

Attachment C

Resolution No. 2016-17

RESOLUTION NO. 2016-17

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF NEWPORT BEACH, CALIFORNIA, SETTING THE FAIR MARKET VALUE RENT FOR MOORINGS LOCATED UPON TIDELANDS IN NEWPORT HARBOR

WHEREAS, pursuant to the 1978 Beacon Bay Bill, as amended, ("Beacon Bay Bill") the City of Newport Beach ("City") acts on behalf of the State of California as the trustee of tidelands located within the City's limits, including Newport Harbor;

WHEREAS, the Beacon Bay Bill and Chapter 17.60 of the Newport Beach Municipal Code ("NBMC") allow the City to issue permits to third parties to construct/maintain moorings upon tidelands;

WHEREAS, the City offers two types of moorings, onshore and offshore, that provide an affordable option allowing residents of California to use and enjoy the tidelands in Newport Harbor;

WHEREAS, onshore moorings are located on the perimeter of the shore within Newport Harbor, and offshore moorings are located offshore within the waters of Newport Harbor;

WHEREAS, the mooring permits issued by the City do not convey any underlying property interest, and instead only allow for the temporary mooring of a vessel upon the waters of Newport Harbor;

WHEREAS, the Beacon Bay Bill, California Constitution Article 16, Section 6, NBMC Subsection 17.60.060(D) and City Council Policy F-7(D) require the City to receive fair market value rent from third parties using the tidelands;

WHEREAS, the City Council has the exclusive discretion to determine fair market value rent based, in part, upon the findings of a City-selected appraiser;

WHEREAS, an appraisal report was prepared by Netzer & Associates and delivered to the City and has been reviewed and considered by the City Council, which report is made a part of the record for this matter;

WHEREAS, on November 23, 2010, the City Council adopted Resolution No. 2010-132, which established fair market value rental rates for onshore and offshore moorings in Newport Harbor;

WHEREAS, the City Council is committed to periodically reviewing tidelands rent to ensure the rent is reflective of fair market value;

WHEREAS, on June 16, 2015, the City Council held a special meeting to receive and consider a comprehensive study conducted by the City's Harbor Commission regarding various aspects of mooring permits, including, but not limited to, fair market value rental rates;

WHEREAS, at the City Council's special meeting, the City Council considered the feedback and ideas gathered during the Harbor Commission's study and outreach meetings, and directed staff to bring back the mooring fair market value rental amounts in this resolution; and

WHEREAS, the City Council has considered all documents and comments in the record in connection with this resolution.

NOW, THEREFORE, the City Council of the City of Newport Beach resolves as follows:

Section 1: The Recitals provided above are true and correct and are incorporated into the substantive portion of this resolution.

Section 2: Resolution No. 2010-132 is hereby repealed. The City Council finds that the rent provisions contained in this resolution provide for the charging of fair market value rent and that the rental rate (and adjustments) constitutes fair market value rent for moorings located upon tidelands, which findings are made by the City Council in its exclusive discretion but are based, in part, on the information in the appraisal of its City-selected appraiser and, in addition, on other testimony and documents in the record for this matter. The City Council further finds and determines the rent for moorings located upon tidelands, operating under a permit, shall be set in accordance with the provisions of this resolution. The rent established in this resolution shall only be applicable to permittees with a mooring located over City managed tidelands. The fair market value rent for moorings located upon tidelands in Newport Harbor shall be set and adjusted as follows:

Onshore Mooring \$17.50* linear foot *Adjusted annually by the U.S. Department of Labor, Bureau of Labor Statistics, Consumer Price Index for All Urban Consumers ("CPI"), Los Angeles-Riverside-Orange County Region or 2%, whichever is less.

The City may conduct a new appraisal of mooring rental rates in Newport Harbor after March 1, 2018, and every fifth (5th) year thereafter, as part of the appraisal required by Resolution No. 2012-96, or any successor resolution.

Offshore Mooring \$35.00* linear foot

Section 3: 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.

Section 4: If any section, subsection, sentence, clause or phrase of this resolution is, for any reason, held to be invalid or unconstitutional, such decision shall not affect the validity or constitutionality of the remaining portions of this resolution. The City Council hereby declares that it would have passed this resolution, and each section, subsection, sentence, clause or phrase hereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared invalid or unconstitutional.

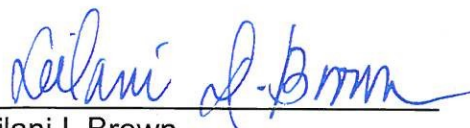
Section 5: This resolution shall take effect immediately upon its adoption by the City Council and the City Clerk shall certify the vote adopting the resolution.

ADOPTED this 26th day of January, 2016.



Diane B. Dixon
Mayor

ATTEST:



Leilani I. Brown
City Clerk



STATE OF CALIFORNIA }
COUNTY OF ORANGE }
CITY OF NEWPORT BEACH } ss.

I, Leilani I. Brown, City Clerk of the City of Newport Beach, California, do hereby certify that the whole number of members of the City Council is seven; that the foregoing resolution, being Resolution No. 2016-17 was duly and regularly introduced before and adopted by the City Council of said City at a regular meeting of said Council, duly and regularly held on the 26th day of January, 2016, and that the same was so passed and adopted by the following vote, to wit:

AYES: Council Member Peotter, Council Member Duffield, Council Member Petros,
 Mayor Pro Tem Muldoon, Mayor Dixon
NAYS: Council Member Selich, Council Member Curry

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed the official seal of said City this 27th day of January, 2016.

Leilani I. Brown

City Clerk
Newport Beach, California

(Seal)

