



# NEWPORT BEACH

## City Council Staff Report

November 12, 2024  
Agenda Item No. 12

**TO:** HONORABLE MAYOR AND MEMBERS OF THE CITY COUNCIL

**FROM:** Seimone Jurjis, Assistant City Manager/Community Development Director - 949-644-3232, sjurjis@newportbeachca.gov

**PREPARED BY:** Lauren Wooding Whitlinger, Real Property Administrator - 949-644-3236, lwooding@newportbeachca.gov

**TITLE:** Amendment No. One to Lease with Newport Harbor Post No. 291 of the American Legion for Use of the Real Property and Tidelands Located at 215 15<sup>th</sup> Street

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### **ABSTRACT:**

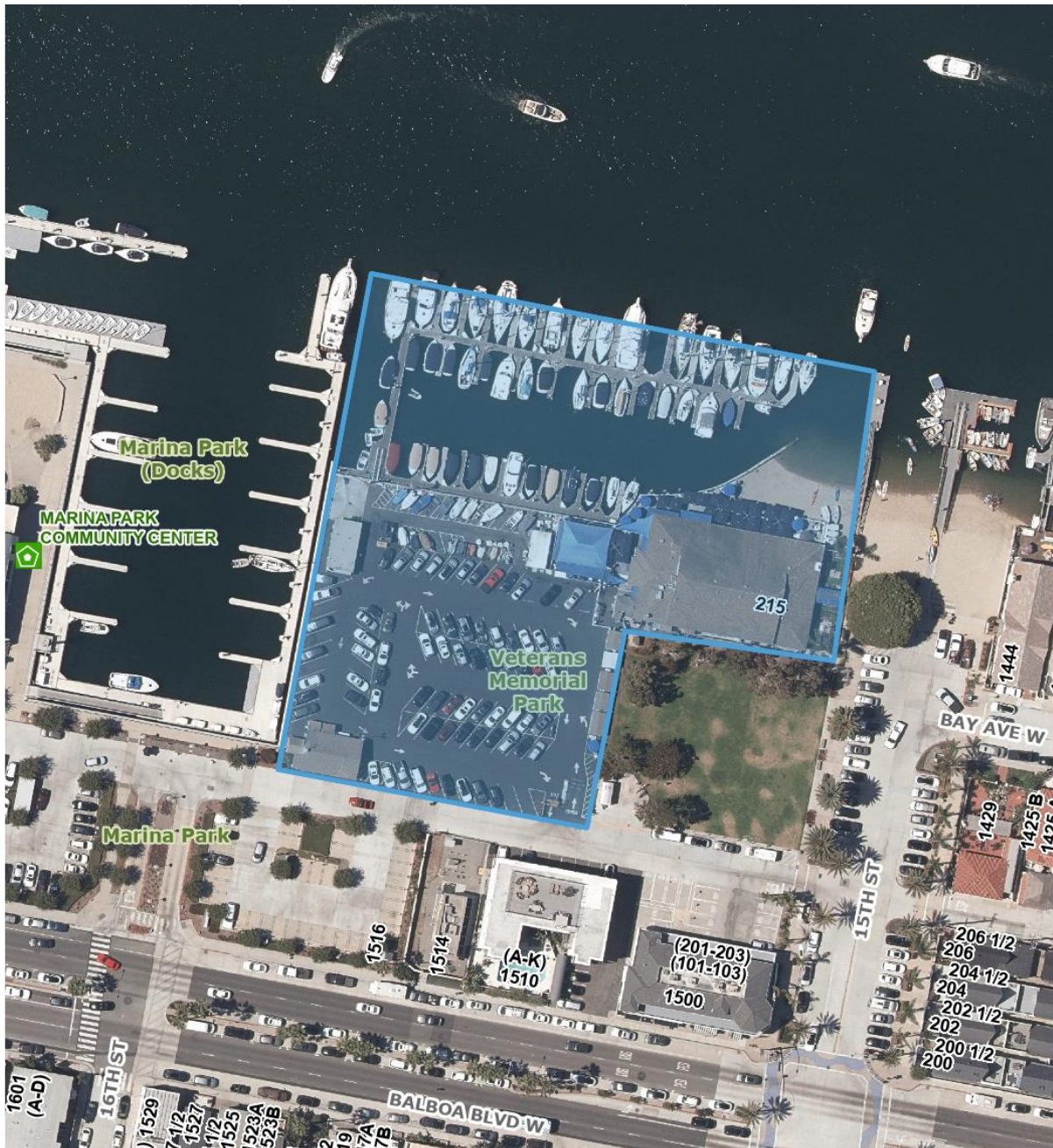
Since 1940, the City of Newport Beach has leased the site located at 215 15<sup>th</sup> Street, Newport Beach (Property) to Newport Harbor Post No. 291 of the American Legion (Legion), a non-profit corporation dedicated to serving active duty and honorably discharged active-duty veterans of the United States Armed Forces. The most recent lease agreement between the City and the Legion was executed in 2002 (Lease). For the City Council's consideration is an Amendment No. One to Lease (Amendment) (Attachment A), requested by the Legion to resolve an audit dispute by streamlining the calculation of rent for the Property and updating other terms of the Lease to conform to the City's current standards.

### **RECOMMENDATIONS:**

- a) Find this project is exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15301 (Existing facilities), and Section 15302 (Replacement or Reconstruction) of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, because this project has no potential to have a significant effect on the environment; and
- b) Authorize the City Manager and City Clerk to execute Amendment No. One to Lease Between the City of Newport Beach and Newport Harbor Post No. 291 of the American Legion for use of City Property, the uplands and adjacent tidelands located at 215 15<sup>th</sup> Street, in a form substantially similar to the amendment attached to the staff report.

### **DISCUSSION:**

The City-owned Property known as the American Legion Post is located at 215 15<sup>th</sup> Street, on the harbor side of the Balboa Peninsula adjacent to the City's Marina Park Community Center. The lease area contains approximately 56,652 square feet or 1.30 acres of dry land and approximately 40,683 square feet or 0.93 acres of water area in the harbor as shown on the map on the next page.



Blue – Lease Premises

### Lease and Rent History

The local branch of the American Legion, Post 291, was established in Newport Beach in 1934. It has leased the Property from the City since 1940, and constructed the clubhouse with a bar, restrooms, event hall, meeting rooms, and an outdoor patio, and the docks, dry storage area, marina restrooms and showers, and parking lot. Under the current Lease (Attachment B), executed in 2002, the initial 25-year term expires in 2028 and can be extended by the Legion for an additional 25 years through 2053.

The Lease provides for the Legion to use the Property to maintain a legion hall with ancillary food and drink service areas, a sandy beach, a commercial marina consisting of 49 slips with 34 dock lockers, dry boat storage and lockers consisting of 47 spaces and 43 dinghy racks, and a parking lot consisting of 26 spaces. The lease premises must also be available for use as a community and recreation center by the City and local community or civic organizations. The Legion is further required to maintain its membership as a chartered American Legion, with a minimum membership of 1,200 persons.

The City is responsible for maintenance of the vertical bulkheads serving the Property. The Legion is responsible, at its sole cost and expense, to maintain all other improvements and equipment at the Property.

For its use of the Property, under the current Lease and historic leases, the Legion has not been required to pay rent for its use of the legion hall or the food and beverage areas by its members. Use and operation of the other ancillary portions of the Property, however, like the marina (40%), boat storage (50%), and parking lot (100%) has been permitted in exchange for percentage rent to be paid to the City.

Under the current Lease, the Legion was further permitted to rent the hall to third parties for non-Legion activities and private events in exchange for payment of percentage rent of 20% to the City. The Lease requires a payment of base rent to the City each month, which is currently set at \$13,478.05. To the extent percentage rent exceeds the base rent paid in a calendar year, the Legion pays the City the difference. Total rent paid to the City for calendar year 2023 was \$155,582.46.

#### Lease Compliance Audit

As part of a routine review of lease revenues for all tenants, the City engaged with the accounting firm Davis Farr LLP in 2019 to conduct a tenant lease compliance audit for the American Legion for calendar years 2016-2018. The audit report (Attachment C) found that the Legion had underpaid rent by \$223,796. This total includes the following discrepancies:

<b>Underreported Revenue and Unpaid Percentage Rent</b>	
<u>Calendar Year</u>	<u>Incorrect Reported Revenue</u>
2016	(\$78,234)
2017	(\$78,305)
2018	(\$66,218)

In addition, the March 2018 base rent payment was overstated by \$1,039. The audit revealed that the underpayment in percentage rent stemmed from unreported revenue generated through catering and other services related to hall rentals. According to the Lease terms, such income should have been reported to the City as part of "gross sales."

The City informed the Legion of these findings in December 2020. However, the Legion disputed the City's interpretation of the Lease and conducted its own audit, which reflected an overpayment of \$220 for the same period.

Beginning in 2021, City staff, with guidance from a City Council working group, and Legion representatives met several times to negotiate a resolution. A key outcome of these negotiations is an amendment to the Lease, increasing the base rent from \$13,478 to \$18,000 per month and removing the requirement for percentage rent based on gross sales. This new structure simplifies the rent terms and helps prevent future discrepancies related to revenue reporting.

#### Major Amendments to the Lease

The proposed terms of the Amendment are summarized below:

1. After the effective date of the Amendment, the Legion shall no longer pay percentage rent. The Legion is also relieved from the obligation to pay the \$223,796 in outstanding rent, as identified by the City's tenant compliance audit.
2. Rent shall be set at \$18,000 per month, or \$216,000 per year, as of the first day of the first month after the Effective Date.
3. Base rent shall increase every five years by the greater of 10% or 75% of the cumulative amount of change in the Consumer Price Index for the previous five-year period.
4. For any work or construction to the Property that exceeds a cost of \$50,000, the Legion shall provide performance bonds and labor and materials payment bonds to the City, for an amount equal to 100% of the project costs.
5. A new section was added to prohibit noise and nuisance at the Property related to amplified sound, and the Legion will be required to comply with the City's municipal code.
6. The types and amounts of insurance coverage required under the Lease were updated to the City's current standards, and the Legion shall continue to provide certificates of insurance to the satisfaction of the City's risk manager, naming the City as additional insured.

The Amendment has been reviewed by the City Attorney's Office and has been approved as to form. The Legion has reviewed and approved the terms of the Amendment.

**FISCAL IMPACT:**

Revenues collected pursuant to the proposed Amendment, \$216,000 in annual rent, will continue to be posted to the Tidelands Fund Real Property accounts in the Community Development Department, 100-10050505-551015.

**ENVIRONMENTAL REVIEW:**

Staff recommends the City Council find this project is exempt from the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment) and 15060(c)(3) (the activity is not a project as defined in Section 15378), of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, because this approval does not authorize a specific project or project scope and therefore has no potential to have a significant effect on the environment.

**NOTICING:**

The agenda item has been noticed according to the Brown Act (72 hours in advance of the meeting at which the City Council considers the item).

**ATTACHMENTS:**

Attachment A – Amendment No. One to Lease

Attachment B – Original Lease

Attachment C – Audit Report Dated March 2, 2020