

**CALIFORNIA STATE LANDS  
COMMISSION**



*Established in 1938*

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July 22, 2024

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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.<sup>1</sup>

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.<sup>2</sup> 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

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<sup>1</sup> Pub. Resources Code, §§ 6009, subd. (d); 6009.1, subd. (c).

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

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for overseeing the City's fulfillment of its duties to the State and the people of California.<sup>3</sup> 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.<sup>4</sup>

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.<sup>5</sup> 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

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

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

<sup>5</sup> Cal. Const., art. XVI, § 6.

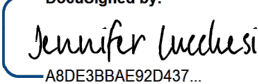
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recommends the City end the private transfers as part of a comprehensive review of mooring permits and residential pier leases.

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,

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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