



STAFF REPORT ON PROPOSED LEGISLATION

To: Mayor Gavin Buckley

From: Teresa Sutherland, City Manager

Date: September 6, 2019

Subject: R-40-19: Classic Wooden Boat Rendezvous and Race – Docking Fee Waiver

This resolution waives the docking fees at the City Dock from September 20-23, 2019, for participants in the 2019 Classic Wooden Boat Rendezvous and Race.

City Dock was improved with grants from the U.S. Fish and Wildlife Service via the State Department of Natural Resources' Boating Infrastructure Grants (BIG). Those grants require vessels using the portions of City Dock improved with the grant funds to be recreational, transient, and 26' or more in length. Vessels operated for commercial purposes or to generate income are not "recreational," and "transient" is defined as 14 days or less. The grant also requires the City to charge a fee for dockage unless the fee waiver is approved the U.S. Fish and Wildlife Service.

Please see the attached email from Li Lia Carson from the Department of Natural Resources with the response from U.S. Fish and Wildlife Service about the proposed fee waiver. (This email was previously provided to the City Council members on August 19.) According to Ms. Caron, the City may not waive the fees for this event unless the City waived the fees for *all* vessels using the BIG-funded areas of the City Dock on September 20-23, 2019, and the vessels would still have to be recreational, transient, and 26' or longer. Waiving the fees for all vessels using the BIG-funded areas would require an amendment to this resolution, which waive the fees only for those vessels participating in the Classic Wooden Boat Rendezvous and Race.

Prepared by Teresa Sutherland, City Manager



Teresa Sutherland <tsutherland@annapolis.gov>

Re: Classic Wooden Boat

1 message

Li Lan Carson -DNR- <lilan.carson@maryland.gov>

Tue, Jul 30, 2019 at 1:45 PM

To: Teresa Sutherland <tsutherland@annapolis.gov>

Cc: Heidi Dudderar -DNR- <heidi.dudderar1@maryland.gov>, Jeannie Riccio -GOV- <jeannie.riccio@maryland.gov>, Brian Cahalan <bcahalan@annapolis.gov>, Susy Smith <sssmith@annapolis.gov>, Matthew Fleming -DNR- <matthew.fleming@maryland.gov>, Catherine McCall -DNR- <catherine.mccall@maryland.gov>, Carla Fleming -DNR- <carla.fleming@maryland.gov>, Don O'Neill -DNR- <don.o'neill@maryland.gov>, Beth Mauk <brbellis@annapolis.gov>

Dear Ms. Sutherland,

We appreciate the City of Annapolis consulting with our office regarding what the City may and may not do with respect to Boating Infrastructure Grant (BIG) funded transient dockage in general.

As I recall, you are familiar with the 2006 Land Control Agreement (LCA) between the City of Annapolis and DNR for Phase I City Dock Renovation using BIG Tier II funds. We often refer back to the LCA when questions arise about the uses of BIG-funded transient dockage.

The 2006 LCA reflects pre-2015 federal requirements that the City "may" charge the public a reasonable fee for use of the facility, and transient vessels may use a designated BIG slip 10 days or less. The federal BIG rule was changed in 2015 to state that the operator of the facility "MUST" charge a reasonable fee, with "transient" defined as a vessel traveling to a single facility for day use or staying at a single facility for up to 15 days. The change from "may" to "must" was to ensure that BIG-funded facilities do not have a competitive advantage over other non-BIG funded facilities and/or private marinas that need to charge a fee to operate.

To address your specific questions we clarified with the U.S. Fish and Wildlife Service (FWS) – who administers the BIG Program – which version of the BIG rule applies to your facility. Below is the response from FWS:

"...in general, the rule that was in place at the time of the grant award is the rule that governs the use of the facility, fees, etc. We tell grantees that they can apply the new rule if they and their subgrantee agree that the new rule would be more appropriate or if there is a subsequent grant that provides additional funding at the facility. However, the facility needs to apply the new or old rule in its entirety. It is not acceptable to use some portions of the old rule and some aspects of the new rule.

In either case, if a fee is charged at the facility, it must be applied to all users of the facility. Or in the case of a special event where the fee will be waived or reduced, it must be applied to all users. It is not acceptable to apply a waiver or fee reduction to a small group or special group of users while other members of the public are still charged full price."

In the past, we have worked with the City to allow transient vessels to stay up to 15 days after the new rule was published because the City charges a fee to use the facility anyway, so this would seem a more favorable rule. Because of this previous request and approach, we have been operating as the City has agreed to and has implemented the facility per the new rule. However, please let us know if you would prefer to operate under the original rule.

The City must ensure the vessels docking at the BIG-funded transient slips/bulkhead are recreational transient vessels 26 feet or larger, whether those slips are reserved by a non-profit

organization, directly by a transient boater, or the slips are on a first come first basis.

To address your specific questions,

- 1) To use BIG funded dockage, the vessels in question must be recreational, transient, more than 26 feet, and stay less than 15 days.
 - Vessels operated for commercial purposes or to generate income in some way are not 'recreational'. **This is correct.**
 - Vessels may not stay more than 14 days or they would not meet the definition of transient. **Vessels may not stay more than 15 days and there is no flexibility on this.**
 - Vessels 26' or less may not use the BIG funded dockage. **This is correct.**

However, in cases during the off season when there are a number of vacant slips, the City may allow smaller transient vessels to tie up as long as transient vessels 26' or greater are not being displaced. We would prefer the City generate some revenue by allowing these smaller vessels when the slips would otherwise be unoccupied. Beth Bellis has a good understanding of this, and if there are questions about a particular situation, she can contact us. The FWS allows DNR this discretion on a case-by-case basis.

- 2) Vessels participating in this Classic Wooden Boat event that meet the definition in #1 may use the BIG funded dockage, but DNR will not permit the City to waive the dockage fees because the vessels for this event would displace other recreational, transient vessels 26' of length or more that would pay the dockage fees. **This is correct and there is no flexibility with this.** To further clarify, at these publicly-funded BIG facilities it is not acceptable to waive the fee for a certain transient vessel user group while all other transient vessels must pay. If you would choose to waive the fees for a particular user group at an event, you would have to waive the fees for all of the transient vessels at the BIG funded areas of the City Dock for that event.

I hope I have addressed your questions and concerns. Feel free to contact me if you have any additional questions. We would be glad to meet with you at your offices to discuss the BIG Program in general and the Classic Wooden Boat Show in particular.

Regards,

Li Lan



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Chesapeake & Coastal Service
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lilan.carson@maryland.gov

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On Fri, Jul 26, 2019 at 3:00 PM Teresa Sutherland <tsutherland@annapolis.gov> wrote:

Dear Ms. Carson:

I am the City Manager for Annapolis, and our Harbormaster, Beth Bellis, shared your email with me. I want to make sure I understand exactly what the City may and may not do with respect to using BIG funded transient dockage for the Classic Wooden Boat event.

Can you confirm my understanding below?

1. To use BIG funded dockage, the vessels in question must be recreational, transient, more than 26', and stay less than 15 days.

- Vessels operated for commercial purposes or to generate income in some way are not "recreational."
- Vessels may not stay more than 14 days or they would not meet the definition of "transient."
- Vessels 26' or less may not use the BIG funded dockage.

2. Vessels participating in this event that meet the definition in #1 may use the BIG funded dockage, but DNR will not permit the City to waive the dockage fees because the vessels for this event would displace other recreational, transient vessels 26' or more that would pay the dockage fees.

Finally, the Annapolis Waterfront Center, Inc. is the sponsor of this event, but they do not own the vessels that will be participating. The vessels are owned by individuals for recreational purposes. None are owned by commercial entities or used for commercial or other purposes that generate income. May I assume this meets the definition of "recreational"?

Thank you for your consideration and clarification of this matter.

Sincerely,

Teresa Sutherland
City Manager

----- Forwarded message -----

From: **Beth Bellis** <brbellis@annapolis.gov>
Date: Mon, Jul 22, 2019 at 3:50 PM
Subject: Fwd: Classic Wooden Boat
To: <keberger@annapolis.gov>, <tsutherland@annapolis.gov>

FYI

Sent from my iPhone

Begin forwarded message:

From: Li Lan Carson -DNR- <lilan.carson@maryland.gov>
Date: July 22, 2019 at 3:46:07 PM EDT
To: Beth Bellis <brbellis@annapolis.gov>
Cc: Carla Fleming -DNR- <carla.fleming@maryland.gov>
Subject: Re: Classic Wooden Boat

Beth,

First of all, thank you for following the grant terms/conditions and checking with us before proceeding. Each request is unique, we appreciate the opportunity to evaluate them on a case by case basis in advance to avoid issues later.

As you are aware, the north face of the Susan Campbell Park and south side of the short dock are designated as BIG funded transient dockage and should be used for the recreational transient vessels to tie up and visit Annapolis and staying less than 15 days.

All BIG eligible vessels (recreational, transient vessels larger than 26', staying less than 15 days) are welcome to use these dockage. As you indicated in your email response, you would use this area either for reservation or first come first serve depending on the vessel length and boater preference. You've also indicated that September is busy time of the year for City Dock, it is most likely the transient dockage are in high demand for that weekend (September 20 – 23, 2019). Carla and I discussed this. Our concern is that BIG eligible transient vessels would be displaced if the reservation of this BIG funded dockage is given to this nonprofit organization.

If the vessels from this nonprofit organization are BIG eligible vessels, they are more than welcome to make the reservation with your office ahead of time so that they can be assured to have spaces available

for them to tie up during that weekend; however, they would need to pay the same dockage fees as do all other BIG eligible vessels. The fees collected should be used for the operation and maintenance of BIG funded dockage.

Thank you again for the opportunity to review this request. Feel free to contact me if you have any questions.

Li Lan



dnr.maryland.gov

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On Fri, Jul 19, 2019 at 10:40 AM Beth Bellis <brbellis@annapolis.gov> wrote:

Yes, they are requesting the entire north face, and both sides of the short pier. It is likely that City Dock will be entirely full on this weekend. September was our largest grossing month last year, and our customers know that the Boat Show takes over 6 pm on September 29th, so this is one of their last opportunities to visit. North Face and short pier are used both as reservation spots and first-come, first-serve since we put boats where they best fit, and according to preference after that. Let me know if you have any other questions.

Thank you!

On Thu, Jul 18, 2019 at 3:38 PM Li Lan Carson -DNR- <lilan.carson@maryland.gov> wrote:

Beth,

Before I discuss this with Carla, let me get a clear picture of the situation. The AWSC is requesting to use the north face and the short pier only correct? We recently designated one side of the short pier and the north face as BIG funded transient dockage so only 50 feet plus 143 feet of north face are impacted?!

Also, what is the likelihood the City Dock will be at full capacity the weekend they requested? Has this area (north face and short pier) always been used as reserved or it is a first come first serve basis?

Thanks.

Li Lan



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On Thu, Jul 18, 2019 at 2:05 PM Beth Bellis <brbellis@annapolis.gov> wrote:

Please see the attached discussion followed by an estimate in fee waiver that is being requested. I have not received any information about what power may also be needed. Power would increase the fees considerably.

Thanks for your time, and I look forward to hearing from you,



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