



Alison Madden &lt;maddenlaw94062@gmail.com&gt;

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**Re: [EXTERNAL]Re: Oyster Point**

1 message

**Alison Madden** <maddenlaw94062@gmail.com>

Wed, Dec 28, 2022 at 11:20 AM

To: James Pruet &lt;jpruett@smharbor.com&gt;

Cc: "Christina Fernandez (christina.fernandez@ssf.net)" &lt;Christina.Fernandez@ssf.net&gt;, John Moren &lt;jmoren@smharbor.com&gt;

Hi,

As a slight follow on, it was both Jim Smith and Anniken who spoke of 'deadlines' for people come over, not assistance from South City. Also South City expressly put on the attached documents I sent the other day, from the town hall, that South City was 'not' offering any compensation, no monetary relief. They have been offering all kinds of assistance, but they never inquired if someone met a deadline. The "deadline" reference was communicated to me as a "move over" deadline...

Just for your info. Again, I think this is all just natural human behavior, that people make assumptions, or take what one person said or did and then work with it. But this is why I raised: "no deadline" for anything, no end-date of Aug 31, 2023, no obligation to move before April 1 2023 and no obligation to show one has met a high or material burden by then, because of the realities of how slips work and the fact that people should not have to move from their community and/or undertake a large commute any sooner than absolutely required, and again, of course, going off total slips vs. occupancy for the 10%.

Also I can do a public record act request or. maybe even just look at BCDC's site for the permit, so I would very much appreciate if you could or would send the permit and any applicable amendments. It may be very helpful in working out some of the gaps.

Final final, I believe I noticed that "extended stays" were worked into liveaboard status due to there "being no extended stays". I agree with the concept and position that "extended stay" is not a thing, I've been telling people this for years. It's one thing to have 1 or 2 bona fide actual "cruisers" that come to a city and stay for six weeks or even six months, and allowing such a special use-case to be "extended stay". But it was something that was gamed for decades in my opinion to exceed the 10% of slips that permits allow. This goes for "tow boats" or "off papers" as we call it at OCM, or other contrivances. So I appreciate the tidiness of cleaning that up. I'm just wondering if they were given LA slips preferential to anyone else on the waiting list at the time, or matriculating even an OCM person who also was on the list over.

No one expects perfection, but fairness, flexibility, compassion and awareness, and (again thank you) continued communication are very much appreciated! ;-)

Thanks,  
Alison

On Tue, Dec 27, 2022 at 9:05 PM Alison Madden <maddenlaw94062@gmail.com> wrote:

Jim,

First, thanks for the back and forth. On one hand, I did say before that I believe intent is one thing and then a 'game of telephone' can be another. I "do" believe a lot of these things I raised are different parties working in their silo and then overlapping but not all at one table.

As to the April 1 date, that's less than six months from Oct 15, and only a little more than six months from Sept. 15, the day that BCDC commissioners approved the Lol, whereas I think even "they" assumed the "one year" would be

from Oct 15, the noticed lease termination date. Of course there should be a little flex to account for: (a) a Town Hall 9/21/2022 where people first learned of the details; (b) Oct 15 as the end date that many people considered to be their "out date" and (c) people moving in between 9/21 and 10/15. I hardly think BCDC would have the granularity or desire to track "day by day" until it says "A-ha! On x day Oyster Point reached it's 10% so "that very day" is an enforcement trigger.

I can tell you that the "Commissioners" on 9/15, had ZERO idea that a six month metric would be inserted. Their first queries off the bat were "is one year even enough for these people" and "isn't the 10% a random thing we just picked out of thin air in the 80s". (Pretty much to that effect). I assume you were on the BCDC zoom that day, or present in person. I was there in person. Many LAs (liveaboards) spoke via Zoom, others in person. The Commissioners had a substantial back and forth. NO ONE thought that someone would insert a six month timeframe as a "check in" toward tracking progress for being out by Aug 31.

Also I don't think the Commissioners thought the end date would be Aug 31. But that's what the docs say. That's six weeks shy of Oct 15.

You say below that the check in was your idea and "It is a forced check in with the Harbormaster and SSF on progress towards vacating the slip on or before the October deadline".

Again, I think you guys made the deadline Aug 31. Also I spoke to Anniken Lydon of BCDC as noted, and she did think that South City and the District would work out a plan for compliance, but this is a pretty short time frame.

You say "progress toward vacating by October ..." But that really means that you made people start looking now, in the Fall and Winter, for slips and through the first quarter of 2023. If they find a slip, they'd have to take it. Slips go fast. So really what if someone just says "fine, I want to be in south city through Sept until Oct 15" and I will move my boat to the Delta if I don't find a local slip. Why can't they do that? Why do they have to show anything as of April 1? If you know boat slips, and I know you do, it means making people move by April 1. Also the City material said "every effort" and the district info also had kind of a material standard.

In any event, I would like you to acknowledge that the district is the one that said "BCDC's policy of 10% of occupied slips". First, this is "not" BCDC policy. Second, if that's what is referenced in the permit, I would expect the inquiry not to be "reaching out to them to ask them what they mean" but to tell them it's just plain wrong. I have not seen it in any other permit.

Also, I am aware of many BCDC permits, which say "no houseboats" etc. This is not supported by the McAteer-Petris Act. Also the presence of liveaboards is not "solely " for safety and security. There has been an ENORMOUS amount of bureaucratic creep that is not supported by either the MPA or the Bay Plan. This is why our group Liveaboards United! and S.F. Bay Marinas for All, Inc. are advocating to the BCDC to 'fess up and start cleaning up this creep. It's not fair and it is interfering with a free flow of people and property and with property values, making people's crafts less valuable due to misunderstandings (i.e. the ridiculous fear of a "flat top" vessel form factor b/c it may be called a "houseboat" (colloquially, as a descriptor), when the craft has propulsion and is navigable).

I am bound and determined to ensure the BCDC honors the intent of the Legislature, not its own bureaucratic staff. We actually SUPPORT harbormaster and owners and operators of marinas, because such owners, operators and harbormasters should not be acting out of fear, confusions, misunderstanding, and "certainly" not just at the mercy of the staff advising what the law is. Their lawyers is one thing, and I would push back against them, and did so in the Sept. 15th meeting, as did many COMMISSIONERS. They are policy makers, they aren't stupid.

So anyway, I do appreciate the back and forth. I would like to know what the verbiage in the permit is. It is a public document after all. It is not solely at the advisement of enforcement staff to say what it means. They definitely need to be checked.

I am on the verge of bringing a dec relief and injunctive action, and a claim for a taking, as my WW2 craft, which has propulsion, has been denied at six marinas, even though it's a vessel landing craft, with a designer cabin on top. I paid \$100K and it's worth \$500K in a slip in Marin. And no one will allow it, even Jim Smith of the HD would not put it on a wait list for OPM. I am not talking about suing any marina or harbormaster, but the denials and all the comm and emails regarding it will be evidence in my action vs. BCDC.

I am beyond hopping mad and sick of BCDC by now....

Thanks,  
Alison

On Tue, Dec 27, 2022 at 4:31 PM James Pruet <jpruett@smharbor.com> wrote:

Alison,

The April date in the berthing agreement was required by the District based on my recommendation. It is a forced check in with the Harbormaster and SSF on progress towards vacating the slip on or before the October deadline.

The berthing agreement will be extended if the tenant is in good standing, i.e. the slip payments are up to date and the tenant has made some effort to vacate the slip on or before Oct 2023. The "effort or action" to vacate by October 2023 will be liberally interpreted by the District during the April 2023 slip agreement renewal.

As for vessels remaining at OCM, those vessels, if they qualify, will be allowed to obtain a slip at OPM with the same requirements as above. The October 3 deadline relates to financial assistance from SSF, not to the qualification to moor at OPM.

As to the number of authorized liveaboard slips, I noted something interesting in the permitting documents and have posed a question to BCDC for clarification. Once I hear back, I will let you know.

Jim

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**From:** Alison Madden <maddenlaw94062@gmail.com>  
**Sent:** Thursday, December 22, 2022 11:16 AM  
**To:** James Pruet <jpruett@smharbor.com>  
**Cc:** Christina Fernandez (christina.fernandez@ssf.net) <Christina.Fernandez@ssf.net>; John Moren <jmoren@smharbor.com>  
**Subject:** [EXTERNAL]Re: Oyster Point

**\*\* External Sender \*\***

Hi, All,

Here are the documents.

The first page is the checklist given at the Town Hall. It is a summary likely from South City but likely also circulated and approved by the District. It says that the first portion of what we are calling the safe harbor (from enforcement), "expires" April 1, 2023. From my understanding, the BCDC never had this concept in their minds, the commissioners that is. I also believe that even Anniken never heard of this, from my call with her. She is with BCDC, did the 9/15/2022 presentation, and handed over this issue to enforcement staff recently. I have no idea if this concept of April 1 was ever circulated to anyone at BCDC, or Supervisor Pine. Perhaps it was with BCDC "enforcement" staff, but we have no knowledge of this. We have no idea where this came from, as between City staff and the District and any other player or entity, if any. The City bullet summary says "every effort" to find a permanent home.

The next 4 pages are the District's "Relocation Interest Form and Acknowledgment". It is two documents, with the second page of each being essentially a single carryover sentence or a signature block that states agreement.

Accordingly, it's really 2 pages - the RIFA description and the application form (or statement of interest) itself.

The Summary cover page states. "per established BCDC policy, no marina may have more than 10% of occupied slips dedicated to liveaboards." Although actual #s of slips is not represented there, at the meeting, the # was presented as fairly low. If I recall correctly, it was around 29 due to 290 being represented as occupied. If the total slips is 400~ then yes, 40 would be allowed (and literally permitted).

The Summary cover page also states that the initial berthing agreement is through April 1 subject to potential extension for those in good standing including "making diligent and good faith efforts" to find a permanent slip elsewhere. This is less than the City's "every effort" but still a material measure and if such diligent and good faith efforts are made, it is understood or inherent that some would take a slip then, which is a huge impact on people's lives, having to move much sooner than the year, and even someone who might be in a reasonable spot to move off the waiting list to the permitted LA list.

In short, the April 1 date, to me, makes no sense, and introduced a real panic that had never even been seen by BCDC and, again, as mentioned above, Anniken hadn't known about it when I raised it and spoke to her in October 2022. We really ask for a thoughtful discussion on whether this April 1 time frame and even any interim step, is required to manage ultimate compliance.

And finally, it was Oct. 3. So if I got Mr. Smith's name right as harbormaster, and now that I send the documents, I was right that it was presented as "occupied slips" and this was represented as "BCDC's policy" but that is "NOT" its policy, it's total slips, and the Oct. 3 date was stated as a requirement to move over (so a condition precedent that has been described by Anniken and Mr. SMith as a "deadline").

Again, when I wrote the commissioners, I definitely said I think that these nits or nuances which have a big impact, are likely either a miscommunication or misunderstanding (Mr. Smith thinking there was ever a "deadline"), etc. are honest gaps that can be discussed. I do believe we were told or shown something by South City that referenced the 290 occupied and 29 LAs. This would be a totally understandable mistake on "their" end.

Also I wanted to clarify a fragment sentence in my first email. My clients at OCM still, actually "may" have filled out the form by Oct 3. Thus, they may have met the condition precedent in time, and thus the 'deadline' to express interest. They are still at OCM until properly noticed. Mr. Klein mentioned coming over when they are properly evicted. This may or may not occur. The lack of proper notice is a complete defense to the UDs that the developer and manager intend to bring in Jan. This will be litigated by motion and writ/appeal, and could take weeks, months or years. It may or may not be resolved by Oct. 15, 2023, Sept. 15, 2023, Aug. 31, 2023 or any other relevant date. So I hope that they who are at OCM, and/or potentially even those who did not fill out the form by 10/3/2022, because they felt they could not afford it, etc. will be allowed at any time in the year as ultimately defined...

Thanks!

Alison

On Thu, Dec 22, 2022 at 11:39 AM Alison Madden <[maddenlaw94062@gmail.com](mailto:maddenlaw94062@gmail.com)> wrote:

Thanks, if you can please provide also my email from this AM that would be great.

I did not know that you spoke at the meeting at the end. I'm not trying to be difficult, but sometimes that's hard without the back and forth we've had today by email, because the Commissioners then get your comments without the benefit of this back and forth, and it gets cemented in their minds I fear. The 'deadline' wasn't April, it was prior, and the August item is also of concern. I think the BCDC will be flexible enough to consider the year from 10/15/2022-10/15/2023, people had to maximize their financial interests and the Town Hall wasn't even until 9/21/2022 so they couldn't even start doing the forms until then. So anyway, I think there's room for nuanced changes and clearing up stuff that maybe was South City's mistake in the documents. I will find those and send ASAP.

Best, Alison

On Wed, Dec 21, 2022 at 5:29 PM James Pruett <[jpruett@smharbor.com](mailto:jpruett@smharbor.com)> wrote:

Correction, your emails were provided to the commission after the meeting today.

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**From:** James Pruett  
**Sent:** Wednesday, December 21, 2022 3:17 PM  
**To:** [maddenlaw94062@gmail.com](mailto:maddenlaw94062@gmail.com)  
**Cc:** Christina Fernandez ([christina.fernandez@ssf.net](mailto:christina.fernandez@ssf.net)) <[Christina.Fernandez@ssf.net](mailto:Christina.Fernandez@ssf.net)>; John Moren <[jmoren@smharbor.com](mailto:jmoren@smharbor.com)>  
**Subject:** Oyster Point

Alison,

Thank you for your comments and emails. Your emails were provided to the Board prior to the meeting and posted on our agenda webpage.

As a follow up to your statements today, we do base the number of permittable liveboards at Oyster Point on the number of slips, not the number of tenants. OPM has 408 slips, meaning OPM can have 41 liveboards under normal circumstance.

As to the April deadline, that is a check-in, not a deadline. The Harbor District will be checking in with the Oyster Cove tenants at OPM and see if they have an exit plan. For those who do not, the Harbor District will be working with the City to assist them. The deadline to have our liveboard population back down to 41 is October 15<sup>th</sup>.

Jim