Office of the City Manager

REVISED
AGENDA MATERIAL

Meeting Date: **July 25, 2023**

Item Number: **19**

Item Description: **$5.5M Loan for D and E Dock Replacement Project at the Berkeley Waterfront**

Submitted by: **Scott Ferris, Director, Department of Parks, Recreation, and Waterfront**

In the FISCAL IMPACTS and CURRENT SITUATION of the report, Option E has been revised with minor edits to provide more clarity.

The revised RECOMMENDATION and the NOW, THEREFORE BE IT RESOLVED clause in the second Resolution now reads as follows:

NOW THEREFORE, BE IT RESOLVED that the Council of the City of Berkeley authorizes an internal loan of $5.5M from the Workers Compensation Fund, and repayment of this loan using the total amount of Transient Occupancy Tax (TOT) revenue generated in the Waterfront starting in FY25 until the loan is paid off, plus an additional $500,000 one-time interest payment from the TOT.

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Office of the City Manager

CONSENT CALENDAR
July 25, 2023

To: Honorable Mayor and Members of the City Council

From: Dee Williams-Ridley, City Manager

Submitted by: Scott Ferris, Director, Parks Recreation & Waterfront

Subject: $5.5M Loan for D and E Dock Replacement Project at the Berkeley Waterfront

RECOMMENDATION

Adopt a resolution authorizing the City Manager to implement one of the following options: (1) execute an Amendment to the existing $5.5M Loan Agreement with the State Division of Boating and Waterways, based on one of four proposed alternatives described below in CURRENT SITUATION; or (2) ~~adopt a resolution authorizing the City Manager to implement~~ an internal loan of $5.5M from the Workers Compensation Fund ~~and/or the Stability Reserve Fund and/or Catastrophic Reserve Fund as determined by the City Manager~~, and repayment of this loan using~~from~~ the total amount of Transient Occupancy Tax (TOT) revenue generated in the Waterfront starting in FY25 until the loan is paid off, plus an additional $500,000 one-time interest payment from the TOT. ~~and/or the Marina Fund with the terms to be determined by the City Manager.~~

FISCAL IMPACTS OF RECOMMENDATION

In Options A through D, a loan from the State Division of Boating and Waterways (DBW) will cost the City approximately $4.5M in interest payments to DBW over a thirty- year period, an additional $250,000 - $375,000 in loan processing fees, and could hold $2 million in City funds in a separate account. An internal City loan as described in Option E will result in the loss of some interest earned by the Workers Compensation Fund, but the loan will be paid back to the Workers Compensation Fund using the total amount of Transient Occupancy Tax (TOT) revenue generated in the Waterfront starting in FY25 until the loan is paid off, plus an additional $500,000 one-time interest payment. This option will save the Marina Fund up to $10M in principal and interest payments. The use of the TOT will result in a loss of approximately $1M-$1.5M per year of General Funds revenue until the loan has been repaid.
~~An internal City loan as described in Option E will result in some initial loss of some interest earned by City funds, but it will be paid back to the City by the Marina Fund subject to terms determined by the City Manager. Additionally, it will save the Marina Fund up to $4.5 million in interest payments.~~

CURRENT SITUATION

Since 1964, the City has obtained four large loans from DBW in order to build and renovate our Waterfront docks, parking lots, utilities, breakwaters, restrooms and complete dredging: 1964 ($1.8M); 1971 ($1.5M); 1985 ($2.0M); and 2001 ($7.8M).

Three of these four loans have been repaid (using the Marina Fund). Currently, the Marina Fund is paying off the $7.8M loan authorized in 2001 (but not fully spent until 2010) and is scheduled to be paid off in 2040.

The City applied for the latest $5.5M DBW loan in 2019 to replace the D and E docks. This $8.26M project is 90% designed and will be funded by the following four sources: the current DBW loan, Measure T1 ($684,000), the State Coastal Conservancy (SCC) grant ($1.5M), and the Marina Fund ($585,000 – portion from Doubletree Hotel Capital Contribution). After a visit from DBW commissioners and staff in 2020, the $5.5M loan was granted and executed by the City Council on March 9, 2021 (see Attachment 3).

In the late spring of 2023, DBW staff raised concerns that the language in our City Council resolution does not adequately protect them from default and that the City's Marina Fund did not meet certain loan criteria. In recent years, the cities of Stockton, Martinez and Petaluma encountered problems repaying their DBW loans, and in 2023, based on these and other state budgetary issues, DBW's entire state loan program may be at risk. DBW staff recently noted that the City's Marina Fund has continued to deteriorate since agreeing to the loan in 2020, raising their concerns about the City's ability to pay debt service not just on the new loan, but on the existing loan from 2001. These two loans will result in a combined total of over $800,000 annual debt service payment from the Marina Fund to DBW. On June 23, 2023, the DBW Commission voted 4-1 to approve the DBW staff recommendation that they allow the City to proceed with the $5.5M loan as long as the City complies with options A, B, C, or D described below. Attachment 4 includes the detailed report and an executive summary from DBW staff.

DBW Option A

Formalize a City financial process whereby a subaccount within the Marina Fund is established solely for the purpose of repaying all outstanding DBW loans. This subaccount must be fully funded with $2 million. Funds in this subaccount may only be used for DBW loan repayments and the subaccount must be fully refreshed within 30 days of each loan payment. The subaccount must be fully funded each fiscal year before Marina Fund revenues are used for any other purpose. The subaccount shall remain fully funded until either this loan is fully repaid or until the City demonstrates to DBW for twelve (12) consecutive months that the Marina Fund has achieved the income/expense ratio and the debt service coverage ratio that DBW normally requires. The City would agree to maintain these ratios in the Marina Fund for the life of the loan. In the event of default, the subaccount shall be used to make loan payments and to cure any deficiencies in maintenance or operations.

The General Fund would be required to provide $2M to the Marina Fund. Benefits of this approach, as opposed to Option C, include: (1) the City has more control over the subaccount as DBW is not a signatory; (2) no cost to create a subaccount; (3) the City would still earn interest on the $2M in the subaccount. It should be noted that restricting $2M in City funds to the Marina Fund subaccount until it meets the required DBW ratios will limit the City's ability to use these funds for other City needs.

DBW Option B

Formalize a City financial process whereby non-boating-related waterfront expenses will be paid from a specified source other than the Marina Fund, or establish an alternate revenue source (or sources) within the Marina Fund, not to include boating-related revenues, to off-set all non-boating-related expenses. Loan funds would be made available after this process is implemented and once the City demonstrates to DBW for twelve (12) consecutive months that the Marina Fund has achieved the income/expense ratio and the debt service coverage ratio that DBW normally requires. The City would agree to maintain these ratios in the Marina Fund for the life of the loan. ***Note***: The Loan agreement will not be extended beyond the DBW funding availability, which currently expires June 30, 2026. To meet this deadline, the conditions noted above must be met, and loan funding requested no later than February 1, 2026.

This option requires an influx of General Fund or other revenues to the Marina Fund or the transfer of expenses to other funds. This option could delay the D and E dock replacement project by at least a year because of the 12 months period required to meet DBW ratios. This option helps address the long-standing financial issues related to the Marina fund by using other City funds.

DBW Option C
As a substitute for meeting the loan ratio conditions DBW normally requires, no later than March 31, 2024, the City shall establish an escrow account funded with $2 million in City funds. The funds in this account shall be held in reserve to ensure payment of debt service on both the DBW loan currently in repayment and this new loan. The escrow account shall remain fully funded until either the loan is fully repaid or when the City demonstrates to DBW for twelve (12) consecutive months that the Marina Fund has achieved the income/expense ratio and the debt service coverage ratio that DBW normally requires. The City would agree to maintain these ratios in the Marina Fund for the life of the loan.

The General Fund would be required to provide $2M to a third-party escrow account which DBW would be a signatory to and could limit any use of escrow funds. This is the least desirable option since it requires that we establish an escrow account that strictly limits City access to the principal and interest in the account, and the escrow company will charge fees to establish and maintain the account.

DBW Option D
As a substitute for meeting the loan ratio conditions DBW normally requires, no later than March 31, 2024, the City shall obtain a surety bond naming DBW as its beneficiary. The City shall bear all expenses and other obligations associated with obtaining and maintaining the surety bond. The surety bond shall be in the amount of the outstanding principal and shall remain fully funded until either the loan is fully repaid or until the City demonstrates to DBW for twelve (12) consecutive months that the Marina Fund has achieved the income/expense ratio and the debt service coverage ratio that DBW normally requires. The City agrees to maintain these ratios in the Marina Fund for the life of the loan.

Staff estimate that this one-time fee for the surety bond will be an additional $250,000 to

$375,000. This option would require the least amount of City cash up front and could be the least expensive of the DBW options in the long-term if we are unable to meet the required ratios in Marina Fund over the next several years.

Option E
City of Berkeley Internal Loan
On June 22, 2023, the Council Budget and Finance Committee recommended that the City pursue an internal loan from an existing City fund instead of using the California Division of Boating and Waterways loan. This would involve borrowing the $5.5M from an existing City fund and paying the loan back with either non-Marina Fund sources or Marina Fund generated revenue once the Marina Fund becomes healthy again. A lower than 4.5% rate would save the Marina Fund significant debt service costs as the DBW loan has a 4.5% interest rate that will result in a~~is estimated to~~ cost of approximately $4.5M in interest over the life of the loan (30 years). ~~An additional benefit might be that another City fund would benefit from this interest.~~

City staff recommends that an internal loan of $5.5M come from the Workers Compensation Fund. This fund is relatively healthy and can sustain such a loan given ~~/or~~ the relatively short time frame for repayment. Other options considered included the use of the General ~~Stability Reserve~~ Fund reserves, specifically the ~~and/or~~ Catastrophic Reserve and the Stabilization Reserve. As stated within the adopted General Fund Reserve Policy by Council, "a Stability Reserve will be maintained to mitigate loss of service delivery and financial risks associated with unexpected revenue shortfalls during a single fiscal year or during a prolonged recessionary period. The purpose of the Stability Reserve is to provide fiscal stability in response to unexpected downturns or revenue shortfalls, and not to serve as a funding source for new programs or projects." The policy also states that "a Catastrophic Reserve will be maintained for the purpose of sustaining General Fund operations in the case of a public emergency such as a natural disaster or other catastrophic event. The Catastrophic Reserve will be used to respond to extreme, onetime events, such as earthquakes, fires, floods, civil unrest, and terrorist attacks. The Catastrophic Reserve will not be accessed to meet operational shortfalls or to fund new programs or projects."

While one could argue that the unanticipated revenue shortfalls in the Marina resulted in the change in the pro forma that led to the recent State conditions pertaining to the loan, City staff maintain that it is prudent to take a strict interpretation of the use of the reserves so that funding is available for situations that clearly fall within these parameters, such as the loan to the Camps Fund to rebuild Tuolumne Camp after a fire or the use of reserves during the COVID-19 pandemic. In addition, currently the funding to reserves is at 14%, which is approximately halfway toward the Council goal of 30%.

City staff recommend that the~~that~~ repayment of this loan come from the Transient Occupancy Tax (TOT) revenue generated in the Waterfront by using the total amount available each year, starting in FY25, until the loan amount, plus $500,000, is paid off. The TOT generated in the Waterfront goes to the General Fund and is used for citywide operations and capital projects. Repayment of this loan using this revenue source will reduce available funding that would be used for other purposes over the next few years. In FY22-24, the Waterfront has received just under $5M to support capital projects and operations from General Fund, American Rescue Plan Act, and the Capital Improvement Fund. The use of the TOT to pay back the internal loan may be considered as continued General Fund support to the Marina Fund. However, rather than directly offsetting the operating shortfall within the Marina Fund, the General Fund would be providing a loan for a major capital project that will increase safety and the Marina's ability to generate revenue~~with the length of repayment and associated fees to be determined by the City Manager~~.

FY23 TOT revenue generated in the Waterfront ranges from $1,000,000 to $1,700,000 annually. The loan repayment plan will annually transfer the waterfront TOT revenues back into the Workers Compensation Fund. This annual transfer will replenish the fund quicker and also limit the impacts of the loan on the balance of the fund. If revenues are collected at the high-end, the loan can be repaid within the next three to four years. The term of the loan is at an annual interest rate of 2.8%, which translates to a total loan cost of approximately $500,000 with a proposed debt schedule utilizing a $1,000,000 annual repayment.

This option is the best option for the Marina Fund because it would allow the City to complete the D & E Dock Project much sooner and at a lower cost (construction costs become drastically more expensive each year), and any interest required by an internal loan would be paid back to the City from revenues generated at the Waterfront instead of to an outside entity (DBW). However, it may not be financially feasible for the General Fund to both forgo the loss of the TOT to repay the loan and also offset the projected operational loss at the Marina Fund given limited resources and other competing priorities. Based upon the projected Marina Fund operating shortfall, the amount of General Fund subsidy could reach $2.6M in FY 25 ($1M-$1.5M in TOT and $1.1M in operating shortfall), $2.1M in FY 26 ($1M-$1.5M in TOT and $660k in operating shortfall), $1.7M in FY 27 ($1M-$1.5M in TOT and $200k shortfall) and $1M-$1.5M in FY 28 (TOT only).

BACKGROUND

Marina Fund History

In 1964, the Council passed a resolution creating the Marina Fund.[1] The purpose of the Fund was to receive a $1.8M loan from the State to build the Marina, including a breakwater, dredging, adding 600 new slips to the existing 200-slip marina, slip utilities, lockers, pilings, roads, parking lots, pathways, landscaping, Marina office building, restrooms, bait shop, and chandlery. The loan required that revenue from slips and future hotel and restaurant leases would cover the costs of debt service, maintenance, and operations of the Waterfront.

In 1970, the City took on a second State loan to increase renovated slips to 1,000, complete the upland areas and sailing basin south of University Ave. In the 1970s and 1980s, the City converted the North Dike Landfill into a new park (initially known as North

[1] See Resolution 39,950-N.S. to Establish the Berkeley Marina Fund for Small Craft Harbor Loan, May 12, 1964.

Waterfront Park, later renamed Cesar Chavez Park) using grants and other local funding. However, by the late 1990s, the Marina Fund showed signs of distress. Budget updates and fee reports continually described structural deficits threatening to exhaust Marina Fund reserves. For example, Council minutes from November 9, 1999 note:

> "…The Marina is significantly under-funded and there is no current source of funds to implement core capital projects while maintaining existing Marina operations…Without a commitment by the Council to actively seek additional sources of ongoing funding beyond non-recurring grants, Marina infrastructure will continue to deteriorate..."[2]

Marina Fund Structural Issues

In recent years, the infrastructure at the Waterfront has experienced significant failures such as deteriorating dock systems, the closing of the Berkeley Pier, and crumbling roadways and parking lots. Due to insufficient revenues, a capital replacement fund for this infrastructure was never established. Instead, infrastructure replacement has been funded through a variety of grants, loans, the Marina Fund when possible, and most recently, one-time allocations from the General Fund and the T1 Bond Measure.

Additionally, the Marina Fund – technically an enterprise fund with an expectation that revenues cover expenses – has been expected to cover all aspects of the Waterfront including recreational activities and park expenses at Cesar Chavez Park, Shorebird Nature Center and Park, Adventure Playground, and at the South Cove area.

Until recently, staffing reductions and deferral of capital and maintenance kept the Marina Fund solvent. But over the last several years, as capital infrastructure further deteriorated and staffing levels could not be further reduced, Marina Fund revenue could no longer to cover basic operational costs. This was exacerbated in 2019 with COVID-19, which significantly reduced hotel and restaurant lease revenue at the Waterfront.

Since 2021, General Fund support has been needed to maintain Waterfront operations. The Council authorized transfers to the Marina Fund of $1.4M in FY22 and $1.15M in FY23 using American Rescue Plan funding to keep the fund solvent. Earlier in 2023, Council solved the anticipated FY2024 $800,000 structural deficit by eliminating one year of Workers Compensation fees, funding Waterfront capital expenditures with General Fund, and using Parks Tax to cover parks-related expenses at the Waterfront. In addition, Council allocated $1.5M from the City's Capital Improvement Program (CIP) Fund over two years to fund the Marina Piling Replacement project ($850,000 in FY23; and $650,000 in FY24).[3] Yearly transfer of City funds to cover the Marina Fund structural gap will still be needed at least through FY2027 in order to maintain operations and complete critical infrastructure projects.

Current Marina Fund Projections

[2] See p.2 of Waterfront / Marina Fund Update, April 12, 2018 for a summary of budget reports from 1999-2017.

[3] This contract has been fully executed and pre-construction has begun.

Attachment 5 includes an updated Marina Fund forecast, which reflects several improved conditions.

- Berth slip occupancy is improving. Marina berth occupancy has steadily increased, reaching 85.5% percent in June 2023 – a level not reached since 2015. Table 1 shows the average annual level of occupancy for the last 15 years. With this latest surge in berth rentals, we are projecting the 2023 average occupancy to reach 83%; and 2024 to increase to 86%. Each 1% is worth approx. $50,000 in Marina Fund annual revenues.

Table 1 - Berth occupancy rate (average of Jan and July for each year)

Years	**Occupancy**
2009	94%
2010	92%
2011	85%
2012	85%
2013	88%
2014	87%
2015	87%
2016	83%
2017	80%
2018	81%
2019	78%
2020	78%
2021	79%
2022	80%

- Capital investments are paying off. Over the past 15 years, there has been a surge of capital investment in the Waterfront with more than $55M from loans, grants, local funds, and most recently $15M in a State earmark for Berkeley marina and pier projects.

- New fee increases were approved by Council. For the first time since 2015, the City is increasing slip fees – the largest source of revenue for the Marina. For the past several years, fee increases were not deemed appropriate due to safety, security and infrastructure problems. But safety and security efforts are making a difference, with security cameras in parking lots, increased presence of Waterfront monitor staff, and the Berkeley Police Department Traffic Bureau's move to the Waterfront office space at 125-127 University last year. In addition, several dock repairs and renovations to slipholder restrooms are addressing longstanding customer concerns. The new fees include 3% increases over each of the next three years; along with larger increases in high occupancy areas like the Dry Storage spaces.

- Lease revenue is improving as the Doubletree and Skates recover from Covid and percentage rent levels increase. If a 199 Seawall lease can be secured in the next year, these figures will grow even more.

- Debt service payments on the new loan are delayed a year. The projected first debt service payment of $342,000 on the new $5.5M loan must be made the August following the first disbursement. This was initially planned to occur in August 2023; but is now anticipated to be August 2024. This creates a savings in FY24 of $342,000.

- Interest income increased. High interest rates in FY23 generated $110,000 more in new revenue to City funds than the prior year.

Together, these conditions result in improved revenue projections, which reduce the level of deficit in each year. The latest projections show the annual deficit decreasing from $1.5M in FY25 to $500,000 in FY27. It should be noted that these projections include approximately $340,000 each year of additional payments to DBW for the $5.5M construction loan.

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE CHANGE
There are no environmental impacts associated with the recommendation contained in this report.

RATIONALE FOR RECOMMENDATION
A loan of $5.5 million will allow the City to complete the D&E Dock Replacement Project at the Berkeley Waterfront.

ALTERNATIVE ACTIONS CONSIDERED
None

CONTACT PERSON
Scott Ferris, Parks, Recreation & Waterfront, 510-981-6700
Christina Erickson, Parks, Recreation & Waterfront, 510-981-6703

Attachments:
1: Resolution
2: Resolution
3: DBW Loan Council Resolution, March 2021
4: DBW Summary Report, June 2023
5: Marina Fund Forecast, June 2023

RESOLUTION NO. -N.S.

$5.5M LOAN FOR D AND E DOCK REPLACEMENT PROJECT AT THE BERKELEY WATERFRONT

WHEREAS, in 2019, the City applied for a $5.5M DBW loan to replace the D and E docks at the Berkeley Waterfront; and

WHEREAS, after a visit from DBW commissioners and staff in 2020, the $5.5M loan was granted and executed by the City Council on March 9, 2021; and

WHEREAS, in the late spring of 2023, DBW staff raised concerns that the language in our City Council resolution does not adequately protect them from default and that the City's Marina Fund did not meet certain loan criteria. In recent years, the cities of Stockton, Martinez and Petaluma encountered problems repaying their DBW loans, and in 2023, based on these and other state budgetary issues, DBW's entire state loan program may be at risk. DBW staff recently noted that the City's Marina Fund has continued to deteriorate since agreeing to the loan in 2020, raising their concerns about the City's ability to pay debt service not just on the new loan, but on the existing loan from 2001. These two loans will result in a combined total of over $800,000 annual debt service payment from the Marina Fund to DBW; and

WHEREAS, on June 23, 2023, the DBW Commission voted 4-1 to approve the DBW staff recommendation that they allow the City to proceed with the $5.5M loan as long as the City complies with one of options A, B, C, or D described in the report above; and

WHEREAS, the current D & E Dock Replacement Project totaling $8.26M is 90% designed and will be funded by the following four sources: the current DBW loan, Measure T1 ($684,000), the State Coastal Conservancy (SCC) grant ($1.5M), and the Marina Fund ($585,000 – portion from Doubletree Hotel Capital Contribution).

NOW THEREFORE, BE IT RESOLVED that the Council of the City of Berkeley authorizes the City Manager to execute an Amendment to the existing $5.5M Loan Agreement with the State Division of Boating and Waterways, based on one of four proposed alternatives (A through D) described in the council report as determined by the City Manager.

RESOLUTION NO. -N.S.
$5.5M LOAN FOR D AND E DOCK REPLACEMENT PROJECT AT THE BERKELEY WATERFRONT

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