

STAFF REPORT*CITY OF OCEANSIDE*

DATE: August 31, 2011

TO: Honorable Mayor and City Councilmembers

FROM: Public Works Department, Harbor and Beaches Division

SUBJECT: **UPDATE OF THE OCEANSIDE HARBOR DISTRICT PERMIT FOR SLIP OR DOCK MOORING AND ADDITION OF A \$300,000 LIABILITY INSURANCE REQUIREMENT**

SYNOPSIS

Staff recommends that the City Council approve the revised Oceanside Harbor District Permit for Slip or Dock Mooring which includes the addition of a \$300,000 liability insurance requirement for all permit holders.

BACKGROUND

Every slip-renter in the Oceanside Harbor must complete a Permit for Slip or Dock Mooring permit application and have it approved by Harbor management. The permit form is periodically reviewed by the City Attorney and Harbor staff. The last changes were in 2003.

ANALYSIS

The permit language was revised on the indemnification provisions and a new permit was added specifically for live-aboard boaters. Other minor changes were made as well, such as clarifying the area within the harbor. A copy of the revised permits is included as Attachment 1.

Upon review by staff, it was found that the majority of marinas in California require their slip-renters to have liability insurance and name the marina as an additional insured. A copy of the survey is Attachment 2.

The most common amount of insurance required in other marinas is \$300,000.

Requiring slip renters to obtain insurance and provide an endorsement naming the City as an additional insured is critical in reducing the City's exposure to liability that may result from the conduct and operations of slip renters. Liability insurance will provide financial protection for the slip renter and the City if the slip renter's conduct or operations cause bodily injury or damage to another person or their property. An

endorsement naming the City as an additional insured under the slip renter's policy will provide the City with the same protection the slip renter has and it allows the City to file a claim with the insurance company in the event that the City is sued because of the slip renter's conduct or operations.

Estimated cost for the insurance is \$250 – \$500 per year. This cost can vary greatly based on the boater's motor vehicle record, experience, and insurance company.

FISCAL IMPACT

Does not apply.

INSURANCE REQUIREMENTS

Does not apply.

COMMISSION OR COMMITTEE REPORT

At the June 23, 2011 meeting, the Harbor and Beaches Advisory Committee voted 5 – 0 to require \$300,000 in liability insurance.

CITY ATTORNEY'S ANALYSIS

The City Attorney has reviewed the document and approved it as to form.

RECOMMENDATION

Staff recommends that the City Council approve the revised Oceanside Harbor District Permit for Slip or Dock Mooring which includes the addition of a \$300,000 liability insurance requirement for all permit holders.

PREPARED BY:

SUBMITTED BY:

J.F. Quan
Frank Quan
Harbor and Beaches Coordinator

Peter A. Weiss
Peter A. Weiss
City Manager

REVIEWED BY:

Michelle Skaggs Lawrence, Deputy City Manager

MSL

Sharon L'Heureux, Property and Liability Manager

SL

Attachments

NAME: _____

PERMIT NO. _____

Permission is hereby granted to the undersigned subject to the following covenants and conditions:

1. (a) The term and rental payments of this Permit shall be Month-to-Month whereby Permittee agrees to pay DISTRICT the sum of \$ _____ based on the hull length of vessel or slip, whichever is greater, payable in advance on the first day of each and every month. The vessel must be solely registered to the Permittee(s) and the registered owner and the Permittee shall be the same person(s). The Permittee shall give notice to the DISTRICT of any change of the vessel as authorized by this Permit. There is to be no change of ownership in vessel authorized by this permit. Permittee acknowledges that the DISTRICT reserves the right to increase the slip or dock mooring footage rate upon thirty (30) days written notice to Permittee. Permittee further agrees that notice given with Permittee's slip payment coupons shall be sufficient notice of an increase in rates.

(b) The consequences of delinquent rental payments shall be: If Rental is not received on or before the fifteenth (15th) of each month; a penalty will be assessed on the sixteenth (16th) day. At the discretion of the DISTRICT, vessels subject to delinquent rental payments may be moved to a location under the observation and operation of DISTRICT personnel until all amounts due are paid. Owners of vessel subject to delinquent fees of more than fifteen (15) days may have their permit cancelled by DISTRICT. The slip or dock mooring will revert to the DISTRICT for its use if the permit is cancelled. DISTRICT may, according to law, conduct a lien sale to recover delinquent fees.
2. Permittee agrees to pay a \$ _____ deposit (one full month's rent) which shall be held for the duration of the Permit. Upon termination of permit, the deposit shall be applied to any outstanding balance or refunded to the Permittee, provided all conditions of the permit and Harbor regulations have been met.
3. Permittee shall obtain and maintain at all times during the term and duration of this Permit all required insurance, including, but not limited to, the following:

Marine Liability insurance to a limit of \$ _____ per occurrence.

There shall be no deviations from the types or amounts of coverage without DISTRICT written approval.

Any lapse in such coverage will be a material breach of this Permit, whether or not a notice of default has been sent to Permittee. As appropriate, DISTRICT retains the right to require Permittee to adjust insurance coverage to adequately protect the DISTRICT and at the sole discretion of the DISTRICT. The purpose of DISTRICT's requirement for insurance is for the protection and benefit of the DISTRICT.

Without insurance Permittee does not have a valid Permit. Permittee agrees that he/she shall not occupy the slip or operate in the harbor area in any manner or at any time if the required insurance is not in full force and effect as evidenced by a Certificate of Insurance and necessary endorsements or, in the interim, an official binder being in the possession of the DISTRICT. Permittee agrees that upon cancellation, termination, or expiration of Permittee's insurance, DISTRICT may take whatever steps are necessary to interrupt any operation from or in the harbor area, including termination of the Permit.

All contractors performing work on behalf of Permittee pursuant to this Permit shall obtain insurance subject to the same terms and conditions as set forth herein for Permittee. It is the obligation of Permittee to provide written notice of the insurance requirements to every contractor and to receive proof of insurance prior to allowing any contractor to begin work within the harbor area. Proof of such insurance must be available for DISTRICT'S inspection at any reasonable time.

All insurance companies affording coverage to Permittee and the registered vessel shall name the DISTRICT, its officers, agents and employees as "additional insured". Permittee shall deliver to the DISTRICT a Certificate of Insurance and shall include separate endorsements providing:

- the additional insured status
- that the Permittee's insurance is primary and non-contributing with the DISTRICT'S coverage
- waiver of right of subrogation against the DISTRICT, its officers, agents and employees

NAME: _____

PERMIT NO. _____

All insurance companies affording coverage to Permittee shall be authorized to transact business in the State of California and shall have an AM Best rating of not less than A VII.

Prior to approval of this Permit, Permittee shall furnish the DISTRICT with evidence of such insurance and shall replace it upon termination. Should such insurance not be available or should it not cover the cost of repairs or loss, for any reason, then such cost shall become the personal responsibility of the Permittee.

4. Indemnification. To the fullest extent allowable by law, Permittee shall indemnify, defend and hold harmless the DISTRICT, its officers, agents and employees from and against all claims, demands, causes of action, lawsuits, proceedings, losses, damages, expense costs (including without limitation attorney's fees, costs and expert witness fees), judgments, penalties and liens of every nature resulting from injury to or death sustained by any person, or damage to property of any kind, or any other injury or damage whatsoever, which injury, death or damage arises out of or is in any way connected with Permittee's use of premises or performance of work, or its failure to comply with any of the obligations contained in this Agreement. Except that said indemnity shall not be applicable to injury, death or damage to property arising from the sole or active negligence or willful misconduct of the DISTRICT, its officers, agents and employees.
5. DISTRICT does not warrant any utilities; further, DISTRICT shall not be liable for an interruption, if any, in service.
6. Permittee shall abide by all applicable rules, regulations, ordinances and statutes of the DISTRICT, City of Oceanside, State of California, or other governmental body, where applicable respecting the use of the berth. A copy of the Harbor Rules and Regulations are available upon request.
7. Permittee is advised and understands that this Permit may create a possessory interest which may be subject to property taxation and that Permittee may be subject to the payment of said property taxes levied on such interest pursuant to Section 107 ~ of the California Revenue and Taxation Code.
8. DISTRICT reserves the right to terminate this Permit at any time, with or without cause, and with or without prior notice and without substitution of another berth if a violation of this Permit occurs.
9. This Permit may be terminated by either party upon thirty (30) days written notice without cause. Permittee will be liable for thirty (30) days rent if the vessel is permanently removed from DISTRICT'S premises without notice. Should Permittee fail to remove the vessel upon termination of this permit, DISTRICT is authorized to do so at Permittee's expense. In the event the DISTRICT terminates this Permit for cause, the DISTRICT may, in its sole discretion, do so without giving thirty (30) days notice.
10. DISTRICT does not warrant that berthing herein described will be usable during any and all stages of tide, wind or weather conditions or other unforeseeable events.
11. DISTRICT reserves the right to use permanent berths for guest vessels, if such berths are not occupied and if needed.
12. Permittee is required to provide either proof of current California vessel registration or current United States Coast Guard documentation in the Permittee(s) names before approval of this Permit. Permittee(s) must notify the Harbor of plans to replace their vessel. Any replacement vessel must be registered or documented in the Permittee(s) name(s) only, be of the appropriate size for the slip, and is required to pass a Harbor inspection. Proof of renewal of registration or documentation shall be furnished to DISTRICT upon request.
13. Pursuant to Section 29A.26 of the Oceanside City Code, Permittee agrees that neither he, his family nor guests will be aboard the vessel at night for more than three (3) nights per week, unless authorized by the DISTRICT. Being aboard the vessel at night without such authorization shall be grounds for immediate termination of this Permit.

NAME: _____

PERMIT NO. _____

- 14. Permittee understands that this Permit confers no transfer rights to another berth, or upon sale of the herein described boat or vessel, to another owner except upon written approval of the DISTRICT.
- 15. Permittee shall have no right to assign or encumber any interest in this Permit or sublease all or any part of the berth or allow any other person or entity to occupy or use all or any part of the berth, without first obtaining the written approval of the DISTRICT. Any assignment, encumbrance, or sublease without said consent shall be voidable and, at DISTRICT'S election, shall constitute a default hereunder. No consent to any assignment, encumbrance, or sublease shall constitute a further waiver of the provisions of this section.
- 16. By this Permit, the DISTRICT grants license to use and occupy storage space for Permittee's vessel and assumes no responsibility beyond that of mere licensor. Such space is to be used at the sole risk of Permittee. Neither DISTRICT, its officers, agents nor employees shall have any liability for any loss or damage of any kind to Permittee's boat, gear, equipment person or personnel for any such cause, including, but not limited to, theft, fire, collision, chafing and sinking. Further, Permittee is solely liable for any loss or damage of any kind to motor vehicles in or on DISTRICT'S parking lots or other premises for any cause whatsoever. In the absence of intentional misconduct or gross negligence by the DISTRICT, its officers, employees or authorized agents, Permittee shall indemnify and hold harmless the DISTRICT and its officers, employees and authorized agents from negligence against all liability, however arising from injury to the person or property of the Permittee, his/her family, agents, guests or invitees occurring while aboard the vessel, Harbor facilities or in the harbor area, more fully described as the property leased by the Harbor District from the City of Oceanside within the Oceanside Small Craft Harbor District. Permittee shall be bound by such indemnification and hold harmless provisions, whether arising from property damage or bodily injury.
- 17. Discharges, including those of human waste, oil, gasoline or any other noxious or hazardous material shall immediately be cleaned by Permittee in accordance with applicable laws. In the event of such a discharge, the Permit and any Addendum which may exist shall be regarded as fundamentally breached, in which event, the DISTRICT shall be entitled to immediately and without notice terminate all services and recover from Permittee any and all clean-up and associated costs incurred, including attorney's fees when necessary.
- 18. This Permit may not be altered or modified except in writing between the parties hereto. No waiver of any kind or breach of any provision of this Permit shall be construed as a waiver of any succeeding breach of same or any other provision.
- 19. Oceanside Harbor is a No Discharge Zone. No Discharge Zones are designated bodies of water where the discharge of treated and untreated sewage from vessels is prohibited. Oceanside Harbor has been designated a Clean Marina under the Clean Marinas Program. Permittees must follow all applicable environmental Best Management Practices (BMP) while maintaining their boat. Permittees are also encouraged to use non-toxic hull bottom paint to reduce the amount of passive copper leaching into the harbor. More information regarding BMPs and non-toxic bottom paint can be found at <http://www.cleanmarina.org>.
- 20. Permittee, by execution of this Agreement, acknowledges that she/he has read and fully understands the contents hereof.

Agreed this _____ day of _____, 20 ____, by and between OCEANSIDE SMALL CRAFT HARBOR DISTRICT and:

Printed Name

Permittee Signature

Printed Name

Permittee Signature

Harbor District Approval

Name _____

Permit No. _____

OCEANSIDE SMALL CRAFT HARBOR DISTRICT

Live Aboard Addendum To Berthing Permit

PERMIT #: _____ SLIP #: _____

APPROVAL FOR LIVE ABOARD STATUS FROM _____ THRU _____

I, _____ (Permittee), request permission to reside aboard the below described boat and agree to all of the following terms and conditions.

1. The DISTRICT shall be entitled in its sole discretion to restrict the number of persons living aboard any vessel located at its premises at any time after the execution of this Addendum and thereafter while this Addendum is in effect, and the Permittee agrees that, with respect to living aboard this vessel in addition to the vessel owner (Permittee), only those persons named immediately below shall be permitted to live aboard the vessel. *The living aboard of any person not identified below shall be grounds for immediate termination of the underlying Permit and this Addendum thereto.*

The following person(s), who are members of my family, will be residing aboard under my supervision.

<u>NAME</u>	<u>RELATIONSHIP</u>	<u>BIRTH DATE</u>	<u>MAILING ADDRESS/HOME PHONE</u>
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

The following information will assist the Harbor in providing the best possible service.

2. VESSEL DESCRIPTION:

Reg./Doc #: _____ Boat Name: _____ Hull: _____ LOA: _____
Power/Sail: _____ Make/Builder: _____ Year: _____

- (a) Do you have any pets? Yes/No If yes, specify: _____
- (b) Does anyone in your family have a medical condition that the Harbor should be made aware of (i.e., Heart, Breathing, etc.?) _____
- (c) Nearest relative not living aboard (name/address/phone): _____
- (d) In case of emergency notify (name/address/phone): _____
- (e) Place of employment/address/phone: _____

This Addendum to the Oceanside Small Craft Harbor District Berthing Permit is additional to and supplements the underlying Permit, which is fully incorporated herein by this reference; to the extent the underlying Permit and this Addendum are inconsistent or redundant, this Addendum shall control and be effective.

Name _____

Permit No. _____

3. To the extent that they are not inconsistent with the terms herein contained, all terms and conditions contained in the underlying Permit shall remain in full force and effect.
4. Live aboard permits are non transferrable.
5. In consideration of the granting of live aboard privileges, the monthly rental fees shall be increased by an additional \$ _____ per foot above and additional to the rental fee required by the underlying Permit. As amended, the additional sum becomes due the same day as the Permit fee is due pursuant to the Permit. Permittee acknowledges that the DISTRICT reserves the right to increase the live aboard rate upon thirty (30) days written notice to Permittee. Permittee further agrees that notice given with Permittee's slip payment coupons shall be sufficient notice of an increase in rates.
6. Living aboard a vessel at the Harbor is a privilege which, in the event of Permittee's breach of any term or condition contained herein or in the underlying Permit, may be revoked at the DISTRICT's sole discretion after fifteen (15) days advance written notice (by mail, personal service or overnight service) to Permittee and upon two (2) days written notice if, in the sole opinion of the DISTRICT, the breach adversely impacts the health, welfare or safety of persons at the Harbor.
7. In the event no breach has occurred, the underlying Permit and/or this Addendum thereto may be terminated by either party, provided thirty (30) days advance written notice is provided to the other party by mail, personal service or overnight service. Upon thirty (30) days notice, this Permit can be terminated with or without cause.
8. It is agreed that the Floating Home Residency Law (California Civil Code sections 800 et seq.) has and shall have no application to the underlying Permit or this Addendum hereto, as the Permittee represents the vessel has a mode of power of its own, is not designed to be used as a stationary waterborne residential dwelling and has no permanent continuous hookup to a shore side sewage system, and therefore is not a "floating home" as defined by that law.
9. The central collective purpose of the underlying Permit for slip rents and this Addendum is the provision of the underlying Permit for slip rental space, and not to create a residential tenancy of any kind, and therefore, neither Permit nor this Addendum shall under any circumstances be deemed to create a residential tenancy.
10. Any litigated disputes related to the underlying Permit and this Addendum thereto shall be litigated in a court of competent jurisdiction in San Diego County, California.
11. In the event of non payment of slip rental fees or the commission of a maritime tort resulting in liability or loss by the DISTRICT, the DISTRICT (in addition to other available remedies at law and/or equity) shall be entitled to avail itself of all rights available in admiralty, including seizure of the vessel under order of a United States District Court to satisfy the DISTRICT's maritime lien, in which event the Permittee understands U.S. Marshals may order ashore anyone found aboard the vessel, including live aboards, and the cost of arrest will be borne solely by Permittee.
12. Upon execution of this Addendum, Permittee shall provide evidence of insurance, as detailed in the underlying Permit.
13. Indemnification. To the fullest extent allowable by law, Permittee shall indemnify, defend and hold harmless the DISTRICT, its officers and employees from and against all claims, demands, causes of action, lawsuits, proceedings, losses, damages, expense costs (including without limitation attorney's fees, costs and expert witness fees), judgments, penalties, and liens or every nature resulting from injury, death or damage sustained by any person, or damage to property of any kind, or any other injury or damage whatsoever, which injury, death or

Name _____

Permit No. _____

damage arises out of is in any way connected with Permittee’s use of premises or Permittee’s failure to comply with any of the obligations contained in this Agreement. Except that said indemnity shall not be applicable to injury, death or damage or damage to property arising from the sole or active negligence or willful misconduct of the DISTRICT, its officers, agents or employees.

- 14. Permittee shall not use, and shall prevent all aboard his/her vessel from using, any alcohol stove or oven while the vessel is located at the harbor.
- 15. Permittee shall not operate any business from his/her vessel while it is located at the Harbor without prior written approval of the DISTRICT.
- 16. Permittee acknowledges that the Oceanside Harbor is a Clean Marina and further, that it is a No Discharge Zone.
- 17. Permittee understands that DISTRICT cannot, and does not, provide additional protection for the Permittee or his/her family or guests or the vessel, or cars parked in the parking lot, or property contained in them, and that Permittee is solely responsible for his/her personal security and that of his/her family and guests, and for the security of his/her vessel, car and the items contained therein.
- 18. The terms contained within this Addendum accurately reflect the complete understanding of the parties and any modifications to this document must be written and executed by all parties to be effective.
- 19. A waiver of any provision or condition of this Addendum shall not be deemed a continuing waiver or a waiver of any other provision or condition.
- 20. Permittee has been afforded ample opportunity to fully read this Addendum and the underlying Permit and to consult with counsel prior to its execution, and by executing this document attests that he/she has read, understands and agrees to abide by each and every term herein.
- 21. Permittee attests that he/she is legally entitled to bind the vessel to all terms of this Addendum and the underlying Permit, that he/she is not, at the time of reviewing and executing this document, under the influence of alcohol, medication or drugs, and that he/she has reached the age of legal majority and is not legally incapacitated or otherwise unable to fully understand and appreciate each and every term contained in this Addendum and the underlying Permit.

I understand that prior to approval of my live aboard status; I will demonstrate the seaworthiness of my vessel by piloting it to the Guest Check- In slip, under its own power, for general inspection of the vessel’s condition to determine its seaworthiness and conformance with health, safety and habitability standards. Also, a specific inspection, including onboard marine sanitation devices and required boating safety equipment, will be conducted annually. I also understand that any violation of City, State or Federal laws applicable to vessel, boating law, or live aboard regulations will be cause for cancellation of my live aboard status at any time.

PERMITTEE SIGNATURE: _____ DATE: _____

INSPECTING OFFICER: _____ APPROVED: _____ DISAPPROVED: _____

HARBOR MANAGEMENT APPROVAL: _____ DATE: _____

Marina Liability Insurance Requirement Survey
31-May-11

<u>MARINA</u>	<u>PRIVATE/PUBLIC</u>	<u>LOCATION</u>	<u>REQUIREMENT</u>
Alameda Marina	Private	San Francisco Bay	250,000
Alamitos Bay Marina	Public	Long Beach	100,000
Anacapa Isle Marina	Private	Channel Islands	300,000
Avalon	Public	Catalina Island	300,000
Bahia Marina	Private	Channel Islands	300,000
Ballena Isle Marina	Private	San Francisco Bay	300,000
Bayside Village Marina	Private	Newport Beach	500,000
Berkeley City Marina	Public	San Francisco Bay	300,000
Brickyard Cove Marina	Private	Richmond	300,000
Channel Islands Harbor Patrol	Public	Channel Islands	100,000
Channel Islands Landing	Private	Channel Islands	300,000
Chula Vista Marine	Private	San Diego Bay	300,000
Dana Point Marina	Private	Dana Point	300,000
Emery Cove	Private	San Francisco Bay	500,000 1M for boats over 41'
Emeryville Marina	Private	San Francisco Bay	300,000
Fortman	Private	San Francisco Bay	100,000 300K for >50'
Glen Cove Marina	Private	Vallejo	300,000
Grand Harbor	Private	San Francisco Bay	300,000
Half Moon Bay	Private	San Diego Bay	500,000
Harbor Island West	Private	San Diego Bay	500,000
Jack London Square Marina	Private	San Francisco Bay	300,000
Kona Kai Marina	Private	San Diego Bay	500,000
LB Shoreline Marina	Public	Long Beach	100,000
Loch Lomond Marina	Private	San Francisco Bay	1,000,000
Marina Bay	Private	Richmond	500,000
Marina Village	Private	Mission Bay	500,000
Marina Village	Private	San Francisco Bay	300,000
Marriott Marina	Private	San Diego Bay	500,000
Monterey Harbor	Public	Monterey	0
Morro Bat State Park	Public	Morro Bay	300,000

Marina Liability Insurance Requirement Survey
31-May-11

<u>MARINA</u>	<u>PRIVATE/PUBLIC</u>	<u>LOCATION</u>	<u>REQUIREMENT</u>
Oceanside Harbor	Public	Oceanside	0 Proposed - 300 to 500K
Oyster Point	Public	San Francisco	300,000
Peninsula Yacht Marina	Private	Channel Islands	300,000
Pier 32	Private	San Diego Bay	500,000
Pier 39	Private	San Francisco	500,000
Pillar Point	Public	San Francisco	300,000
Pittsburg Marina	Public	Pittsburg	300,000
Point Loma Marina	Private	San Diego Bay	500,000
Port San Luis	Public	Port San Luis	salvage
Rainbow Marina	Public	Long Beach	100,000
San Diego Yacht Club	Private	San Diego Bay	500,000
San Leandro	Public	San Leandro	300,000
Santa Barbara Marina	Public	Santa Barbara	0
Santa Cruz Harbor	Public	Santa Cruz	0
Sea World Marina	Private	Mission Bay	300,000
Shelter Cove Marina	Private	San Diego Bay	500,000
South Beach Harbor	Public	San Francisco Bay	300,000
Spud Point Marina	Public	Sonoma County	0 Risk Manager allowed them to waive insurance since they are mostly commercial.
Vallejo Municipal Marina	Public	San Francisco Bay	300,000
Ventura Harbor Village Marina	Public	Ventura	300,000
Ventura Isle Marina	Private	Ventura	300,000
Ventura West	Private	Ventura	300,000
Vintage Marina	Private	Channel Islands	300,000

Sources: 2010 Santa Barbara Waterfront Department Survey, 2010 Long Beach Marine Bureau Survey, San Diego Dockmasters Group, California Harbor Masters and Port Captains.

**Pleasure Craft (Non-Commercial use) ANNUAL INSURANCE COSTS
 BERTHED: OCEANSIDE HARBOR**

Notes:

These are ESTIMATES ONLY and include basic coverages for Liability at a \$100,000 CSL and a \$300,000 CSL No Hull Coverage included.
 Vessel age used was 1999 and Operator had no negative MVR and boating experience.
 Water Safety Course required.

Vessel Size:	22 ft / 225HP	28 ft / 350HP	32 ft / 450HP	40 ft / 275HPx2
	100,000	100,000	100,000	100,000
	\$ 200	\$ 400	\$ 450	\$ 500
				\$ 500
				\$ 550