



NEWPORT BEACH

City Council Staff Report

July 9, 2024
Agenda Item No. 13

TO: HONORABLE MAYOR AND MEMBERS OF THE CITY COUNCIL

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TITLE: Ordinance No. 2024-15, Resolution Nos. 2024-46 & 2024-47: Harbor Commission Recommendations and Alternative Recommendations for Rental Rates for Moorings

ABSTRACT:

The City of Newport Beach manages the tidelands in Newport Harbor, which includes parts of the harbor used for docking boats (called mooring fields) located beyond the pierhead lines, and areas on the shore for onshore moorings. For exclusive use of the harbor to moor a vessel, the City Council sets fair market value rent for these moorings.

In 2024, after multiple meetings and extensive public input and discussion, the Harbor Commission recommended that the City Council increase the mooring permit rental rates to current fair market value. Due to concerns raised by mooring permit holders regarding the increase in rates, City staff reviewed the Harbor Commission's recommendations. As a result, staff is providing alternative recommendations for the Council to consider. For the City Council's consideration and discussion are the Harbor Commission's recommendations and the staff's alternative recommendations regarding the rental rates and transferability of moorings.

RECOMMENDATIONS:

- a) Determine this action is exempt from the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(2) and 15060(c)(3) of the CEQA Guidelines because this action will not result in a physical change to the environment, directly or indirectly;
- b) Adopt Resolution No. 2024-46, *A Resolution of the City Council of the City of Newport Beach, California, Setting Fair Market Value of Rent for Moorings Located Upon Tidelands in Newport Harbor*; **OR**
- c) Waive full reading, direct the City Clerk to read by title only, introduce Ordinance No. 2024-15, *An Ordinance of the City Council of the City of Newport Beach, California, Amending Sections 17.60.010, 17.60.020, 17.60.040, and 17.60.045 of the Newport Beach Municipal Code Related to Mooring Permits and Licenses*, and pass to second reading on July 23, 2024; and
- d) Adopt Resolution No. 2024-47, *A Resolution of the City Council of the City of Newport Beach, California, Setting the Fair Market Value of Rent for Moorings Located Upon Tidelands in Newport Harbor*.

DISCUSSION:

Beacon Bay Bill

Pursuant to State of California statutes, the City holds in trust and administers certain tidelands and submerged lands (collectively, tidelands) in Newport Harbor on behalf of the people of the State, with oversight by the California State Lands Commission (SLC). The City manages the public tidelands property under the guidance of the Beacon Bay Bill (Chapter 74 of the Statutes of 1978, as amended).

The tidelands are “Sovereign Lands” and were granted to the City primarily for the promotion and accommodation of commerce, fishing, recreational boating, and navigation. And, the Beacon Bay Bill generally limits use of the public lands to:

1. The establishment of a public harbor;
2. Public bathing beaches, public marinas, public aquatic playgrounds, and recreational facilities open to the general public; and
3. For preservation of the lands in their natural state.

Outside of the public uses listed above, under certain conditions, the tidelands can be granted for private uses consistent with those specified in the trust. The conditions for private use include governing the use under a lease or permit agreement, limiting such agreement to no more than 50 years, and improving the tidelands at no expense to the State.

Additionally, when tidelands are reserved for exclusive use by third parties and not available for general public use, the City is required to obtain rent in exchange for that exclusive use. The Beacon Bay Bill provides that “[i]n 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.”

The City may charge different rates for different uses when it is supported by an appraisal that makes distinctions in value (i.e., an on-shore mooring versus an offshore mooring). While the Beacon Bay Bill does not define discrimination, staff interprets that charging different rates for the same type of use that does not have a different value (e.g., a resident versus non-resident rate for the same mooring), would be a discrimination in rates and is prohibited by SLC.

Further, Section 6 of Article XVI of the State Constitution prohibits making a gift of public funds or gift of the State’s public lands. The City acts as trustee and fiduciary of State tidelands in Newport Harbor pursuant to the Beacon Bay Bill. It is staff’s understanding from discussions with SLC staff that charging less than fair market value to any individual or other entity privately using the public tidelands would be a gift of public funds or gift of public lands and is prohibited.

Beyond the City’s obligations as trustee of the public tidelands in Newport Harbor, the

Newport Beach Municipal Code (NBMC) Sections 17.60.020(E) and 17.60.060(D) require that rental rates for the various tidelands uses throughout Newport Harbor are set based upon fair market value, as determined by an authorized appraiser and the City Council.

City Council Policy F-7-*Income and Other Property* also requires the City to receive fair market rent for private third party use of public lands. While there are exceptions that allow the City to receive less than fair market rent when the land is providing a community service or uses available to the public, private use of moorings does not qualify as a public benefit.

Moorings

Pursuant to NBMC Section 17.60.040, a permit is required for use of a mooring in Newport Harbor over City-owned or controlled tidelands. There are approximately 478 onshore moorings (including approximately 44 permits issued to and managed by the Lido Isle Community Association) under the City's jurisdiction in Newport Harbor, which are in various locations around Balboa Island, Newport Island, Lido Isle, and along the bay side of the Balboa Peninsula. Vessels are limited to no more than 18 feet in length for onshore moorings.

There are approximately 731 offshore moorings (including approximately 79 permits issued to and managed by Balboa Yacht Club, and approximately 73 permits issued to and managed by Newport Harbor Yacht Club) under the City's jurisdiction in Newport Harbor, which are in various locations designated as "mooring fields" throughout the harbor. Vessels must not exceed the set length for the offshore mooring length.

A map of the on- and offshore mooring fields around Newport Harbor is included as Attachment A.

Mooring Rental Rate History

Following a 2006-2007 Orange County Grand Jury report titled "Newport Harbor Moorings: Are They Held in the Public Trust or for Private Profit?" which recommended establishing a regularly scheduled independent appraisal for the fair market value of mooring permit fees, the City Council conducted an extensive review of the mooring rates, discussing issues such as open-market transfers, transfer fees, and sub-rentals.

On November 23, 2010, the City Council approved Resolution No. 2010-132 (2010 Resolution) (Attachment E) to increase mooring rental rates to fair market value over a five-year period. Fair market value was determined to be 14% of the slip rates as established by the Newport Harbor Marina Index, an average of the slip rates at the low- to moderately priced marinas in Newport Harbor. This index was also used to set the slip rates for the City-owned Balboa Yacht Basin marina pursuant to City Council Resolution No. 2010-134. After the phase-in period, the rate for a 40-foot mooring was set at \$36.45 per linear foot per month, compared to the rate of \$1.67 per linear foot per month in effect when the 2010 Resolution was approved. This was the first change to mooring rates since 1996.

In January 2015, the City Council directed the Harbor Commission to study the mooring rents and other related mooring issues and then return with recommendations. The Harbor Commission held four meetings to solicit input from the public, including mooring users and other interested parties. The Harbor Commission provided a mooring report with its recommendations to the City Council.

At a special meeting on June 16, 2015, the City Council considered a Harbor Commission mooring report and recommendations made by the SLC. The SLC noted that mooring permits do not convey a real property interest; and recommended the City obtain a real property appraisal. The City Council directed staff to conduct a fair market appraisal and return with a resolution setting the fair market value rent for both onshore and offshore moorings.

On January 26, 2016, the City Council adopted Resolution No. 2016-17 (2016 Resolution) (Attachment F) based on an appraisal report by Netzer & Associates. The 2016 Resolution set rates at \$2.91 per linear foot per month for offshore moorings and half of that rate (\$1.46 per linear foot per month) for onshore moorings. The 2016 Resolution called for the rate to be adjusted annually by the lesser of 2% or the change in the consumer price index (CPI). Additionally, the 2016 Resolution allowed for the City to conduct a new appraisal of mooring rental rates in Newport Harbor after March 1, 2018, and every fifth year thereafter.

For reference, the current 2024 rental rate for onshore moorings is \$1.67 per linear foot per month, and for offshore moorings is \$3.35 per linear foot per month.

Harbor Commission Consideration

Pursuant to the 2016 Resolution and under the direction of the Harbor Commission subcommittee responsible for Harbor Commission Current Objectives Item 2.2, the City issued Request for Proposals (RFP) No. 21-53 on April 8, 2021, seeking proposals from qualified appraisers to determine the fair market rent for moorings in Newport Harbor. Four proposals were received, and Netzer & Associates was contracted to perform the appraisal work. Netzer & Associates provided a report on onshore moorings, dated December 21, 2021, which was submitted for the Harbor Commission's review and consideration at three separate public meetings in early 2022 (Attachment G).

In late 2023, the appraiser was directed to evaluate the offshore moorings and provided a report dated December 26, 2023 (2023 Appraisal). The offshore mooring report was presented to the Harbor Commission at five separate public meetings between January and April 2024 (Attachment G).

On January 10, 2024, the Harbor Commission reviewed the results of the 2023 Appraisal. Public comments were received, but no further action was taken by the Harbor Commission. On February 1, 2024, the Harbor Commission held a special meeting seeking additional public input on the 2023 Appraisal report. Extensive public comments were received, but no further action was taken by the Harbor Commission.

On February 14, 2024, the Harbor Commission held a regular meeting and discussed the 2023 Appraisal report. Further public comments were taken, including comments related to discrimination. No further action was taken by the Harbor Commission. On March 18, 2024 the Harbor Commission held a special meeting and took further comments.

At its meeting on April 10, 2024, the Harbor Commission made the following recommendation to the City Council on the fair market value rental rates for moorings, which are reflected in Resolution No. 2024-46 (Attachment B):

- Establish the fair market rental rates for onshore and offshore moorings as equal to 24% of the City adopted Newport Harbor Marina Index.
- After the January 2025 adjustment, all future mooring rental rate adjustments will coincide with annual City slip rate adjustments effective at the start of each new City fiscal year beginning July 1, 2025.
- The total mooring rate adjustments will be phased in beginning January 1, 2025, through a final adjustment on July 1, 2029, as per the schedule set forth in the presentation material provided during the April 10, 2024, Harbor Commission meeting (included in Attachment G).
- The 24% phased-in rate adjustment amounts per linear foot per mooring size, will be adjusted each year based on future annual adjustments per the City-adopted Newport Harbor Marina Index. These subsequent adjustments will be applied to the initial recommended rate adjustment and equally distributed and phased in over the same period of time.
- At the end of the phase-in period (July 1, 2029), the mooring rental rates for onshore and offshore moorings in Newport Harbor will be equal to 24% of the then average slip rates as determined by the City-adopted Newport Harbor Marina Index.

Table 1		
Mooring Rental Rate Comparison		
Source	Rate/LF/Month	Rent/Month
BYB Slip Rate – 40-foot (July 1, 2024)	\$52.32	\$2,092.80
Current 40-foot Mooring Permit Rental Rates (Reso No. 2016-17)	\$3.35	\$134.00
Offshore Mooring Appraisal – 40-foot (Netzer, December 26, 2023)	\$16.00	\$640.00
City Mooring License Program – 40-foot (March 1, 2024)	\$15.00	\$600.00
Harbor Commission Recommendation (April 10, 2024) (24% of 2024 BYB Rate)	\$12.56	\$502.40
City Council 2010 Resolution (Reso No. 2010-132) (14% of 2024 BYB Rate)	\$7.32	\$292.80

Table 1 compares the various rental rates, the appraisal conclusions, and the Harbor Commission's recommendation assuming full phase-in, and the slip rates at the Balboa Yacht Basin, for a 40-foot mooring permit:

The 2023 Appraisal did not take the newly created City Mooring License Program (City License) into account because the City License was implemented after the report was issued; however, the Harbor Commission did consider the City License rates (also included in Table 1 above) in its recommendation and felt it was an accurate reflection of the local market for moorings. The City License is different than the mooring permits in that the City owns and maintains the mooring tackle and the mooring is not transferrable.

Staff's Alternative Recommendations

Following the Harbor Commission's recommendations to the City Council, several mooring permit holders contacted the City, alleging conflicts of interest and discrimination in rental rates between different users of the tidelands.

Community Development Department staff reviewed the Harbor Commission's recommendations and the rates established for residential piers under Resolution No. 2015-10 and developed alternative recommendations for the City Council to consider. The general considerations behind the alternative recommendations are:

- Grandfather existing mooring permittees at current rates, with no changes to rates except for CPI adjustments;
- Phase out all private transfers of moorings; and
- Ensure future moorings are owned, managed and maintained through the City license program, referenced as the short-term mooring license regulations pursuant to Section 17.60.045 of the NBMC.

With these in mind, staff makes the following alternative recommendations:

a) Permit Rates – Grandfather Existing Rates

- Existing mooring permittees will continue to be subject to the mooring rates established in Resolution No. 2016-17. This allows the current permit holders to continue to pay the same rates, with CPI adjustments or 2% maximum, until the permit is transferred (subject to the transfer conditions below) or the permit is relinquished.

b) Mooring Permit Transfers

- Existing mooring permittees may privately transfer their permit to a new permit holder one time within four years, but no later than August 21, 2028 (Ordinance No. 2024-15, Attachment C). After August 21, 2028, or after the one-time private transfer (whichever occurs first), no further transfers are allowed.

- If a death of a permittee occurs, the executor or administrator may hold the mooring permit for only one year. During that one-year period, the executor or administrator must secure a City-licensed mooring or find a new location for the vessel.

c) Transferred Permits

- Mooring permittees who obtained their permit through a private transfer during the initial four years after adoption of Ordinance No. 2024-15 will continue to pay the existing rates for four additional years from the date of transfer. After four years, the mooring permits will be converted to a City license and will be subject to the short-term mooring license rates established by Resolution No. 2023-62 (Attachment H). There is no City fee for converting the permit to a license. This alternative rate structure is outlined in Resolution No. 2024-47 (Attachment D).
- The mooring rates approved under Resolution No. 2023-62, adjusts annually on July 1, are shown in Table 2 below:

Length (LF)	Mooring Type	License Fee (Monthly)	
		Rate/LF	Rent/Month
18	Onshore	\$9.00	\$162.00
30	Offshore	\$13.00	\$390.00
40	Offshore	\$15.00	\$600.00
50	Offshore	\$17.50	\$875.00
60	Offshore	\$20.00	\$1,200.00
95	Offshore	\$22.00	\$2,090.00

d) Maintenance of Mooring and Tackle

- Existing mooring permittees or those who acquire permits through a private transfer during the four years after adoption of the resolution, and are subject to the existing mooring rates, are responsible for providing and maintaining the mooring and tackle pursuant to NBMC Section 17.60.040(B)(2)(b).
- The City shall be responsible for the cost of providing and maintaining the mooring equipment and tackle for mooring users under the City’s short-term mooring license program, and those whose permit has converted to a City license.

e) Future Mooring Holders

- New mooring users under the City License are subject to short-term mooring rates established by Resolution No. 2023-62. The license for use of the mooring will be governed by the City's short-term mooring licenses regulations NBMC Section 17.60.045.

f) Yacht Clubs

- The Balboa Yacht Club, the Newport Harbor Yacht Club, and the Lido Isle Community Association (LICA) are subject to the onshore mooring rates established in Resolution No. 2016-17 until August 31, 2032. Thereafter, the mooring permit will convert to a mooring license and subject to the short-term mooring rates established in Resolution No. 2023-62.

The above recommendations are reflected in the draft Ordinance No. 2024-15 (Attachment C) and license fee structure recommendations are drafted in Resolution No. 2024-47, (Attachment D). A redline strike out version of the ordinance is provided as Attachment K.

State Lands Commission (SLC) and California Coastal Commission

The City's consideration of an increase to the rental rate for moorings in Newport Harbor has been brought to the attention of both the SLC and the California Coastal Commission (Coastal). City staff has been in contact with both agencies to discuss the matter and has provided copies of the materials provided to the Harbor Commission. After review of the appraisal reports and additional information submitted by the appraiser, SLC submitted a letter to the City, dated April 9, 2024, included as Attachment I. SLC concluded the City can reasonably rely on the fair market rates provided in the 2023 Report.

Public Input

The City has received significant public input regarding the proposed changes to the mooring rates. Correspondence received on the matter was provided to the Harbor Commission for its consideration, and many community members voiced their opinions during public comments at the eight public meetings held by the Harbor Commission in 2022 and 2024.

Additionally, the Harbor Commission subcommittee tasked with reviewing the mooring rental rates met with representatives from the Newport Mooring Association (NMA). The NMA made a presentation during public comments at the Harbor Commission meetings.

Correspondence from the public that has been directed to City Council, and which was received by June 26, 2024, at 5 p.m. is included as Attachment J.

FISCAL IMPACT:

Revenues collected for mooring permits and licenses, including any increases in revenue pursuant to a change in the mooring rental rates, will be posted to the Tidelands Fund and Tidelands Capital Fund accounts in the Harbor Department, 10045451-551035, 10045451-551040, 10103-551035, and 10103-551040. The revenues collected pursuant to the currently approved 2016 Resolution are included in the budget for fiscal year 2024-2025.

ENVIRONMENTAL REVIEW:

The City Council finds the setting of fair market value rent for moorings located upon tidelands 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 Guidelines, California Code of Regulations, Title 14, Chapter 3, because it has no potential for resulting in physical change to the environment, directly or indirectly. Alternatively, the City Council finds the setting of fair market value rent for moorings located upon tidelands is entitled to a Class 1 Categorical Exemption pursuant to CEQA Regulation Section 15301 because the mooring rent contemplates the continued use of existing facilities, with no expansion of the proposed use. Further, the City Council finds the setting of fair market value rent for moorings located upon tidelands is entitled to a Statutory Exemption pursuant to CEQA Regulation Section 15273(a)(1) because the fair market value rent established by the City Council will be used to meet operating expenses within the tidelands. Lastly, the City Council finds the setting of fair market value rent for moorings located upon tidelands is not a project under CEQA Regulation Section 15061(b)(3) because it has no potential for causing 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 – Map of Onshore and Offshore Moorings
- Attachment B – Resolution 2024-46: Harbor Commission Recommendation
- Attachment C – Ordinance No. 2024-15: Alternative Recommendations
- Attachment D – Resolution 2024-47: Alternative Fees
- Attachment E – Resolution No. 2010-132
- Attachment F – Resolution No. 2016-17
- Attachment G – Harbor Commission Agendas, Staff Reports with Attachments (links)
- Attachment H – Resolution No. 2023-62
- Attachment I – Letter from State Lands Commission, dated April 9, 2024
- Attachment J – Comments Received from the Public
- Attachment K – Ordinance No. 2024-15 (redline)