



CITY OF MARTINEZ

**CITY COUNCIL AGENDA
June 19, 2013**

TO: Honorable Mayor and City Councilmembers
FROM: Council Marina Subcommittee
PREPARED BY: Jeffrey Walter, City Attorney
SUBJECT: Sending Letter to DBAW, State Attorney General’s Office, and State Department of Finance to Re-Convene Marina City-State Committee

RECOMMENDATION:

Discussion of and possible action authorizing the Mayor to send a letter to the State Resources Agency, Boating and Waterways Division, Parks and Recreation Department, Department of Finance and the Attorney General, requesting that these state public agencies, along with the City, re-establish and re-convene the City-State Committee charged with monitoring and overseeing the Marina.

BACKGROUND:

The Martinez Marina is unable to generate sufficient revenues to pay off existing debt, operate the marina, and perform necessary dredging. Only through extinguishing and re-structuring existing debt and obtaining new financing will the Marina be able to make the necessary improvements to transform the Marina into an operable, financially sustainable enterprise.

In 1964, the City signed a memorandum (1964 MOU) with the State whereby a City-State Committee was established and tasked with monitoring and overseeing the development and leasing of the Marina. The beneficial purposes served by this Committee have not occurred for at least two decades because the Committee has not met for that period of time. It is desirable to re-convene this Committee to ascertain whether through collaboratively working with the State the mutual goals of the entities can be achieved.

ACTION:

Motion to authorize the Mayor to send a letter to the State Resources Agency, Boating and Waterways Division, Parks and Recreation Department, Department of Finance and the Attorney General, requesting that they, along with the City, re-establish and re-convene the City-State Committee charged with monitoring and overseeing the Marina.

Attachments: Proposed letter to DBAW

APPROVED BY:

City Manager



City of Martinez

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(925) 372-3512
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D R A F T

Department of Boating and Waterways

Department of Finance

Office of Attorney General

Re: City of Martinez Marina
Request to Re-Establish City-State Committee to Oversee Revitalization of
Marina

Dear _____:

Introduction

The Martinez Marina is in trouble. Trouble that has beset the Marina and been its constant companion since the first spade of earth was turned to begin its construction in 1960. When it was first envisioned, the Marina was fully expected to be financially self-sustaining, and from its revenues both operating expenses and long term debt were anticipated to be paid. The reality, however, has been just the opposite. From 1960 to the present -- some 53 years -- the Marina was and is incapable of supporting itself. By the end of 2012, its total operating expenses had exceeded its total income by at least \$78,877. According to the Department of Boating and Waterways (DBAW), the City remains millions of dollars in debt for the loans DBAW (and its predecessors) have extended to the City for the Marina since 1960. The State Lands Commission has negotiated with the City a new, 46 year lease, which for the first time requires the City to make annual rental payments of at least \$10,000, and mandates that by 2019, the City make improvements to the Marina estimated to cost over \$6 million. Even though it was under no legal obligation to do so, the City bravely attempted to stem the flow of red ink by lending, spending or granting from its own general fund over \$2,387,742 to the Marina enterprise.

This can no longer continue.

The Marina has reached a cross-road: it must be closed, severely reduced in its scope or revitalized with the infusion of substantial sums of money accompanied by DBAW's extinguishment of the suffocating debt that has prevented the Marina from becoming self-sustaining.

The Importance of the City-State Committee Overseeing the Marina and a Request for its Re-Constitution

In a Memorandum of Agreement entered in October 1964 by the City, the then State Resources Agency, the Division of Small Craft Harbors, the Department of Parks and Recreation and the State Lands Commission (“1964 MOU”), a City-State Committee was created which was made up of representatives of the City and State of California and charged with overseeing the development and leasing of the Marina. That City-State Committee has fallen into dis-use and the principle of collaborative decision-making between the two jurisdictions that provided the foundation of those early years of the Marina no longer governs their relationship.

The Marina’s future depends upon a renewed commitment by both the State and City to work together in a collaborative manner, as envisioned 49 years ago in the 1964 MOU. Only together can the significant issues which hamper the Marina’s success be addressed and overcome. Consequently, the City requests that the City-State Committee be re-convened and meet to discuss these important issues. The City proposes that the meeting take place no later than July 30, 2013. The City’s representatives are prepared to travel to Sacramento to conduct this meeting, but it is the City’s opinion that it would be helpful to our discussions were the State’s representatives to come to Martinez to inspect the Marina before our first discussion.

Discussion of the History of the Marina and Its Difficulties

The principal cause of the inability to profitably operate the Marina has been its breakwater. It does not work. It allows so much silt to flow through it that major segments of the Marina fill with silt, preventing boats from accessing berths and, daily, from entering or leaving the Marina. Although the Marina was first constructed with over 360 berths, only 256 are presently usable and of these, only 50% are rented because, except for 8 slips, boats parked at these berths sit on silt a portion of every day. Since 1960, the various experts retained by the City to investigate how to repair or replace the breakwater have all concluded it was improperly designed. Unfortunately, this design was approved by the State Division of Small Craft Harbors and was the design upon which that agency agreed to loan the City the first \$1.3 million used by the City to construct the Marina.

From the outset the Martinez Marina was plagued with construction disputes and litigation. In 1973, the City applied to the then State Department of Navigation and Ocean Development (now, DBAW) for a \$450,000.00 loan to improve and dredge the Marina. As part of that loan application, the City submitted a July 1973 Feasibility Report. What is said in that Report about the difficulties the City was facing in constructing and operating the Marina between 1960 and 1973 describes the same problems that have repeated themselves over and over then and into the 21st century. A copy of a portion of that Feasibility Report is attached for your review. See, **Exhibit A**. From reading it you will understand why the Marina’s current difficulties are not the making of the persons who currently are employed by the City or sit as its elected officials. These are structural problems that can only be solved through intergovernmental cooperation and the infusions of substantial sums of money.

As mentioned above, in 1960, the State agreed to loan up to \$1.3 million to the City to construct the Marina. The plans and specifications, the engineering reports and the other studies that described the improvements necessary to be effected to create the Marina were submitted to the State, the State reviewed and approved them and based thereon, in January 1960, the State and the City executed a loan agreement for \$1.3 million. However, after construction began with

the use of those loan proceeds, the City and its contractor got into a dispute and construction stopped. As of 1964, the Marina remained uncompleted, siltation clogged its travel ways and litigation had erupted between the contractor, the City and the State. The State claimed that, as of April 1964, the City owed the State \$120,526.00 in accrued interest. After considerable negotiations, the parties reached a settlement and in October 1964 executed the 1964 MOU which stated in part that:

“The parties have reached an agreement designed to produce development of the harbor, settle all rights and obligations of the State and City, and provide for a resolution of the claim of [the contractor]. . . .

“The principal purposes of this Agreement are to provide for development of a harbor at Martinez that would be beneficial to the public and produce income for the State and the City, to resolve the rights of the City and the State, and to dispose of the [contractor’s] claim.” Memorandum of Agreement at p. 3 (October 1964), copy attached as **Exhibit B**.

Most importantly, the 1964 MOU stated that:

“To accomplish these purposes, the State and the City have agreed to place various parcels of land separately owned by them into a single project to be held by the City for development under the supervision of a joint committee of the City and State officials. . . .

“Thus, all City owned lands would be held by the City subject to this agreement; the State owned lands will be leased to the City and the lands so combined will be developed on a unitary basis. The income from development or sales of the lands will be divided between the State and the City as herein set forth.” *Id.* at p. 4.

The 1964 MOU created a joint “City-State Committee” to oversee the construction and future operation of the Marina. The committee consisted of representatives from each of the following:

1. State Department of Finance
2. State Attorney General
3. Small Craft Harbors Commission
4. City Council
5. City Attorney
6. City Manager

The creation of this committee and the 1964 MOU were considered by the parties to be so important that the agreement was signed by then Governor Edmund G. Brown. The agreement heralded a new beginning with both the State and the City collaboratively moving forward to assure that important waterfront lands owned by the City and the State were developed in a way that would promote the interests, not solely of the citizens of Martinez, but of the region and Northern California at large. This responsibility was not viewed as just the responsibility of the City, because these lands were to be held in trust for all of the citizens of the State of California: lands for which the State was historically responsible, but for which the State found a willing partner, namely, the City, to husband, develop and make available for use by the broader public through parks, open space and the Marina.

During the 12 years following execution of the 1964 MOU, it became apparent that a comprehensive plan was needed to develop and maximize the public use of the Martinez waterfront while at the same time assuring that natural resources were not imperiled. The City and the East Bay Regional Park District entered into an agreement to form the Martinez Waterfront Planning Agency for the purpose of conducting feasibility and preliminary design studies for a proposed regional shoreline park on the Martinez waterfront. The East Bay Regional Park District, the City, and several State Legislators collaborated to propose State legislation to implement these regional park concepts. See Resolution No. 55-76 describing these efforts, copy attached as **Exhibit C**. Pursuant to the overall effort at this time to plan for the future use of the shoreline, the City and East Bay Regional Park District adopted a Martinez Waterfront Land Use Plan governing the uses to which the waterfront property could be put.

Instrumental in the development of this Legislation to implement this new park concept was the City-State Committee created pursuant to the 1964 MOU. Indeed, through that Committee's efforts and those of other city and park officials, Senator John Nejedly was persuaded to sponsor legislation that was adopted by the State Legislature and signed by the Governor re-dividing the land along the waterfront as between the East Bay Regional Park District and the City and identifying the uses for the lands granted back to the City. The importance of the City-State Committee was acknowledged in this Legislation, where, at Section 1(f) it states with respect to same:

“In addition, the development and operation of the lands for the protection thereof and for the security of sums due under the [1964 MOU] are under the supervision of a committee made up of representatives from the City and the State, which is known as the ‘City-State Committee’.”

In said Legislation (Chapter 815 of the Statutes of 1976), copy attached as **Exhibit D**, two of the parcels of land granted back to the City were allowed to be used by the City provided that those uses were consistent and permitted by the Martinez Waterfront Land Use Plan. Moreover, all such uses were required to be “in accord with the 1964 MOU” and “the development and operation of the entire area of such parcels shall be under the supervision of the City-State Committee, in the same manner as is presently provided by [the 1964 State Lands Lease with the City] and agreements [i.e., the 1964 MOU] with respect to the lands subject to such lease and agreements.” Chapter 815 at Section 3(b).

The collaboration between the State and the City memorialized in the 1964 MOU and reaffirmed in 1976 as a critical component, through the work of the City-State Committee, in assuring the proper development and economic feasibility of the Marina and the waterfront as a whole no longer exists. The City-State Committee has not met for over 20 years. Instead of a partnership, DBAW now views the City simply as a debtor and will not offer any additional financial assistance to the City unless it brings the current mountain of debt below \$1,000,000.

All told, the City has borrowed money from the State five (5) times. Once in 1960, when it borrowed \$1.3 million. Once again in 1973 (when it borrowed \$450,000.00). In 1978 (when it borrowed \$175,000.00). In 1982 (when it borrowed \$300,000.00). And in 1984 (when it borrowed \$750,000.00). Although the 1960 loan agreement of \$1.3 million was replaced by the 1964 MOU and the debt is paid out of net income, if any, generated by the operation of the

Marina¹, the four loans made to the City between 1973 and 1984 are payable “solely from the gross revenues received by [the City] from the operation of the [Marina], prior to any other expenditures from such revenues, and such gross revenues shall constitute security for the obligation of repayment hereunder.” Loan Agreement dated December 20, 1973 at paragraph 9, p. 5, copy attached as **Exhibit E**. These four loan agreements did not address nor accommodate the City’s pre-existing and underlying obligation to pay the State \$1.3 million, plus 3% interest, under the 1964 MOU. They simply heaped debt upon debt, with their payments tied solely to “gross” revenues, irrespective whether the operations of the Marina produced or produces sufficient cash or net income in any given year to repay the amounts owed under the four loan agreements.

Because the Marina has been a marginal operation and has in many years operated in the red, these four loan agreements and the 1964 MOU have operated as a strangle hold on the ability of the City to spend the money where it is needed most, mainly, to replace the breakwater and stop the Marina from silting up.

Conclusion and Reiteration of Request

The City cannot over-emphasize the importance and urgency of re-establishing the City-State Committee. The City respectfully requests that you appoint a person from your agency to sit on this Committee and communicate this appointment to the City at your earliest convenience. Please respond to this invitation by no later than July 10, 2013.

Sincerely yours,

Rob Schroder,
Mayor, City of Martinez

Cc: _____, Executive Director, California State Lands Commission
Martinez City Council
Board of Directors, East Bay Regional Park District
Assemblyperson Susan Bonilla
State Senator Lois Wolk
Congressmen Mike Thompson and George Miller

¹Under the 1964 MOU, eighty percent (80%) of the net income is paid to the State until \$1.3 million is paid, and the remaining twenty percent (20%) is paid to the City. After the sum of \$1.3 million has been paid to the State, 80% of the net income is paid to the City and the remaining 20% is paid to the State until interest that accrued on the \$1.3 million (at 3% per year), is paid off. **Exhibit B** at p. 8.