

CITY OF NEWPORT BEACH

HARBOR COMMISSION STAFF REPORT

Agenda Item No. 2
January 14, 2009

TO: HARBOR COMMISSION

FROM: City Manager's Office
Chris Miller, Harbor Resources Manager
(949) 644-3043, cmiller@city.newport-beach.ca.us

SUBJECT: Updates to the Rules Governing Mooring Transfers

ISSUE

Should the Harbor Commission recommend to the City Council an ordinance change related to the mooring transfer process?

RECOMMENDATION

The Harbor Commission may either:

1. Advise Harbor Resources to submit the proposed mooring transfer ordinance to City Council; or,
2. Advise Harbor Resources to submit the proposed mooring transfer ordinance to City Council with suggested changes; or,
3. Advise Harbor Resources to re-evaluate the mooring transfer ordinance with the Mooring Master Plan Subcommittee, then bring back to the Commission at a later date.

BACKGROUND

For nearly three years, staff and members of the Mooring Master Plan Subcommittee have developed new rules concerning the transfer of moorings within Newport Harbor. In addition, the Grand Jury had also inquired about the mooring process and recommended that the City evaluate its current transfer practice and to refine the wait list.

CURRENT SYSTEM

The rules concerning mooring transfers have long been in the Municipal Code and have remained virtually untouched for several decades. In the early days of the harbor, mooring space in the harbor was given to anybody who could provide their own mooring tackle and buoys, provided they stay within the defined boundaries. As mooring a vessel became more and more popular on the offshore buoys, the demand for moorings

also increased, at which time a wait list was established around the mid 1960's. This wait list was designed to provide a mooring to the next available person whenever a mooring was relinquished back to the City; something that rarely occurred. The reality was that the mooring permittee would sell the vessel in a private transaction, and with that sale the mooring permit was included. Because these transactions could involve a sizable dollar amount, the selling permittee was enticed to find a private buyer on the open market. Therefore, the mooring wait list has remained stagnate for nearly 40 years.

PROPOSED SYSTEM

Staff is recommending that the entire mooring transfer process be evaluated to better suit the needs of the boating public and the City. The attached proposed ordinance reflects the efforts of the subcommittee and staff, along with the concurrence of the City Attorney's office. Some major highlights of the proposed ordinance are:

1. The Lido Isle Community Association has been added, along with Newport Harbor Yacht Club and Balboa Yacht Club, as organizations that are allowed to hold mooring permits. All other moorings in the harbor must be held by a single, natural person.
2. Permit requirements include name, address (pertinent contact information), indemnification for claims against the City, proof of liability insurance, proof of vessel ownership etc....
3. Family trusts are allowed to hold a mooring permit.
4. The boundaries of the NHYC, BYC and LICA may not be expanded beyond their boundaries prior to enactment of this ordinance.
5. Upon transfer, the permittee must show proof of ownership within 60 days, otherwise, the mooring may be deemed vacant and may be rented.
6. The permittee has not transferred more than one offshore mooring during the previous 12 months.
7. The transferee does not hold more than two other mooring permits.
8. Trades may be approved between two permittees without a fee.
9. City may provide long term mooring rentals for a period up to one year to moorings that are deemed vacant.
10. Permittees may notice the City of their intent to vacate their mooring for 15 days or more, therefore creating a long term rental opportunity. Permittee may reclaim the mooring with notice.
11. Public may rent moorings after signing a contract. Equipment damage deposit is required to cover any repairs to the mooring. Renters shall provide mooring lines.

12. Renting is based on availability and is not guaranteed for a specific term. Live aboards are not permitted on rentals. Rentals are offered to the persons on the wait list.
13. Moorings may be loaned for no more than 30 days. The 'loan-er' may not loan for more than 60 days in previous year. The 'loan-ee' may not be the recipient of a loan for more than 90 days in the previous year.
14. A written application is required to be on the wait list. The list shall be verified and updated every other year.
15. Mooring transfer charge shall be a multiple of the annual mooring permit fee as established by the Council approved Fee Schedule.

PUBLIC NOTICE

This agenda item has been noticed according to the Ralph M. Brown Act (72 hours in advance of the public meetings at which the Harbor Commission considers the item). It was also posted on the City's website.

ENVIRONMENTAL REVIEW

The Harbor Commission's approval of this agenda item does not require environmental review.

Submitted by:

Chris Miller
Harbor Resources Manager

Attachments: Mooring Transfer Ordinance

ORDINANCE NO. 2009-___

**AN ORDINANCE OF THE CITY COUNCIL OF THE
CITY OF NEWPORT BEACH, CALIFORNIA,
AMENDING SECTION 17.01.030 OF CHAPTER 17.01
AND SECTION 17.60.040 OF CHAPTER 17.60 OF
TITLE 17 OF THE NEWPORT BEACH MUNICIPAL
CODE PERTAINING TO MOORING PERMITS**

The City Council of the City of Newport Beach finds that:

1. The Management and Stewardship of the Newport Harbor has been granted under Tidelands Trust Legislation by the State of California. Vessel moorings in the City Tidelands are intended to provide a lower-cost alternative to boat slips in Newport Harbor and to provide boating accessibility to a larger segment of the population. Historically, starting from the 1930's, mooring transferability was limited under the Municipal Code to allow an individual mooring permit holder to convey the existing mooring hardware, and to transfer the mooring permit to another individual only in conjunction with the sale of the vessel assigned to the mooring.
2. When this system was developed, demand for moorings was minimal. Initially, an individual could request permission to install mooring equipment and would be assigned a location and a mooring number. Over the next thirty years, an informal wait list was established. However, as the demand increased over several decades, a significant value was associated with possession of a mooring permit that was far in excess of the value of the mooring hardware. As the value of the permit increased, the ability to acquire a permit from the wait list decreased significantly.
3. When there is great demand for moorings, a value is associated with a mooring permit in excess of the annual permit fees. This amendment to the mooring permit and transferability provisions of Title 17 provides for a revised process that is fair and equitable to all parties involved and identifies use fees, rents and charges that will assist in funding Harbor maintenance and dredging projects.

NOW THEREFORE, the City Council of the City of Newport Beach, California, HEREBY ORDAINS as follows:

SECTION 1: Section 17.01.030(A)(4) of Chapter 17.01 of the Newport Beach Municipal Code is hereby added to read as follows:

17.01.030 Definition of Terms.

4. Assigned Vessel. The term "Assigned Vessel" shall mean a vessel lawfully registered or documented to a Permittee to occupy a designated mooring or berthing location in the Newport Harbor.

SECTION 2: Section 17.01.030(J)(15) of Chapter 17.01 of the Newport Beach Municipal Code is hereby added to read as follows:

- J. Definitions: M.
15. Multiple Vessel Mooring System. The term "Multiple Vessel Mooring System" shall mean a floating platform secured to a single point mooring which allows multiple vessels to be secured that are shorter in overall length than the side of the platform to which the vessel is to be moored.

SECTION 3: Section 17.60.040 of Chapter 17.60 of Newport Beach Municipal Code is hereby amended in its entirety to read as follows:

17.60.040 Mooring Permits.

- A. Permit Required. No person shall place, erect, construct or maintain a mooring in the waters of Newport Harbor over City-owned or controlled tidelands without first having obtained a mooring permit from the Harbor Resources Manager. Any work described and authorized in the permit must be completed within the time period designated in the permit.

- B. Issuance of Permit; Conditions. The Harbor Resources Manager, in furtherance of the tideland grants to the City, may issue permits pursuant to the provisions of this Chapter to permit annual or temporary mooring of vessels in Newport Harbor. Each Permit issued by the Harbor Resources Manager shall allow the Permittee to moor only the Assigned Vessel, which must be a vessel specified on the permit that is owned by the Permittee.
 - 1. Exceptions:
 - a. The Balboa Yacht Club and the Newport Harbor Yacht Club (collectively, "Yacht Clubs") currently hold permits for multiple moorings placed within certain mooring area boundaries established by the City. In addition, the Lido Isle Community Association ("LICA") has permits for shore moorings on that island. These non-profit organizations shall hold their respective permits under the Yacht Club, or association name, for the moorings identified by Harbor Resources as under their respective control at the time of enactment of this ordinance. The Yacht Clubs and LICA shall be solely responsible for managing moorings under their control and shall be permitted to assign moorings under their control to Yacht Club members and members of LICA, respectively. The Yacht Clubs and LICA shall keep accurate records of the name and address of the club members and community association members to which each mooring has been assigned. Mooring records shall be made available for audit by the Harbor Resources Manager during regular business hours upon request.
 - b. Mooring of a tender. A vessel no longer than fourteen feet (14') in overall length to serve as access to and from the Assigned Vessel, may be secured to the Assigned Vessel or may be secured to the mooring in the absence of the Assigned Vessel.
 - c. Multiple Vessel Mooring System Pilot Program. The Harbor Resources Manager may approve Multiple Vessel Mooring System in the mooring areas of Newport Harbor Yacht Club and the Balboa Yacht Club. An application for a Multiple Vessel Mooring System shall be submitted in writing to the Harbor Resources Manager, who shall evaluate the application based upon standards he shall have established.
 - 2. Permit Requirements. Each mooring permit must identify one natural person who shall be responsible for all activities related to the mooring permit. Such person shall be identified on the permit by his/her full legal name, current address, current telephone number and current e-mail address and shall agree to be responsible for maintenance and repair of mooring equipment, to defend and indemnify the City of Newport Beach against any claims or losses arising out of, or related to the use of the mooring permit, provide proof of liability insurance as

determined by the City's Risk Manager, and registration or other proof of ownership, all to the satisfaction of the Harbor Resources Manager.

3. Permittee/Transferee Qualifications. A mooring permit shall be held by or transferred to only to the following persons:
 - a. A natural person holding title to an Assigned Vessel;
 - b. A natural person who obtains title to an Assigned Vessel under a will or other testamentary instrument, and/or under the California Probate Code;
 - c. An intervivos trust, family trust, or other similar type of trust holding title to an Assigned Vessel so long as all trustors are natural persons (if there are any conflicts between the provisions of the trust terms, particularly with regard to any asset transfer provisions, the provisions of this ordinance shall prevail);
 - d. A documented partnership of all natural persons holding title to an Assigned Vessel;
 - e. A marine contractor or marine support service provider, holding title to an Assigned Vessel used to provide current or ongoing harbor infrastructure and marine or fishing services (such as maintenance and dredging) as authorized under the provisions of Marine Activities Permit; or
 - f. The Balboa Yacht Club, Newport Harbor Yacht Club and LICA- only for those moorings assigned by the City of Newport Beach within certain established mooring areas or locations, prior to the enactment of this amended ordinance. The boundaries of these designated mooring areas may not be expanded.

- C. Plans and Specifications Required. No permit shall be issued for placing, erecting, constructing or maintaining a mooring unless such mooring is constructed:
 1. In accordance with standard plans and specifications approved by the Harbor Resources Manager and at a location approved by the Harbor Resources Manager, or;
 2. In accordance with other plans and specifications for the mooring or buoy which have been submitted by the applicant, showing the construction of the proposed mooring or buoy together with the location, and which meet the requirements established in this chapter and which have been approved by the Harbor Resources Manager.

- D. Unpaid Fees. When the Permittee is in arrears for a period of ninety (90) days or more, the Harbor Resources Manager may, at his/her discretion, revoke the permit upon five (5) days written notice to the Permittee by first-class mail to the address shown on the permit.

- E. Transfer of Permit. A permit may be transferred if the Permittee intends to sell or otherwise transfer ownership of the Assigned Vessel and does not intend to replace the Assigned Vessel with another vessel owned by Permittee. Permits shall not be transferred without the prior written approval of the Harbor Resources Manager. The Harbor Resources Manager shall approve the transfer of a mooring permit under the procedures set forth below:

1. The Permittee (or, if the Permittee is deceased or incapacitated, the Transferee as defined below) shall submit to the Harbor Resources Manager:
 - a. A completed mooring transfer form (on the form provided by the Harbor Resources Manager); and
 - b. Documentation that the proposed new Permittee (Transferee) qualifies as a Permittee under section B(3) above.
2. If Transferee is purchasing the Assigned Vessel and does not have title to the Assigned Vessel owned by the Transferee at the time of transfer, then:
 - a. Within sixty (60) days of a transfer, Transferee shall submit to Harbor Resources Manager a copy of a California Department of Motor Vehicles registration or other current registration (or in lieu thereof, U.S. Coast Guard documentation of ownership) documenting Transferee's ownership of the Assigned Vessel, or in the case of a shore mooring, a photograph of the Assigned Vessel if it is not subject to vessel registration laws; or
 - b. If such documentation is not received by the Harbor Resources Manager within the sixty (60) day period, then the mooring may be deemed vacant.
3. If Transferee intends to moor a vessel other than the Assigned Vessel and does not have title to the vessel that will be moored at the time of transfer, then:
 - a. Within sixty (60) days of an approved transfer the Transferee shall notify Harbor Resources Manager that the Assigned Vessel has been removed from the mooring and before a new vessel may be placed on the mooring shall submit to Harbor Resources Manager a copy of a California Department of Motor Vehicles registration or other current registration (or in lieu thereof, U.S. Coast Guard documentation of ownership) documenting Transferee's ownership of the new Assigned Vessel, or in the case of a shore mooring, a photograph of the new Assigned Vessel if it is not subject to vessel registration laws; or
 - b. If the documentation is not received within 60 days of a transfer, the mooring will be deemed vacant and may be rented pursuant to section G below.
4. The transfer request shall be denied unless Mooring Permit fees are paid current; required mooring inspections are current; required maintenance and repairs are complete and there are no derelict or unauthorized vessel(s) on the mooring.
5. The Permittee and Transferee must provide a written agreement to defend and indemnify the City of Newport Beach in any dispute with a third party over Transferee's right to be the Permittee.
6. Transfer Approval. Upon confirmation of compliance with Section E above, the Harbor Resources Manager must find all of the following conditions to approve the transfer of a mooring permit:
 - a. The Permittee no longer owns the Assigned Vessel or has retained ownership of the Assigned Vessel and has permanently vacated the mooring;

- b. The Permittee has not transferred more than one offshore mooring to another Permit Holder during the previous twelve (12) months;
 - c. The Transferee does not hold more than two (2) other mooring permits;
 - d. The Permittee and the Transferee have met all the qualifications and conditions for issuance of a permit in Section B above.
 - e. Additional mooring transfers may be allowed under Sections (a), (b) and (c) above at the sole discretion of the Harbor Resources Manager provided there is reasonable necessity and no indication of mooring speculation.
7. The Harbor Resources Manager may approve the trade of two moorings between two permittees subject to compliance with Section E above without any transfer fee imposed by the City.
- F. City's Authority to Rent out Moorings. Permittee may not rent the mooring to any other person. With the exception of moorings issued to Permittees described in Section B (3)(f), City shall have the authority to rent out moorings pursuant to the following provisions:
- 1. Deemed Vacant Moorings. City may rent out Deemed Vacant Moorings at its own discretion for any period of time up to one (1) year. The Permittee may reclaim its mooring upon thirty (30) days prior written notice to City of its intent to return the Assigned Vessel to the mooring.

The following moorings are "Deemed Vacant Moorings":
 - a. An Assigned Vessel has not been tied to the mooring for thirty (30) consecutive days or more; or
 - b. A vessel, other than an Assigned Vessel, has been tied to the mooring for thirty (30) days or more; or
 - c. Required documentation for an Assigned Vessel has not been provided for a transfer request pursuant to Section E above.
 - 2. Noticed Vacant Moorings:
 - a. Permittee may provide written notice to City of its intent to vacate its mooring for fifteen (15) days or more. These moorings shall be "Noticed Vacant Moorings." Written notice shall include the date the Permittee intends to vacate his/her mooring, and the date he/she intends to reoccupy the mooring with the Assigned Vessel.
 - b. If Permittee provides notice, the Permittee may reclaim its mooring on the reoccupation date indicated in his/her written notice, or, if the Permit Holder returns prior to or after the reoccupation date, upon twenty-four (24) hours written notice to the City.
 - c. City may rent out Noticed Vacant Moorings at its own discretion for any period of time up to the reoccupation date on Permit Holder's written notice, or the twenty-four (24) hour written notice. If the mooring continues to be vacant for thirty (30) days past the reoccupation date

indicated on Permit Holder's notice, and there is no further written notice from Permit Holder, the mooring shall become a Deemed Vacant Mooring.

G. Procedures for Mooring Rental. Any person wishing to rent a mooring must enter into a written mooring rental agreement with the Harbor Resources Department that includes the following:

1. An agreement to be responsible for any damage to mooring equipment, to defend and indemnify the City of Newport Beach and the Permittee against any claims or losses arising out of, or related to the mooring rental, and that requires the renter to provide proof of liability and marine pollution insurance, registration or other proof of ownership, and an equipment damage deposit, all to the satisfaction of the Harbor Resources Manager.
2. The repair of any damage to the mooring equipment shall be paid by the mooring renter.
3. Renters shall provide mooring lines which shall be removed at the end of the rental period.
4. A mooring rental agreement is renewable based on availability. Upon return of the Assigned Vessel to the mooring, Harbor Resources Department will attempt to reassign the renter to another mooring. Renters have no right of renewal or substitute moorings upon return of the Assigned Vessel, or upon termination of a mooring rental agreement for any reason. Renters accept an indefinite term at their own risk.
5. The rental fee will be based on a rate established by the Newport Beach City Council and delineated in the Master Fee Schedule Resolution.
6. Live aboards are not permitted on mooring rentals.
7. Mooring rentals that are available for fifteen (15) days or more shall be first offered to persons on the Wait List, as defined below, as a priority. Acceptance or non-acceptance of such mooring rentals shall not cause such persons to lose their position on the Wait List.
8. Mooring rentals that are available for less than a fifteen (15) day period, or longer term mooring rentals if no Wait List persons rent the moorings pursuant to Section (7) above, shall be offered to the public on a first-come, first-serve basis.
9. A mooring may be loaned free of rent to a vessel other than the Assigned vessel for no more than thirty (30) consecutive days provided that: 1) The Permittee provides the Harbor Resources Manager with written notice identifying the vessel that will use the mooring; 2) The Permittee has not so loaned the mooring for more than sixty (60) days in the calendar year that precedes the commencement of the current mooring loan; and 3) The vessel requesting a loan has not previously been the recipient of loans for more than ninety (90) days in the previous twelve (12) months.

H. Mooring Permit or Rental Wait List

1. The Wait List ("Wait List") is the list or lists of natural persons as of the date of the adoption of this ordinance, who wish to obtain a mooring permit as permits revert back to the City or rent a mooring from the City. On and after the effective

date of this Ordinance, the Wait List(s) shall be maintained for natural persons interesting in securing a mooring permit, or renting a Deemed Vacant, or a Noticed Vacant Mooring.

2. Any person wishing to be added to a Wait List must do so on a written application with a fee to be established by resolution of the City Council. Any person may be removed from a Wait List may provide a written signed notice to the Harbor Resources Manager at any time, requesting to be removed from the Wait List.
 3. Each even numbered calendar year, City shall send one notice to all persons on the Wait List requesting confirmation of continued interest and/or updating of contact information. If there is no response to the thirty (30) day notice along with payment of the fee referenced in I (4) below, then the person shall be removed from the Wait List.
 4. Each person on the Wait List is responsible to keep the City informed of any changes to mailing address or other contact information and must pay a fee for the administrative costs to maintain the Wait List to be established by resolution of the City Council. Nonpayment of such fee shall cause the person to be removed from the Wait List.
 5. Revoked, surrendered or abandoned moorings will be offered to persons on the Wait List.
 6. If no person on the Wait List accepts a mooring permit according to the reallocation process noted above, then the Harbor Resources Department may auction the mooring and issue a permit for the mooring to the highest qualifying sealed bid.
- I. Mooring Permit Transfer Charge. The City shall charge the Permittee for the right to transfer a Permit under section E above in an amount equal to a multiple of the annual permit fee as determined by the Master Fee Schedule except, the fee shall not be required if the transfer is from the Permittee to the same Permittee as trustor of an inter vivos trust, living trust or other similar estate planning arrangement.
- J. Surrendered Mooring Equipment. If the Permittee sells transfers or otherwise no longer owns the Assigned Vessel and does not intend to apply for, or does not receive approval to transfer the Permit to another, the Permittee may provide written notice to the Harbor Resources Department of his or her intent to surrender the Permit.

Once a Permit is surrendered, the Permittee shall remove the Assigned Vehicle and/or the mooring equipment thirty (30) days after written notice of surrender of the Permit, or, upon failure to remove the mooring equipment, title shall vest in the City.

- K. Revocation of Permit.
1. Grounds for Revocation. A Mooring Permit may be revoked upon any of the grounds set forth in Section 17.70.020 or for any of the following:
 - a. The moored vessel, or the mooring equipment has been determined to violate the applicable Mooring Regulations in section 17.25.020, and the owner or renter has not made the necessary corrections or repairs within the time required;
 - b. The mooring Permittee has failed or refused to allow an inspection of the vessel to determine if it is seaworthy and operable or a public nuisance;

- c. Living aboard a vessel assigned to a mooring without a Live-aboard Permit.
- 2. Notice and Hearing. In the event the Harbor Resources Manager determines there are grounds to revoke a permit, the Harbor Resources Manager shall proceed in the manner described by Section 17.70.020.
- 3. Upon revocation, it shall be the duty of the owner of the mooring to immediately remove the mooring equipment and any moored vessel. If not removed within thirty (30) days of revocation of the Permit, the mooring equipment shall vest in the City and may be transferred by City to another person or may be removed by the Harbor Resources Manager and the cost of mooring removal shall be paid by the mooring Permittee. Any moored vessel or equipment not removed within 30 days may be impounded by the City and disposed of in the manner provided by law. City incurred costs of removal of mooring equipment or any vessel moored thereto may be charged against the Permittee and collected in any court of competent jurisdiction or recovered by the City from the proceeds of sale of the mooring or equipment.
- 4. During any revocation proceeding under this Section L, if the mooring is unoccupied, it may be temporarily assigned as a mooring for guest vessels by the Harbor Resources Manager.

SECTION 4: If any section, subsection, sentence, clause or phrase of this ordinance 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 ordinance. The City Council hereby declares that it would have passed this ordinance, and each section, subsection, clause or phrase hereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses and phrases be declared unconstitutional.

SECTION 5: The Mayor shall sign and the City Clerk shall attest to the passage of this ordinance. The City Clerk shall cause the same to be published once in the official newspaper of the City, and it shall be effective thirty (30) days after its adoption.

SECTION 6: This ordinance was introduced at a regular meeting of the City Council of the City of Newport Beach, held on the ___ day of _____, 2009, and adopted on the ___ day of _____, 2009, by the following vote, to wit:

AYES, COUNCILMEMBERS _____

NOES, COUNCILMEMBERS _____

ABSENT COUNCILMEMBERS _____

MAYOR _____

ATTEST:

CITY CLERK