that end, staff was asked to reach out to other harbors (such as Newport Beach, Long Beach and Dana Point) to see what their policies were for commercial use of public docks. In addition, Commissioner Milligan (who is on the subcommittee) planned to bring back an annual calendar of events at the Huntington Harbour Yacht Club where use of the Dock, and potentially the parking lot, could be problematic.

Based on this identified listing of next steps, the subcommittee agreed to meet next in mid-December 2019, with the intent of formulating a recommendation regarding the issuance of commercial permits for the Dock in time for full Harbor Commission consideration at their January meeting.

REQUEST FOR A SPECIAL HARBOR COMMISSION MEETING

Due to the Christmas holiday, the Harbor Commission is dark in the month of December. However, for the past few weeks, Harbor Commission Chair Larkin has asked that staff reconsider the current moratorium on issuance of Dock usage permits for commercial operators, and to consider issuing a limited and temporary permit allowing Wagner Charters to use the Dock to provide harbor tours during the holidays.

After discussing the various options available moving ahead, Chair Larkin has requested that the Harbor Commission reconsider their prior support for the staff's decision to place a moratorium on the issuance of Dock permits, and further, that the Harbor Commission also consider whether or not the City should issue a limited and temporary permit to allow Wagner Charters the ability to use the Dock through January 31, 2020, for the provision of private harbor

tours during the holiday season. The City Attorney has also weighed in on this particular matter, and a memorandum drafted by the City Attorney's Office containing a legal review of the matter has been included as an attachment to this memorandum.

Also of note, given that there does not currently exist a formally adopted City process for issuance of a permit to use the Dock for commercial purposes, after this matter is reviewed by the Harbor Commission, if necessary, the matter should be forwarded on for City Council consideration.

ANALYSIS

Based on the request by Chair Larkin, staff has reassessed the overall situation, and continues to believe that there is merit in waiting to issue any further permits for commercial use of the Dock until the current assessment processes being conducted is completed. Among the reasons that have been identified that support the current permit issuance moratorium include the following:

- Coordination issues with the Huntington Harbour Yacht Club, especially given the special events and activities that occur during the holiday season, as well as their other high demand activities throughout the year.
- Concerns regarding a lack of process, fairness, and equity, in the event that another private operator requests a permit for use of the Dock prior to finalizing any new procedures.
- Managing logistical / administrative considerations, including oversight of use and risk management / insurance coverage provisions.

Conversely, as has been noted previously, the City has an uneven history when it comes to managing private access / use of the Dock. In particular, the City has already issued a permit for one charter boat operator (Prince Charters), and the argument has been made by Chair Larkin that it would be more equitable to issue a limited and temporary permit (which would expire January 31, 2020) that allows Wagner Charters to access the Dock for the provision of holiday harbor tours, while the City works to finalize development of a long-term permitting process. A few additional arguments that have been made by Chair Larkin in support of that particular position include the following:

- To date, outside of Prince Charters and Wagner Charters, the City has not been approached by any other charter boat operator seeking use of the Dock.
- Although not verified by the Huntington Harbour Yacht Club, Prince Charters appears to have been able to coordinate access and use of the Dock without creating negative impacts. Given that factor, and the current Dock configuration, the opinion has been shared that adding one additional charter operator for a limited period of time could potentially be facilitated.
- Issuing a limited-term, temporary permit that contains substantive operating regulations would allow a middle-ground approach while the City determines what our long-term Dock permitting decisions / processes will be moving ahead.

HARBOR COMMISSION OPTIONS

While staff does believe that the current moratorium on the issuance of Dock access permits for commercial entities is appropriate, Chair Larkin has asked that the City revisit this particular issue. To that end, staff is now seeking the Harbor Commission's recommendation regarding the issuance of a temporary permit allowing Wagner Charters the use of the Dock for harbor tours through January 31, 2020. Also, given that there does not currently exist an adopted City process for issuance of a permit to use the Dock for commercial purposes, staff believes that it would be most appropriate for this matter to ultimately be decided by the City Council.

The staff-identified options currently available to the Harbor Commission are as follows:

1. The Harbor Commission recommends that the City Council deny the issuance of a temporary permit allowing Wagner Charters the use of the Dock for holiday harbor tours through January 31, 2020, and reaffirms a commitment to the subcommittee work currently being coordinated to develop recommendations regarding a Dock permitting process for eventual City Council consideration. Furthermore, the Harbor Commission supports the staff recommendation to hold off on the issuance of any other private commercial Dock access permits until a final decision on the matter is made by the City Council.
2. The Harbor Commission recommends that the City Council issue a temporary Dock access permit to Wagner Charters for the operation of holiday harbor tours through January 31, 2020, so long as they are able to meet the City's insurance requirements and ensure their use of the Dock will not negatively impact any currently scheduled activities (including events at the Huntington Harbor Yacht Club and the Harbor Cruise of Lights event). Additionally, should another private commercial entity request a Dock access permit prior to a final decision by the City Council on this matter, the Harbor Commission supports the staff recommendation that no other private commercial Dock access permits should be issued until a final permitting process is adopted by the City Council. This action has been identified as a reasonable approach to any future situations, given that the proposed permanent Dock access permitting process should be finalized in Q1-2020.
3. Provide staff with alternative recommendations regarding Dock permitting processes.

After receiving direction from the Harbor Commission, if necessary, staff will forward the recommended action to the full City Council for review on December 16, 2019.