
Subject: FW: Changes to Mooring Fees
Attachments: Mooring Transfer History.xlsx

From: Jamshed Dastur <jhdastur@aol.com>
Sent: July 17, 2024 12:18 PM
To: Dept - City Council <CityCouncil@newportbeachca.gov>
Cc: Stewards of the Harbor <stewardsoftheharbor-info@210680278.mailchimpapp.com>; Newport Mooring Association <mail@newportmooringassociation.org>
Subject: Changes to Mooring Fees

Mayor O'Neill and City Council Members:

It feels like I am flogging a dead horse; however I will give it one more try. I am hoping that there might be a few more Council Members that will join Council Member Weigand and allow further time to fully vet the proposal hastily passed at the last meeting. It certainly has merits; however the unintended consequences of this decision, could be the exact opposite of what is being desired by the City.

Here is one example, using some very rough but credible numbers. The attached Mooring Transfer History data was gleaned from the Harbor Department web site. The average number of market sales of moorings over the last 7 1/2 years was 54 per year, and the maximum in any year was 83. It is unclear if the proposed change in transferability policy will increase or decrease the annual market sales over the next 4 years. However, let us assume that it would increase to 100 per year, a rosy scenario of twice the current average. Then, at the end of the 4 year transition period, and for many many years thereafter, there would be about 1000 moorings paying low "grand-fathered" rates and about 400 moorings paying the highly inflated rates. At some stage in the not too distant future, there will again be pressure on the City, to collect market rates from all mooring users. Those enjoying "grand-fathered" rates will be told that the City's hands are tied by State regulations and that the 2024 City Council erred when it promised something exceeding its authority.

Under the current proposal, over 1000 moorings would not be available to new users for decades, being classified as legacy moorings. The other 400 moorings would be available only to those with deep pockets. I do not believe that this outcome is desired by anyone on the City Council.

This City's proposal is based on a flawed premise that the City Council has the authority to grant millions of dollars worth of legacy rights, spanning decades. Besides, it achieves a result that is contrary to its stated goal of fairness in future mooring availability.

I respectfully appeal to the City Council to withdraw this proposal for final approval at the next meeting.

Sincerely

Jamshed Dastur
949-887-1938

TRANSFER HISTORY

YEAR	MARKET SALE	FAMILY TRANSFERS	TOTAL TRANSFERS
2017	30	19	49
2018	39	16	55
2019	41	17	58
2020	63	24	87
2021	83	46	129
2022	68	49	117
2023	56	31	87
2024 thru end of June	27	9	36
TOTAL	407	211	618
7 1/2 YEAR Average	54	28	82

From: [Ad lever](#)
To: [Stapleton, Joe](#); [Avery, Brad](#); [Weigand, Erik](#); [Grant, Robyn](#); [Blom, Noah](#); [Kleiman, Lauren](#); [O'Neill, William](#); [Dept - City Council](#); [City Clerk's Office](#)
Subject: Public Comment - 07/23/2024 - Consent Agenda Item 3
Date: July 21, 2024 1:45:57 PM
Attachments: Public Comment 07-23-2024-merced-compressed.pdf

[EXTERNAL EMAIL] DO NOT CLICK links or attachments unless you recognize the sender and know the content is safe.

Good day all, please find that attached.

Thank you.

Adam

City of Newport Beach
100 Civic Center Drive
Newport Beach, California 92660

July 21, 2024

Sent via e-mail to:

jstapleton@newportbeachca.gov; bavery@newportbeachca.gov;
eweigand@newportbeachca.gov; rgrant@newportbeachca.gov;
nblom@newportbeachca.gov; lkleiman@newportbeachca.gov; cityclerk@newportbeachca.gov;
woneill@newportbeachca.gov; citycouncil@newportbeachca.gov

Re: July 23, 2024 Council Meeting CONSENT CALENDAR ITEM 3. Ordinance No. 2024-15: Amending Sections 17.60.010 (Public Trust Lands - General), 17.60.020 (Application for Pier/Mooring Permits or the Lease of Public Trust Lands), 17.60.040 (Mooring Permits), and 17.60.045 (Short-Term Mooring Licenses) of the Newport Beach Municipal Code Related to Mooring Permits and Licenses.

Dear Mayor and Council,

I apologize for some of what I write below being repetitive, but with more recent information becoming available, and the City having morphed what was anticipated to be a proposal to further increase the existing rate disparity between Moorings and Residential Piers/Docks, into something more far flung, I'm left feeling that perhaps I have previously failed to well articulate some of my remarks. Also, the total here, is a sum of the parts. I pose that an awareness of those many parts, and the resultant cumulative adverse impacts on low-cost/affordable Harbor/Coastal boating access, put into context a more complete picture of what has occurred, how it has occurred, and some of the parties involved.

The City's "Alternative Recommendation" for Moorings, which received 6-1 Mayoral/Council endorsement on July 9, raises a number of significant issues.

The "Alternative" was first publicly noticed on Friday July 5th, 2024, over a **major** holiday weekend, which set records for numbers of people travelling away from home. The plan itself, requires some level of analysis. To have had the extreme changes/proposals **not** come through the customary channel of the Newport Beach Harbor Commission, deprived interested parties and stakeholders, of the customary opportunity to study, and comment. It is quite disheartening, to have had such substantive proposals pop out of nowhere, on such short notice, over a holiday.

Remarks at the July 9 Council Meeting, were perceived to indicate that some Councilmembers and Harbor Commissioners may have collaborated on the

“Alternative”, outside of public scrutiny. Before you act, you must determine that instances of “Spoke-and-wheel” or “Walking Quorum” have not here occurred.

The “Alternative” actualizes **all** of the apparent objectives/changes the City desires, but poses stretching them out over a period of time. Over time, **all** Mooring Permits will transition into City held “Mooring Licenses”. This will result in the complete deprivation from members of the general public, an ability to obtain “Mooring Permits”. Also over time, **all** moorings will be subject to the excessive price increases the City favors (300 to over 500%). These high prices will then be compounded annually, by removal of the predictable CPI based rent/fee adjustments that Permit holders have become accustomed to, and which the City **continues** to use in adjustments for **other** types of rents/fees. Generations of future boaters, will then be economically excluded, and the City of Newport Beach Local Coastal Program – Coastal Land Use Plan’s stated intent to **“Continue to provide shore moorings and offshore moorings as an important source of low-cost public access to the water and harbor”**, will fail.

Over time, all Live-aboard Permits will cease to exist (Live-aboards are not permissible under City Mooring Licenses). I do not feel that the City should take away the **last** affordable method I’m aware of, for persons of lesser means to live/work in Newport Beach. Nor should the City do **anything** to **contribute** to the homeless crisis. Newport Beach entering into agreement to ship its homeless out to Costa Mesa, does not mitigate. I feel that given how strictly the City now manages/monitors Live-aboards, the ending of a California boating tradition of over 100 years, is not necessary.

Over time, the security recreational/commercial-fishing/marine services/etc./etc. boat owners/operators have, will be erased by converting all Mooring Permits to Licenses. Permits run for years, Licenses run month to month. The eventuality of having to deal with where to locate a large boat, on short notice, is a horrible thing to experience.

The City has long desired more control, over more permits. There have been discussions in the past, about the City setting aside funds to purchase permits. Based upon the Mooring Permit Transfer Log for calendar year 2024, through “3.25.24”, seven Mooring Permits in desirable lengths, could have been obtained for less than the cost of the new electric Harbor Department Patrol boat on order. The fact that the City hopes to Codify an ability to revoke/impound/confiscate Permits at no cost instead, does not make doing so “right” or “just”.

The City likewise, **could** have been reducing issues related to “Permit Transferability” for **years**, by purchasing Permits as they became available.

Permits are **regularly** available. The City did substantially increase the cut it receives through Transfer Fees. That specific income **should** have been applied to increasing the City's inventory of Permits. The fact that Permits have come to have an associated value, does not make members of the public holding Permits guilty of something. I had to save and plan for years to be able to acquire a Mooring Permit. The fact that doing so can pose difficulty, does not mean that the process is fatally flawed. Everyone who wants a Bentley, can't afford one. Everyone who wants a government Permit to operate a Radio or T.V. station can't afford one. Everyone who wants to harvest/extract natural resources from public lands (Oil and gas/Timber/Mineral/Etc.), cannot afford a Permit to do so. The fact that **everyone** who wants a Mooring Permit, cannot immediately afford one, is consistent, and logical.

It seems that some City actors look at **asking** prices for Mooring Permits, and errantly conclude that any amount identified, is 100% profit. This could not be further from the truth. I have been keeping a close eye on, and studying Mooring Permits in Newport for over 15 years. I have found, that when the maintenance costs, rent, and other expenses and difficulties are factored in, there is typically little financial gain in Transferring Permits. Councilman Avery, at the meeting of July 9, indicated that he profited from the Transfer of two Mooring Permits. To establish context though, it must be disclosed what level of capital gain occurred? Historical policy making decisions are a primary contributing factor to Permits having come to have some associated value (Discussed in more detail below). Policy created this, and policy to remedy it, should **not** subject innocent parties to extreme loss through potential Eminent domain/Inverse condemnation/Municipal theft/Constitutional due process taking violations/Etc.

What the City has referred to as "Grandfathering" rates for Mooring Permit Holders as of a date certain, is not **actually** provided for. Mayor and Council stated during the July 9 Meeting, that future Mayors and Councils could change pricing. Moreover, **this** Mayor, Council, and Harbormaster, have done 180-degree reversals on previous assurances they've made to stakeholders. Permit holders, at present, have no security as far as future rates/fees. Important to acknowledge too, is that a discriminatory and unfair rate (Mooring @ \$1.34 per sq. ft. per yr. vs. Residential Piers/Docks, not including vessels @ .57 cents per sq. ft. per yr.), paid over the unsubstantiated promise of a Permittee's life-time, or until Mayor and Council change their minds, **remains** a discriminatory and unfair rate.

The City seems to be ignoring the fact that The California State Lands Commission (Hereafter "SLC"), calculates annual rental rates for the lease of State tide and submerged lands approximately every 5 years, the last time being about two years ago, in June of 2022. Their current Category 1 Benchmark rate

for Southern California, is .451 cents per square foot per year. **Newport Beach** data was used in determining that rate. Associated SLC Staff Report 39, for purposes of comparing commercial marinas to buoys/mooring poles states:

“These facilities offer many of the same amenities as a commercial marina, such as a place for the docking and mooring of boats and the loading and unloading of passengers and equipment”.

Again, SLC Staff Report 39 uses the words “fair”; “equitable”; “reasonable”; “consistent”; and “appropriate”, to describe their current Benchmark rate. This means that the current rate of .451 cents per square foot per year, is what the State, with vast levels of knowledge and experience in such things, has determined to be “fair” here. The formula The State used to set that rate, has been clearly outlined. It’s not rocket science.

Moorings in Newport Harbor, are clearly lacking in the amenities of docking, and the loading and unloading of passengers and equipment. A lack of onshore parking, access to utilities and services, and dinghy/tender storage have also been cited as impediments Mooring Permittees face here. Over all, Residential Pier Permits have a much greater level of utility and value, yet pay less in fees.

And while Mooring Permittees are **prohibited** by Code from subletting their Mooring Permits, Residential Pier Permittees **are** allowed to sublet their dock space, often at substantial financial gain. Little of this goes into the Tidelands Fund, other than the fee calculated over the actual physical footprint of the pier/dock. Fees **not** being assessed by the City, on the space the many vessels there occupy, to some, appears to constitute theft from the Tidelands Fund. And interestingly, the City Codified that **it** may sublet permitted moorings, with the City keeping **all** of the proceeds. Mooring Permittees are also required to add The City as insureds to their vessel policies, providing the City millions of dollars of free coverage. Apparently, Residential Pier Permittees are exempted from this standard. The City’s Mooring vs. Pier/Dock discrimination, extends far beyond just pricing. And still, with the various challenges faced by Mooring Permittees, **and** a much higher level of imposed City restriction, this group currently pays **more** in rent/fee amounts, and over a broader calculated area.

The City of Newport Beach’s Fee Schedule, dictates that Residential Piers, aka docks over State owned, City managed tide/submerged lands adjacent to residential properties, incur annual rental fees of .57 cents per square foot per year. Various City Resolutions setting past and present fees for these Residential Pier Permits in Newport, for use of the **same** lands as Mooring Permittees,

describe those rates as **“fair market value rent”**. That being the case, The City's current Residential Pier Permit rate, must be considered to be fair.

Information is also readily available, indicating that Offshore Mooring rents/fees in Newport Beach, are presently higher, sometimes significantly so, than those in other areas of the State. (Attachment A)

As you well know, Residential Pier Permit fees were before you on July 9th (Attachment B). In spite of The SLC noting in April, that it's an **“opportune”** time to address **“significant”** rate disparity, and in spite of the Coastal Commission on July 9, recommending that the City **“develop a proposal to simultaneously implement the updated rates for both moorings and private slips to resolve this discrepancy”**, you voted to increase the Residential Pier Permit rate/fee by an **insignificant** 1 to 2 cents per square foot per year, while at the very **same** meeting, voted to increase the **already higher** mooring fees, by hundreds of percentages. These actions, in tandem, assured that your peers, Harbor Commissioners; Electeds; and others, for the space **their** piers/docks/boats encumber over granted sovereign lands, will continue to be assessed much lower fees on their docks, and no fees at all on their boats. How can Mayor and Council conclude that fee free boat storage at these spaces, even if it is for your peers, is **not** an unconstitutional gift?

And as I think each of you also know, a 2024 Appraisal Report from highly regarded firm CBRE, determined fair annual rent amounts for offshore moorings in Newport, closely in line with what they are presently. The City commissioned Netzer and Associates Appraisal Report of 12/26/2023 on the other hand (Again, Holiday proximate timing), concluded that Offshore Mooring rents should increase exponentially. Netzer's conclusions appear based on inappropriate/flawed methodology; comparisons to dry-land real properties; for-profit Marina slips; etc.; etc. These do not so closely compare to moorings over generally undevelopable land/water, as is implied. Netzer materials also evidence some discrepancy about how many offshore mooring fields, and how many public docks exist in Newport Harbor, **and** contradict a 2016 determination made by the very same firm:

Mr. Netzer's January 6, 2016 Appraisal, stated:

“The Ratio analysis attempts to estimate the market rent for moorings as compared to the rent for similar slip spaces in the same marina or harbor. As shown in the analysis, the ratio can vary dramatically (25% to 92%) and, while a potential renter could take this into consideration (cost of a slip v.

cost of a mooring), it is not judged to be a reliable measure of Fair Market Rent.”

Timelines related to various Netzer Appraisal Reports, and other interactions with The City, have also raised **serious** concern among many. Addressing materials sourced from various Public Records Requests, some of which I've seen presented at local City, and Yacht Club meetings:

The timing of Newport Beach Harbor Commissioner Scott Cunningham's e-mail of July 22, 2020, as related to the subsequent Mooring Appraisal RFP, is quite concerning. The RFP for the Appraisal wasn't even "Posted" by the City, until April of the following year, and "Awarded on August 3, 2021", after **four** firms had submitted bids. (Attachment C)

Harbor Commissioner Cunningham, seemingly knowing **nearly a year in advance**, that James B. "Jim" Netzer would be the Appraiser selected, and knowing from "two long conversations with Jim" **prior** to his selection, that the resulting appraisal would deviate substantially from Mr. Netzer's January 6, 2016 Appraisal, tends towards indication of a rigged selection process, and a curated appraisal. Commissioner Cunningham, also took it upon himself to e-mail the chosen Appraiser online listings of Mooring Permits purportedly for sale. This looks to me, like further effort to influence the Appraisal.

Serious concerns also arise from the fact that in April/May 2022, to alleviate any conflict of interest, The Harbormaster had entered into an agreement with the City, to **not** participate in discussions related to offshore moorings (Attachment D). Public Records requests however, have shown multiple instances of participation in 2023 and 2024. Are we to conclude that the City Attorney; select City staff/ personnel; The Harbormaster, et al., all simply **forgot** about this agreement? **Or**, that the parties **knowingly** disregarded it? Is **either** scenario acceptable to you?

Although boats on shore moorings are restricted to no more than 8' wide, and 18' long, communications indicate that Mr. Netzer tells the Harbormaster that he uses a length of 36' long for his calculations. The Harbormaster, subsequent to having entered into the agreement that he "***does not participate in discussions or the development of recommendations related to use or financial arrangements associated with offshore moorings***", responds in kind, with likewise inflated numbers, writing that a boat on a 40' Mooring would typically be 14' wide, and 40' long (Note: Boats with rectangular footprints are very uncommon). The Harbormaster then opines, that the actual square footage of Tide/Submerged lands a mooring would encumber, could be 20' x 60', or 20' x 80'.

Other e-mails show the Harbormaster telling the Appraiser to price a 25' Mooring at the 30' rate. Similarly, the Phase-in documents the City provided the State, apply the rate for 20', well-appointed **marina slips** at the City's Balboa Yacht Basin Marina (\$32.23 per lf), to 18', challenging to use, Permitted shore moorings.

An apparent pattern of basing conclusions on calculations using **more** space than is **actually** encumbered by **moored** vessels, in conjunction with applying **higher** fee rates to **lower** tier **permits**, **unrealistically** inflates the resultant prices.

Important to understand too, is that boats on moorings do not continually occupy any such amount of space, and that other Tide/Submerged land users regularly transition through, and use much of that supposed mooring space for their own activities. The City, and parties holding Residential Pier/Dock Permits on the other hand, occupy a generally fixed space, and often proclaim that the spaces they use over public lands, are **not** to be used by anyone else. (Attachment E)

And in early October of 2023, Jim Netzer, acting on behalf of The Newport Aquatic Center (Hereafter NAC), was involved in negotiating from the City, a 3 to 5 decade long, "Amended and Restarted" **zero** fee ground lease, for **acres** of **prime, waterfront sovereign land**. The City generously **waived** its policy F-7 requirement, that full fair market value be obtained under said lease. Mr. Netzer, along with the Harbormaster's brother, are/were Board Members of the NAC. Mr. Netzer's family members, also have close ties with the NAC (Please refer to "Presentation BYC Meeting 04-08-2024" previously provided).

Just a couple of weeks subsequent to this no fee lease, a Microsoft Teams meeting, captioned "Appraisal Kick-Off Call Off-shore Moorings" was arranged. City personnel, **including** the Harbormaster **and** Commissioner Cunningham, as well as the Appraiser, were to participate. The timing of the no-cost lease, so **closely** coinciding with the kick-off for an Appraisal Report that Harbor Commissioner Cunningham said would quote – unquote "look much different", **along** with Mr. Netzer's reversal of his 2016 position that a slip to mooring ratio is not judged a reliable measure of Fair Market Rent, **and** the involvement of multiple parties with financial interests, who thus, should **not** have even been involved, raises **numerous, serious** concerns, quid pro quo being one. And if events in the timeline do not rise to a level of impropriety, I think they certainly rise to the level of the appearance of impropriety. Will Mayor and Council vote tonight, to endorse this "the ends justify the means" pattern of conduct?

The City has also tried to use the new, and relatively untested City Mooring License Program to rationalize extreme fee increases for these water only permits. Under the Program though, the City maintains the mooring tackle. In contrast,

individual Mooring Permittees incur that not insignificant expense themselves. The City has also touted the number of Mooring License applicants, as justification to raise fees exponentially. Subsequent determination though, indicated that some applicants were using multiple e-mail addresses to apply. Consequently, the high numbers of applicants the City cites, are inaccurate.

40' moorings are said to be the most common. Even **if** the near 20 License applications for the **single** 40' Mooring License the City offered, were **truly** separate individuals applying, auction style pricing would be the result. The **sole** 30' Mooring License, suffers from the same deficiencies. Moreover, at the Harbor Commission meeting of July 10, 2024, I believe the Harbormaster stated that three 50' Licenses remain unclaimed. If there is such high demand, why are these vacant? And even when/if they become occupied, using pricing of 16 Mooring Licenses, to estimate what over a thousand other Moorings would fetch, is asinine. The City's Mooring License data, cannot **rationally** be used to determine "fair market rent".

Consider too, that near 100 moorings sit unoccupied in Newport Harbor on any given day. This is due in large part, to the fact that the overnight sublet price set by the City, pencils out to be near the cost of a fully appointed marina slip! The City is not burdened with the expense of maintaining these vacant moorings, **and** receives monthly rent for them from Permittees. Priced reasonably, they could be sublet for substantial gain. The **over**-pricing of the many empty moorings though, deprives the Tideland's Fund of potential revenue, **and** creates a false scarcity. This in turn, serves to drive up the price which might be obtained for the very limited number of City held Mooring Licenses (16). It's simple supply and demand economics. Pricing is being artificially manipulated through policy.

Conclusion:

Mayor and Council willfully and knowingly **choosing** to ignore multiple sources of reliable and consistent data, in favor of manipulated and flawed data, is beyond problematic. As is **choosing** to rely on a preferred, apparently manipulated and conflicted outlier Appraisal Report. As is allowing the continued loss of potential Tidelands revenue, though mismanagement and inefficiency.

An ongoing refusal to accept that the **current** SLC Benchmark rate; your **own**, **slightly** adjusted this **very** month Residential Pier Permit fee; The CBRE Offshore Mooring Appraisal Report values; **and** the **lower** fees for moorings in other areas of the State establish "fair market rent" for moorings, would be willful/wrongful/harmful.

Until this most recent misguided and deceptive Harbor Commission rate increase Recommendation was begun, Mooring Permittees, for use of the **same** State resource, were willingly paying multiple times more in rates than Residential Pier Permittees. Oftentimes, the moorings and piers are not even very distant from one another. It is difficult to extract fairness from this disparity, but it was being tolerated. As more and more information has come to light during the progression of the Recommendation and Alternative though, the level of unfairness has become increasingly pronounced, concerning, and to many, unacceptable.

How could Harbor Commissioner Vice Chair Ira Beer, in good conscience, have **repeatedly** implied that Mooring Permittees, while paying **higher** fees, may be beneficiaries of unconstitutional gifts of the use of State lands, while at the **same** time, others are paying **no** fees for the actual space their associated vessels occupy? How could have each Harbor Commissioner, in good conscience, have ethically endorsed increasing the rate disparity and discrimination even further?

And in the same vein, how could The Harbor Commission, some of whom are equity members in Newport Yacht Clubs, think that it's "fair" to not subject themselves or their peer's Clubs, and The Lido Isle Community Association, to the same excessive fee increases, in the same timelines they propose for Mooring Permittees unaffiliated with these exclusive entities? And how could Mayor, and five of six Councilmembers have bought into this on July 9? And for how long, will this buy-in continue? These materials in part, are to establish that any action(s) that The City/Mayor/Council take in these matters, is/are taken willfully, and knowingly.

Sincerely,



Adam Leverenz
adlever@hotmail.com

Attachment A:
Statewide Mooring
Rent/Fee Comparison:

1 pg.

Mooring fees in California 2024
Yearly fees for 40' boat

Avalon

Yearly fee to city \$523.20.
24/7 dinghy docks provided.

Morro Bay

Yearly fee to city \$1320.
24/7 dinghy dock provided.

San Diego Shelter Island

Yearly fee to city \$1538.04. (Maintenance included)
24/7 dinghy dock provided.

Monterey Bay

Yearly fee to city \$1000.
24/7 dingy dock \$600 yr

Santa Barbara

Yearly fee to city is \$350.00.
24/7 dingy dock \$125 yr

Conclusion:

Average yearly fees in California \$1091.25
24/7 dinghy docks provided:

Newport Harbor

Mooring permittee must pay
approx. \$750 yearly for mooring
maintenance and upkeep.

No dinghy docks provided

**After new fee schedule
phase-in:**

\$1603.00

\$5760.00*

This rate hike is designed to deny access to all but the wealthiest people, and force middle class boaters out of the harbor. It will put an end to affordable family boating in Newport Harbor.

*This number will increase in proportion to increases in marina fee increases and inflation.

Attachment B:
Residential Pier Permit
Rate Disparity

3 pgs.

California State Lands Act, CHAPTER 74, SECTION 1 (a)(3)(d)

(d) In the management, conduct, operation, and control of the lands or any improvements, betterments, or structures thereon, the city or its successors shall make no discrimination in rates, tolls, or charges for any use or service in connection therewith.

City of Newport Beach Local Coastal Program – Coastal Land Use Plan

3.3.2-3. Continue to provide shore moorings and offshore moorings as an important source of low-cost public access to the water and harbor.

CALIFORNIA STATE LANDS COMMISSION

100 Howe Avenue, Suite 100-South
Sacramento, CA 95825-8202

Lauren Wooding Whifflinger
Real Property Administrator
City of Newport Beach

April 9, 2024 Page 3

impact of increased rates. Staff also observes a significant disparity between the City's residential pier rates and mooring rates. In addition to reassessing mooring rates, staff believes it is an opportune time for the City to also reassess its residential pier rates to ensure these rates reflect fair market value consistent with the City's granting statutes and fiduciary duties.

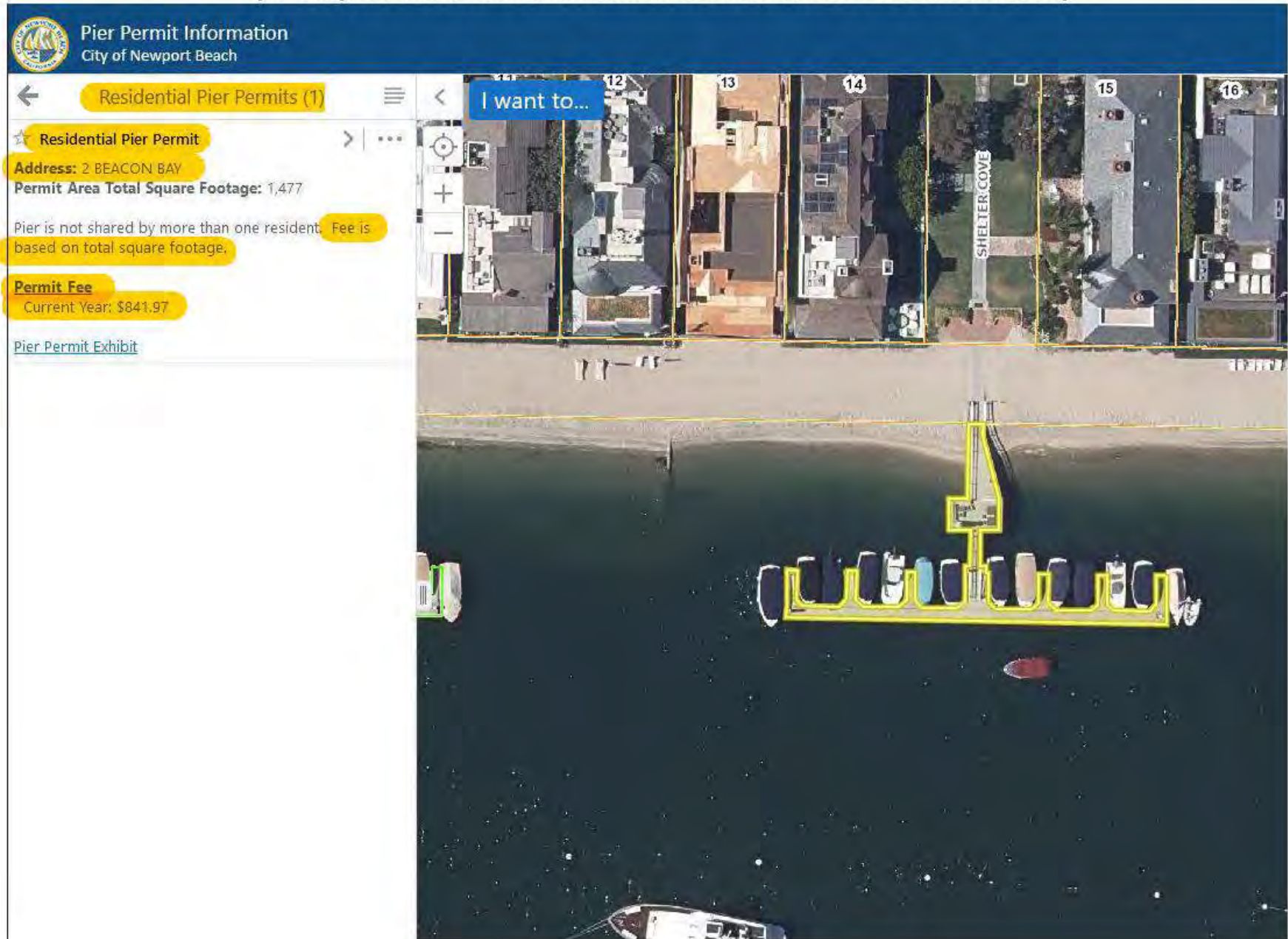
CITY OF NEWPORT BEACH
NEWPORT BEACH
City Council Staff Report
Agenda Item No. 3
July 9, 2024

RECOMMENDATIONS: b) Adopt Resolution No. 2024-44, A Resolution of the City of Newport Beach, California, Revising Certain Rents Within the Schedule of Rents, Fine and Fees.

PUBLIC WORKS - HARBOR RESOURCES

1	Piers				
	a) Residential	\$0.56	\$0.55	\$0.57	per sq ft

14 boat berthing spaces, at a Beacon Bay HOA affiliated pier/dock, pay a combined total of \$841.97 annually for the physical footprint of the pier/dock over public submerged lands. The boats pay no fees for the space they occupy.
(A Newport Beach Harbor Commissioner has served on the HOA board)



A pier/dock, CDP Reconfigured under a Newport Beach Harbor Commissioner's name, pays \$352.80 per year (2 Residences x \$ 176.40) for the physical footprint of the pier/dock. The boats pay no fees for their footprint.

Map Viewer
Newport Beach - GIS

I want to...

Residential Pier Permit 1 of 2

☆ Residential Pier Permit

Address: 1907 BAY AVE E
Permit Area Total Square Footage: 619

Shared pier between two residents, Fee is based on half of the total square footage.

Permit Fee
Current Year: \$176.40

[Pier Permit Exhibit](#)

[Add to Results](#) [View Additional Details](#)

605 Sq Ft 659 Sq Ft

1801 1803 1805 1807 1813 1903 1905 1907 1909 1911 1913 817 Sq Ft

**Attachment C:
Harbor Commissioner
e-mails/
RFP Invitation #21-53**

**Info:
5 pgs.**

On Jul 22, 2020, at 1:48 PM, Cunningham, Scott
<SCunningham@newportbeachca.gov> wrote:

Removing Jim.

Hi All,

I've had two long conversations with Jim regarding the 2016 Mooring Appraisal. The net net is when we are ready (and funded) the appraisal results will look much different than the 2016 numbers.

Note the dates:

Scotts email – 7/22/2020

RFP 21-53 Published – 4/8/2021

TENTATIVE PROJECT SCHEDULE	
RFP Published:	April 8, 2021

Bid Opportunities

Found 862 bids

Posted	Project Title	Invitation #	Due Date	Remaining	Stage	Format
04/08/2021	Tidelands On-Shore & Off-Shore Appraisal Services	21-53	05/20/2021 01:00pm		Awarded	Electronic
04/27/2021	Landfill Gas (LFG) Control System Operation & Mainte...	21-57	05/18/2021 01:00pm		Awarded	Electronic
04/20/2021	Business License and Permit Processing Software	21-55	05/18/2021 01:00pm		Awarded	Electronic
04/28/2021	(4) 2021 Ford F-150 2WD SuperCab Trucks	21-58	05/12/2021 01:00pm		Closed	Electronic
04/19/2021	On-Call Traffic/Transportation Engineering	21-09	05/10/2021 03:00pm		Awarded	Electronic
04/15/2021	FY2020-21 Traffic Signal Rehabilitation	C-7791-1	05/10/2021 10:00am		Closed	Electronic
04/13/2021	Establishment of Eligibility List for Referral of Real Est...	21-54	04/28/2021 01:00pm		Closed	Electronic
04/01/2021	Armored Transport Services	21-52	04/28/2021 01:00pm		Awarded	Electronic
03/19/2021	UNDERGROUND STORAGE TANKS - TESTING, DESIG...	7223-1	04/20/2021 02:00pm		Award Pending	Electronic
03/22/2021	Parking Code Consulting Services	21-43	04/13/2021 01:00pm		Awarded	Electronic
03/19/2021	AS-NEEDED SPORT & RECREATIONAL FIELD LANDS...	7997-1	04/08/2021 02:00pm		Awarded	Electronic
03/24/2021	As-Needed Athletic and Recreational Field Services	21-45	04/08/2021 01:00pm		Awarded	Electronic
03/25/2021	Dover Shores Traffic Calming Improvements	7998-1	04/08/2021 10:00am		Closed	Electronic
03/24/2021	(3) 2021 Toyota Tacoma 4x4 Double Cab Vehicles	21-46	04/07/2021 01:00pm		Closed	Electronic
02/18/2021	UNDERGROUND UTILITY ASSESSMENT DISTRICT N...	7979-1	04/07/2021 10:00am		Awarded	Electronic
03/10/2021	Generator Maintenance & Repair Services	21-41	04/06/2021 01:00pm		Awarded	Electronic

[← Back to Bid Search](#)

Tidelands On-Shore & Off-Shore Appraisal Services 21-53

Awarded

- [Bid Information](#)
- [Documents](#)
- [Addenda/Emails](#)
- [Q&A](#)
- [Prospective Bidders](#)
- [Bid Results](#)**
- [Awards](#)

Showing 4 Bid Results

Vendor	Type	Bid Amount	Ranking	Responsive
Lea Associates, Inc. 1631 Pontius Avenue Los Angeles, California 90025 Contact: Robert M. Lea, MAI Phone: 310-477-6595			\$0.0000 0	Yes
Netzer & Associates 170 E. Seventeenth Street, Suite 206 Costa Mesa, California 92627 Contact: James Netzer, MAI Phone: 9496316799			\$0.0000 0	Yes
R. P. Laurain & Associates, Inc. 3353 Linden Avenue Suite 200 Long Beach, California 90807 Contact: John P Laurain Phone: 5624260477			\$0.0000 0	Yes
The Dore Group Inc 1010 University Avenue Suite C207 San Diego, California 92103 Contact: Lance W. Dore Phone: 619-933-5040 ext. 101	DGS		\$0.0000 0	Yes

[< Back to Bid Search](#)

Tidelands On-Shore & Off-Shore Appraisal Services 21-53

Awarded

- [Bid Information](#)
- [Documents](#)
- [Addenda/Emails](#)
- [Q&A](#)
- [Prospective Bidders](#)
- [Bid Results](#)
- [Awards](#)**

Awarded on August 3, 2021

The project has been **awarded** to Netzer & Associates [View](#)

Please see the attached Notice of Intent to Award (also uploaded under the "Addenda & Emails" tab of this RFP page) for additional details regarding the evaluation and award process for RFP 21-53.

Item #	Item Code	Description	UOM	Qty
1		Tidelands On-Shore & Off-Shore Appraisal Services	Complete Project	1

From: Scott Cunningham
To: Jim Netzer
Cc: Wooding, Lauren
Subject: 45" Newport Offshore Mooring in D Field - boats - by owner - marine sale - craigslist
Date: September 20, 2023 1:03:50 PM
Attachments: 45" Newport Offshore Mooring in D Field - boats - by owner - marine sale - craigslist.png

[EXTERNAL EMAIL] DO NOT CLICK links or attachments unless you recognize the sender and know the content is safe.

Nice tidy profit...

From: Cunningham, Scott
To: Jim Netzer
Cc: Wooding, Lauren
Subject: Fwd: alert: Newport Mooring
Date: June 09, 2022 10:17:32 AM

Hi Jim,

Probably going to move forward with offshore appraisal towards end of Summer but wanted you to keep this for your records. Check out last sentence.

Thanks,

Scott

Scott Cunningham

Begin forwarded message:

From: CL Search <alerts@alerts.craigslist.org>
Date: June 9, 2022 at 9:36:41 AM PDT
To: scott12159@icloud.com
Subject: alert: Newport Mooring

1 new result for search terms: Newport Mooring, sort: relevant, as of 2022-06-09 09:36:37 AM PDT

- [Newport Mooring - \\$48,000 \(Newport Beach\)](#)

[View all the results.](#)

[Unsubscribe from this alert.](#)

Commissioner Cunningham is seen here sending emails of craigslist ads, which shows the purported listings of craigslist ads for offshore moorings for sale

Attachment D:
Harbormaster/
City Attorney/
City Agreement –
e-mails:
5 pgs.

- Initiatives were launched resulting in better data capture and statistics reporting. Future improvements will include customer satisfaction survey data analysis and calls for service location analysis
- Participated in the Emergency Operations Response to the following:
 - o Elly oil spill
 - o Tsunami warning
 - o Three severe weather occurrences
 - o Sewage spill into the harbor
 - o Out of control stolen boat in the harbor

The Harbormaster has disclosed the arrangements made, at his own expense to alleviate any conflict of interest associated with his ongoing use of an offshore mooring permit. While undergoing the recruitment process, any and all known possible conflicts of interest were disclosed. Prior to the City making an offer of employment, all such possible conflicts were discussed with the City Attorney. Agreements and arrangements satisfactory to all relevant parties were made during that discussion. The Harbormaster was entrusted and empowered to make determinations going forward related to any conflict disclosures. In support of this arrangement, the Harbormaster:

- does not participate in discussions or the development of recommendations related to use or financial arrangements associated with offshore moorings
- reminds anyone with an interest that input on recommendations related to offshore mooring permits are made by Real Property Administration staff
- does not deliberate or vote on any policy related matters before the Harbor Commission
- is expected to answer questions related to policy implementation and impacts on Harbor Department operations
- hereby discloses that the offshore mooring permit he enjoys is held in an irrevocable trust the beneficiary of which is the Balboa Yacht Club. The Balboa Yacht Club holds all the offshore mooring permits adjacent to the subject mooring
- hoping to avoid other conflict of interest concerns also hereby discloses any significant financial interests related to the Balboa Yacht Club including a membership certificate are held in the same irrevocable trust
- further discloses that all remaining financial interests in either the subject offshore mooring permit or membership in the Balboa Yacht Club are de minimis

ENVIRONMENTAL REVIEW:

Staff recommends the Harbor Commission find this action is not subject to 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

From: jamesbnetzer@aol.com
To: [Wooding, Lauren](#); [Blank, Paul](#)
Subject: Offshore Mooring Appraisal Question
Date: December 05, 2023 4:08:15 PM

[EXTERNAL EMAIL] DO NOT CLICK links or attachments unless you recognize the sender and know the content is safe.

Lauren & Paul,

I am trying to get the draft appraisal completed but I have a question about the size of a "typical" mooring **and the square feet of tidelands that it encumbers.** On methodology I apply the "land value" to the square footage and convert it to a rental rate. In the onshore mooring appraisal I based the value on an onshore mooring encumbering an area of 288 square feet (36' x 8') based on the "typical" area from the point of attachment (seawall) to the mooring buoy/ball and an 8' beam. **What dimensions and square footage should I use for the offshore mooring?**

Thanks for your assistance!

Regards,

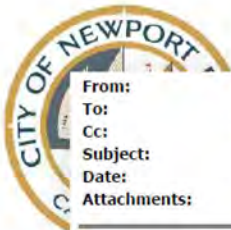
Jim Netzer

From: [Blank, Paul](#)
To: jamesbnetzer@aol.com
Subject: RE: DRAFT - Offshore Mooring Appraisal w/ Tiered rates
Date: December 27, 2023 10:23:00 AM
Attachments: [image001.png](#)

Great work!!

Thank you.

Have a great New Year.



Paul Blank
Harbormaster

From: [Blank, Paul](#)
To: jamesbnetzer@aol.com
Cc: [Wooding, Lauren](#)
Subject: Re: Offshore Mooring Appraisal Question
Date: December 05, 2023 4:48:06 PM
Attachments: [PastedGraphic-2.png](#)

The cool thing about onshore moorings is they are essentially all the same size.

Offshore moorings are of a variety of sizes (25', 30', 35', 40'...90'). Any dimensions I give you will be subject to critique as "not representative of the variety of sizes, configurations and conditions" actually out there.

That disclaimer out of the way, the biggest population of moorings out there are 40' moorings. A typical 40' boat on one of those moorings would be 40' long x 14' wide but the mooring takes up much more space than that.

The distance from the boat to each mooring float is approximately 10' - so the space taken up on the surface is approximately 60'. Then there is the placement of the weights on the sea floor. The distance from the float to the weight adds at least 7' and up to as many as 15' to each end of the mooring depending on the depth where the mooring is placed.

If you want to go with just the surface dimensions consumed by the typical mooring on Newport Harbor, go with 60' x 20'.

If you want to go with the dimensions of the entire mooring including what's below the surface, go with 80' x 20'.

Best,



Paul Blank
Harbormaster

From: [Wooding, Lauren](#)
To: ["jamesbnetzer@aol.com"](mailto:jamesbnetzer@aol.com)
Subject: RE: DRAFT APPRAISAL - Offshore Moorings - Fair Market Rent
Date: December 20, 2023 5:18:00 PM
Attachments: [image001.png](#)

Hi Jim,

Thanks very much for getting this draft in to me before the end of the year. I will be sharing internally and will be in touch after the new year with any comments or changes before we have you finalize the report and take it out of draft mode.

I hope you have a very Merry Christmas and Happy New Year and get to spend time with your family in the next few weeks!

And I look forward to catching up with you in the new year.

Thank you,

Lauren



Lauren Wooding Whitlinger
Real Property Administrator
Community Development Department

On Wednesday, January 3, 2024, 4:56 PM, Wooding, Lauren <L.Wooding@newportbeachca.gov> wrote:

Hi Jim,

I'm going through the report and have some additional comments and questions that I'd like to address before we publish this, **since I know it will be reviewed very closely.**

Do you have time tomorrow morning to review with me?

Thank you,

Lauren



Lauren Wooding Whitlinger
Real Property Administrator

-----Original Message-----

From: Wooding, Lauren <LWooding@newportbeachca.gov>

To: James Netzer (jamesbnetzer@aol.com) <jamesbnetzer@aol.com>

Sent: Mon, Jan 31, 2022 10:35 am

Subject: FW: Shore Mooring Rental Rate Increase

Hi Jim,

Thanks for answering all of the questions I submitted to you. I am reviewing them with Paul and will let you know if we have any further questions.

In the meantime, can you review the email below and let me know when you have some time to chat. I think this should be considered in our valuation, but I think it is mostly a matter of administrative capacity. I want to get your take on it before I discuss further with Paul.

Thank you,

Lauren



LAUREN WOODING WHITLINGER
Community Development Department

Howdy Jim:

Thanks for taking the meeting this morning.

Upon further inspection of that one 25' mooring in the BYC field, I noticed that an individual holds it and therefore needs a rate set by the City.

I don't think you need to perform some extensive analysis just for that one mooring.

Please just apply the 30' rate you determine to that mooring but definitely add an entry in the report that includes the 25' category.

Sorry for my previous inaccurate or incomplete statement.



Paul Blank

Harbormaster

Attachment E:

A partial selection of images, showing various members of the public transitioning through; recreating in; and using the supposed space Mooring Permitees are claimed by the City, to have Private Exclusive Use of, as compared to the level of Private Exclusive Use exercised by the City itself, and select Residential Pier Permitees:

21 pgs.























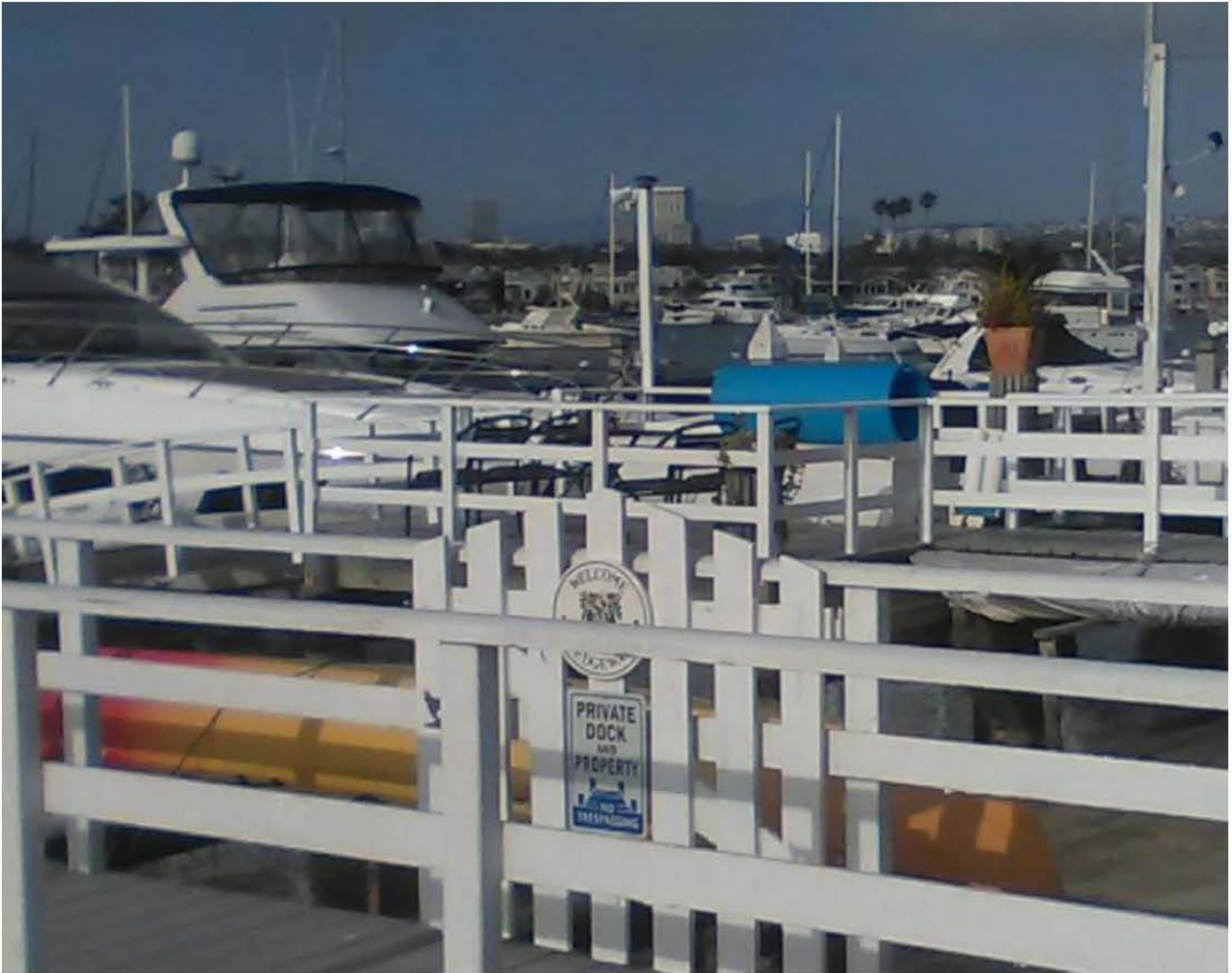


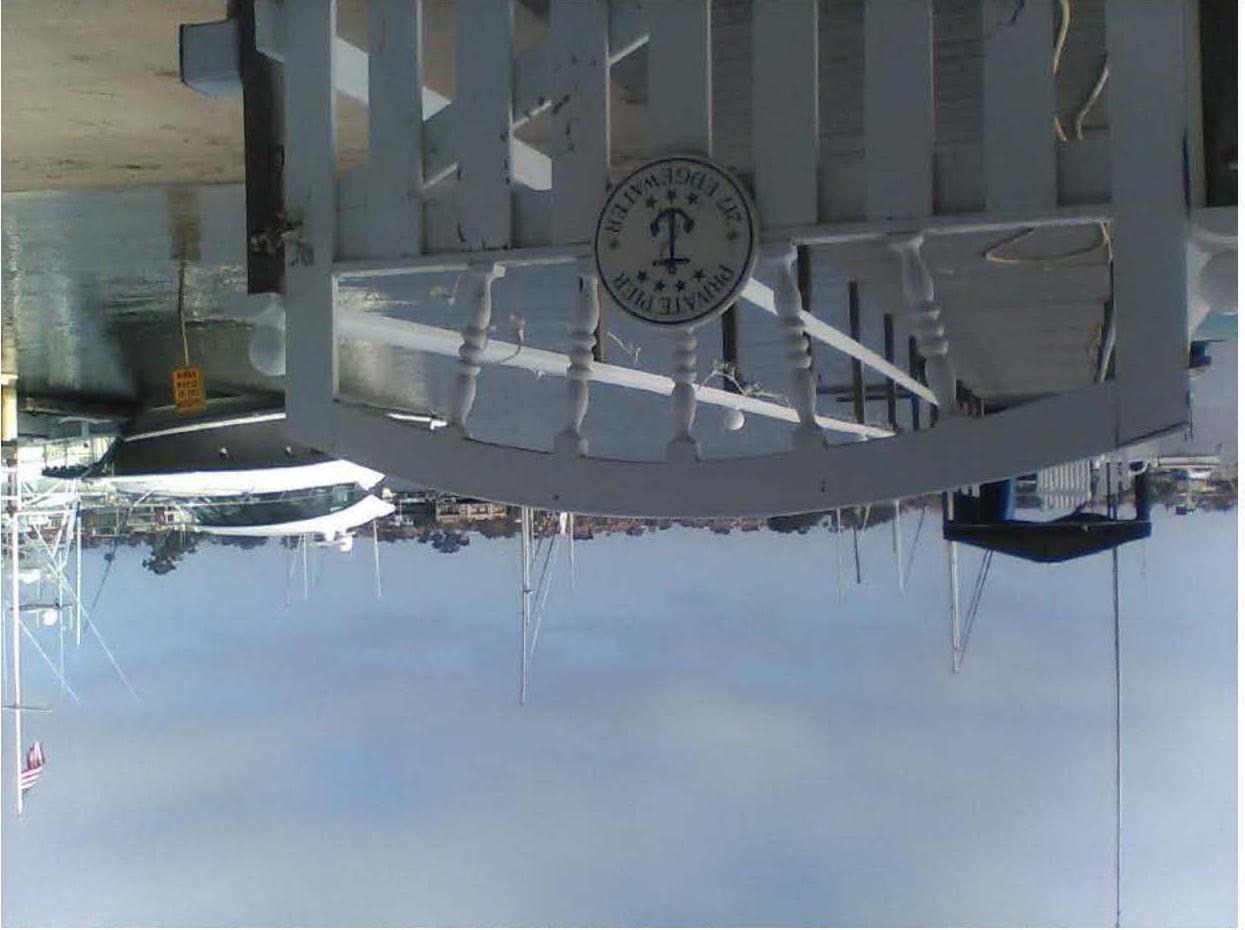




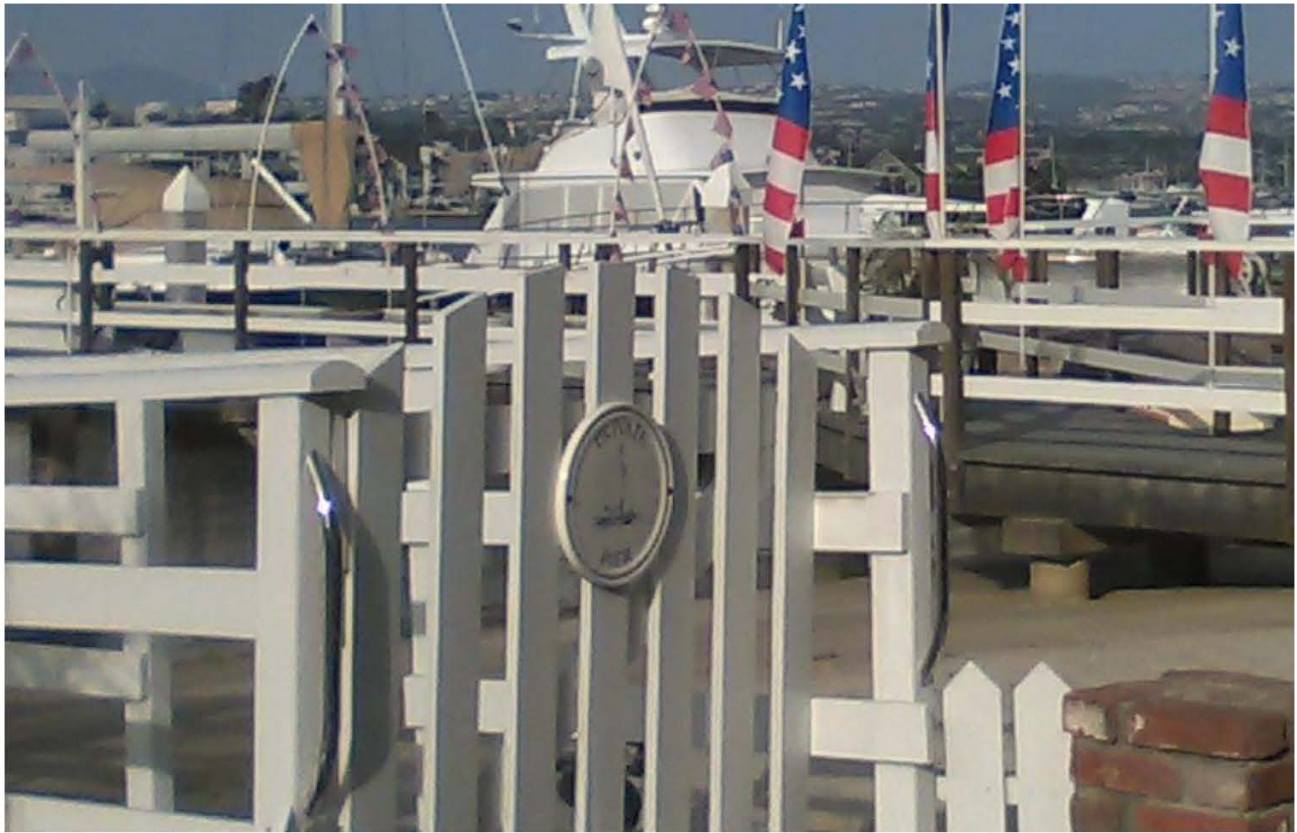
The following images, show City and Residential piers/docks, which occupy granted sovereign land, but which are posted as if Private Property:















From: [Admin](#)
To: [Dept - City Council](#)
Cc: [City Clerk's Office](#)
Subject: Re: Public Comment for July 23, 2024 City Council Meeting Re: Ordinance 2024-15
Date: July 22, 2024 9:50:20 AM

[EXTERNAL EMAIL] DO NOT CLICK links or attachments unless you recognize the sender and know the content is safe.

Dear Mayor O'Neill and Esteemed Members of the City Council,

Thank you for your responses to my previous correspondence regarding the postponement request for the second reading of Ordinance 2024-15.

The Newport Mooring Association represents approximately 1000 mooring holders in Newport Harbor. We are advocating for this postponement on behalf of mooring permittees due to significant concerns regarding the transparency of the ordinance proposal process and the lack of clarity in defining a mechanism for maintenance of current rates for current permittees. The "alternative plan" presented diverged substantially from what was initially outlined during the Harbor Commission's January 2024 session. Furthermore, this alternative plan was introduced to the public over a major holiday weekend (July 5th) and swiftly voted on the subsequent Tuesday (July 9th), allowing insufficient time for meaningful public input or the thorough consideration of councilmember concerns.

During the City Council Meeting on July 9, 2024, several council members articulated valid reasons supporting the request for extended discussion and public feedback on Ordinance 2024-15. Councilmember Avery emphasized that "There's a lot of work to be done" (5:27) and stressed the need to safeguard the interests of affected individuals (5:29). Councilmember Grant underscored the importance of maintaining accessibility and affordability for existing mooring holders, advocating for a sustainable, long-term solution (5:35). Mayor O'Neill acknowledged the permanence of liveaboard permits while acknowledging future uncertainties. "Can that change by a future Council? Yeah" (5:44), and Councilmember Weigand highlighted concerns over the "uncertainty" surrounding the proposed solution (5:38). These concerns reinforce the need to establish a durable lease or comparable framework that secures the interests of current

mooring permittees, as underscored by Mayor Pro Tem Stapleton (4:20).

At the City Council meeting on May 24, 2023, assurances were given regarding the perpetual transferability of mooring permits, a commitment now rescinded while other public tideland permits remain unaffected. Reneging on a promise made a little over one year ago understandably raises doubts as to the trustworthiness of this council among mooring holders.

In the spirit of transparency and practicality, we strongly urge the council to postpone action in order to formalize protections for current mooring permittees.

Once again, the NMA stands ready to meet with city leaders to begin addressing these pressing issues at your earliest convenience.

Sincerely,

Anne Stenton

President, Newport Mooring Association

From: [Biddle, Jennifer](#)
To: [City Clerk's Office](#)
Subject: FW: Public Comments for July 23, 2024 City Council Meeting
Date: July 22, 2024 11:24:11 AM

From: kartbin <kartbin@yahoo.com>
Sent: July 22, 2024 11:22 AM
To: Dept - City Council <CityCouncil@newportbeachca.gov>
Subject: Public Comments for July 23, 2024 City Council Meeting

[EXTERNAL EMAIL] DO NOT CLICK links or attachments unless you recognize the sender and know the content is safe.

Dear City Council,

We are asking for this postponement on behalf of mooring permittees for several reasons. The biggest concern we have is the lack of transparency in the process of proposing this ordinance. Not only was this "alternative plan" fundamentally different from what was shared via the Harbor Commission in January of 2024, this alternative plan was only shared with the public over a major holiday weekend (July 5th) and initially voted on the following Tuesday (July 9th) which did not give adequate time for public input or to address Councilmembers' concerns.

Additionally, we agree with City Council members that this ordinance needs more detail before the second reading. Why the rush to push this ordinance through? Several Councilmembers made statements at the [July 9, 2024 City Council Meeting](#) regarding Ordinance 2024-15 that support the request for additional time for discussion and public input. Councilmember Avery stated clearly that "there's a lot of work to be done" (5:27) and "We need to protect people... if we say it's in perpetuity, we need to protect them, and there's a lot of things on the list here and there's a lot of work to be done to make it right" (5:29). We couldn't agree more. Councilmember Grant stated "It is extremely important that we maintain the accessibility and the affordability for the people who are there and have relied on what they have... we do need a long term solution (5:35). Mayor O'Neill stated "Folks on liveboards can liveaboard for the rest of their lives" but then added "Can that change by a future City Council? Yeah" (5:44). Councilmember Weigand mentioned "the word uncertainty" (5:38) as it relates to this solution.

This is why the NMA has requested that City leaders sit down with us to develop a long-term lease or similar solution to protect the interests of current mooring permittees. Mayor Pro Tem Stapleton stated on July 9, 2024, "If I'm a mooring permit holder today and I have a permit I can continue that permit for as long as I want to be in the harbor" (4:20). But what is the mechanism for ensuring that promise? At the [May 24, 2023 City Council meeting](#), transferability was said to be protected "in perpetuity" (1:54) as it was discussed between Mayor O'Neill and Harbormaster Blank

and again stated by City Attorney Harp (2:20). Now, transferability for mooring permits, but not for other permits on public tidelands, will effectively be ending. It is easy to see why mooring holders are concerned. In the interest of transparency and common sense, we ask that the council use its power to enshrine these protections for current mooring permittees.

As Councilmember Avery asked on July 9th, why the rush to adopt this ordinance, which they themselves have stated needs more work done to “make it right?”

Please consider the following:

Why wasn't this proposal run through the Harbor Commission?

Why wasn't there more time for public input and comment?

Why the rush to pass this “alternative plan”, when there is clearly more work to be done to ensure current mooring permittees are guaranteed their rates in perpetuity?

The timeline of the new proposal presents insurmountable logistical challenges and we therefore urge you to hold off on tomorrow's vote so that the new plan can be reviewed further.

We requested guidance from the Newport Mooring Association, but there is much confusion about the details and they are unable to advise us.

This is an inappropriate and unacceptable timeline.

Like many people, we are out of town and unable to appear in person to change our mooring permit.

Thank you for your cooperation, the Baker Family

From: [Sarah Zielsdorf Calvert](#)
To: [Dept - City Council](#); [City Clerk's Office](#)
Subject: Public Comments for July 23, 2024 City Council Meeting
Date: July 22, 2024 12:33:23 PM

[EXTERNAL EMAIL] DO NOT CLICK links or attachments unless you recognize the sender and know the content is safe.

Hello City Council,

As mooring holders and residents of Newport Beach we are extremely disappointed in the City Council's lack of transparency regarding 2024-15. We don't understand why you are rushing this proposal to a vote without adequate time for public input.

We deserve better from our elected officials!

Regards,
Kenny & Sarah Calvert

From: Lunetta, Kim@SLC
To: [Leung, Grace](#); [Dept - City Council](#); [City Clerk's Office](#)
Cc: [Sahar Durali](#); Huckelbridge, Kate@Coastal; Blackmon, Seth@SLC; [Harbor Commission](#)
Subject: Public Comment letter for July 23rd City Council Meeting - Agenda Item 3 - Ordinance No. 2024-15
Date: July 22, 2024 1:13:20 PM
Attachments: [image001.png](#)
[image002.png](#)
[image003.png](#)
[City of Newport Beach Agenda Item 3 Ord 2024-15 ltr signed 7.22.2024.pdf](#)

[EXTERNAL EMAIL] DO NOT CLICK links or attachments unless you recognize the sender and know the content is safe.

Good afternoon,

Please see attached letter from Executive Officer Jennifer Lucchesi regarding Agenda Item 3 at the City Council July 23rd meeting.

Kind regards,

Kim Lunetta, Administrative Assistant
Executive Office
[CALIFORNIA STATE LANDS COMMISSION](#)
100 Howe Avenue, Suite 100-South
Sacramento CA 95825
916.574.1397
Kim.Lunetta@slc.ca.gov



**CALIFORNIA STATE LANDS
COMMISSION**



Established in 1938

EXECUTIVE OFFICE

100 Howe Avenue, Suite 100-South
Sacramento, CA 95825-8202

JENNIFER LUCCHESI, Executive Officer

916.574.1800

TTY CA Relay Service: **711** or Phone **800.735.2922**

from Voice Phone **800.735.2929**

or for Spanish **800.855.3000**

July 22, 2024

File Ref.: G 09.02

SENT VIA ELECTRONIC MAIL

gleung@newportbeachca.gov
citycouncil@newportbeachca.gov
cityclerk@newportbeachca.gov

Grace K. Leung, City Manager
Honorable City Councilmembers
City of Newport Beach
100 Civic Center Drive
Newport Beach, CA 92660

Subject: Comment on Agenda Item 3: Ordinance No. 2024-15, City of Newport
Beach City Council Meeting, July 23, 2024

Dear City Manager Leung and City Councilmembers,

California State Lands Commission (Commission) staff requests that the City Council postpone the second reading and adoption of Ordinance 2024-15, scheduled for July 23, 2024. This postponement will allow Commission staff to review the City's management of its mooring permits and residential pier leases on granted state lands to ensure that the City is fulfilling its responsibilities as the state's fiduciary.¹

The Legislature granted the state's tide and submerged lands in Newport Bay to the City of Newport Beach to manage on the state's behalf.² The City's legislative granting statutes, the common law Public Trust Doctrine, and the California Constitution require the City to manage its granted lands for the benefit of the statewide public, not for purely private or local interests. State trustees are obligated to administer these lands fairly and equitably, without discriminating among users and rates. The State Lands Commission is responsible

¹ Pub. Resources Code, §§ 6009, subd. (d); 6009.1, subd. (c).

² The City's granting statute is Chapter 74, Statutes of 1978, as amended.

Grace K. Leung, City Manager
Honorable City Councilmembers
July 22, 2024
Page 2

for overseeing the City's fulfillment of its duties to the State and the people of California.³ The City's legislative grant expressly authorizes the State Lands Commission to conduct formal inquiries into whether the City has complied with its trust grant obligations and directs the Commission to work with the Attorney General's Office and report to the Legislature as needed to address violations of the trust grant.⁴

While Commission staff recognize the City's efforts to align mooring rates with fair market value, the recent decision to grandfather existing rates, coupled with the failure to reassess residential pier rates, underscores the need for a comprehensive evaluation to ensure that all rates reflect fair market value without discrimination in how rates are applied to specific users. As members of the public have repeatedly pointed out, there are inconsistencies in the magnitude and timing of rate adjustments among mooring permits and residential pier leases. In particular, the residential pier lease rates appear to be substantially below fair market value. Further, the methodology used to establish those rates may constitute an unconstitutional gift of public funds and certainly appears to raise issues of discrimination in rates between residential pier leases and mooring permits inconsistent with the law.

Clarification about these disparities is essential to prevent inequity and ensure proper management of the state's tidelands. It is critical that the City charge fair market rates for the use of all tidelands and submerged lands to avoid unconstitutional gifts of public property.⁵ Staff is concerned that the City is not comprehensively reviewing all user categories to ensure equity. Addressing both pier lease rates and mooring rates, at the same time, would guarantee that all rates are fair, reflecting a balanced consideration of the uses and impacts across Newport Bay.

Commission staff agrees with the City's effort to end the illegal private profiteering from mooring transfers. A 2006-2007 Orange County Grand Jury Report found that there is a loophole that allows a private mooring transfer after a boat sale, allowing private parties to commodify public assets in direct violation of the core tenants of the Public Trust Doctrine. Commission staff

³ Pub. Resources Code, §§ 6009, subd. (c); 6009.1, subd. (a); 6301.

⁴ Chapter 74, Statutes of 1978, as amended, § 1, subds. (n)-(q).

⁵ Cal. Const., art. XVI, § 6.

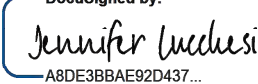
Grace K. Leung, City Manager
Honorable City Councilmembers
July 22, 2024
Page 3

recommends the City end the private transfers as part of a comprehensive review of mooring permits and residential pier leases.

Commission staff believes it is prudent for the City to delay the second reading of Ordinance 2024-15 until staff's review of the City's fiduciary management of its mooring permits and residential pier leases is complete. This review is expected to conclude by the end of this year, and the conclusions and any recommendations will be presented for the Commission's consideration. As part of this review, we will follow up with an engagement letter that will include additional details of our initial records request. We will also be coordinating with Coastal Commission staff as they review the City's mooring permit and pier lease programs for consistency with the Coastal Act.

Commission staff looks forward to working with the City to collaboratively address and resolve these issues.

Sincerely,

DocuSigned by:

A8DE3BBAE92D437...

JENNIFER LUCCHESI
Executive Officer

cc: Sahar Durali, Deputy Attorney General
Dr. Kate Huckelbridge, Executive Director, California Coastal Commission
Seth Blackmon, Chief Counsel, State Lands Commission
City of Newport Beach Harbor Commission

From: [Peter Broome](#)
To: [City Clerk's Office](#)
Subject: Fwd: Long time resident and new mooring permittee requests ability to transfer permit for those with less than 12 months ownership
Date: July 22, 2024 1:30:59 PM

[EXTERNAL EMAIL] DO NOT CLICK links or attachments unless you recognize the sender and know the content is safe.

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

From: Peter Broome <peterbroome@gmail.com>
Date: Mon, Jul 22, 2024 at 1:23 PM
Subject: Long time resident and new mooring permittee requests ability to transfer permit for those with less than 12 months ownership
To: <citycouncil@newportbeachca.gov>, <thecityclerk@newportbeach.gov>
Cc: <hbpagm@gmail.com>

Dear City Leaders,

I believe there was an oversight in the recent resolution regarding mooring permittees, specifically those who have been permittees for less than 12 months, as they cannot currently transfer their permit due to the 12 month permittee holding rule. This effectively eliminates the value they recently paid to transfer the permit. They do not have the same benefit of transferring to a new permittee that the others have.

I am a long time Newport Beach resident who became the permittee of mooring K-002 on April 8, 2024. I paid \$55,000, with oversight of the city, to transfer the permit for mooring K-002 to me as the new permittee. This permit was part of my retirement plan. I planned to use the mooring as part time residence throughout my retirement then transfer the mooring when I am older, to help financially support my later retirement.

I ask that you add the give permittees with less than one year of ownership the right to transfer permits until Aug 21, 2024. I currently have someone that is ready to pay for the transfer of my permit, but the city will not allow it with the current rules. We tried to transfer the permit this morning with Madison and she said our only recourse is through the City Council.

Please consider this impact to some of your long time residents. I hope this is heard in tomorrow night's meeting. Please add it to the agenda.

Best regards,
Peter Broome
111 18th St, Newport Beach, CA 92663
949-351-1396

From: [Biddle, Jennifer](#)
To: [City Clerk's Office](#)
Subject: FW: Long time resident and new mooring permittee requests ability to transfer permit for those with less than 12 months ownership
Date: July 22, 2024 1:33:54 PM

From: Peter Broome <peternbroome@gmail.com>
Sent: July 22, 2024 1:25 PM
To: Dept - City Council <CityCouncil@newportbeachca.gov>; thecityclerk@newportbeach.gov
Subject: Re: Long time resident and new mooring permittee requests ability to transfer permit for those with less than 12 months ownership

[EXTERNAL EMAIL] DO NOT CLICK links or attachments unless you recognize the sender and know the content is safe.

Sorry for a couple of typos...this is emotional for me...

I got my permit April 8, 2024...just a few months ago...

On Mon, Jul 22, 2024 at 1:23 PM Peter Broome <peternbroome@gmail.com> wrote:

Dear City Leaders,

I believe there was an oversight in the recent resolution regarding mooring permittees, specifically those who have been permittees for less than 12 months, as they cannot currently transfer their permit due to the 12 month permittee holding rule. This effectively eliminates the value they recently paid to transfer the permit. They do not have the same benefit of transferring to a new permittee that the others have.

I am a long time Newport Beach resident who became the permittee of mooring K-002 on April 8, 2004. I paid \$55,000, with oversight of the city, to transfer the permit for mooring K-002 to me as the new permittee. This permit was part of my retirement plan. I planned to use the mooring as part time residence throughout my retirement then transfer the mooring when I am older, to help financially support my later retirement.

I ask that you add the give permittees with less than one year of ownership the right to transfer permits until Aug 21, 2024. I currently have someone that is ready to pay for the transfer of my permit, but the city will not allow it with the current rules. We tried to transfer the permit this morning with Madison and she said our only recourse is through the City Council.

Please consider this impact to some of your long time residents. I hope this is heard in tomorrow night's meeting. Please add it to the agenda.

Best regards,

Peter Broome

111 18th St, Newport Beach, CA 92663

949-351-1396

From: [Biddle, Jennifer](#)
To: [City Clerk's Office](#)
Subject: FW: Mooring Title changes
Date: July 22, 2024 3:27:49 PM

-----Original Message-----

From: Nick Ralston <nickinlaguna@gmail.com>
Sent: July 22, 2024 2:32 PM
To: Dept - City Council <CityCouncil@newportbeachca.gov>
Subject: Mooring Title changes

[EXTERNAL EMAIL] DO NOT CLICK links or attachments unless you recognize the sender and know the content is safe.

I currently own the N-5 title. I am confused by the lack of information, and really nothing has been sent to me yet, regarding this new scenario. Transferability within family for example. Trust hand me down? where is the information? There should be no deadlines to adjust until mooring "owners" have time to process the new language. Nick Ralston