

Attachment D

Resolution No. 2024-47: Alternative Fees

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

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 options 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(0) and City Council Policy F-7 Section (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, the City Council is committed to periodically reviewing tidelands rent to ensure the rent is reflective of fair market value;

WHEREAS, an appraisal report dated December 26, 2023, was prepared by Netzer & Associates and delivered to the City establishing the fair market value of moorings at 30% of the Newport Harbor Marina Index;

WHEREAS, the Newport Harbor Marina Index was established pursuant to City Council Resolution No. 2010-134, approved on December 6, 2010, and is the average of slip rates in the Newport Harbor's low or moderately priced marinas;

WHEREAS, short-term mooring license fees for moorings held pursuant to Section 17.60.045 (Short-Term Mooring Licenses) were established pursuant to City Council Resolution No. 2023-62 approved on November 15, 2023;

WHEREAS, the Harbor Commission held a meeting on April 10, 2024, and considered the appraisal recommendations and unanimously recommended to the City Council adjusting the mooring rents to reflect the current fair market value rental rates for onshore and offshore moorings in Newport Harbor;

WHEREAS, the City Council held a regularly scheduled meeting on July 9, 2024, related to moorings rents to consider the recommendations of the Harbor Commission; 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 City Council finds that the rent provisions contained in this resolution provide for the charging of fair market value rent and that the rental rates (and adjustments) constitute 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 and/or license, shall be set in accordance with the provisions of this resolution. The rent established in this resolution shall only be applicable to permittees and/or licensees 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:

- a) The mooring rent established by Resolution No. 2016-17 shall continue to apply to an existing mooring permittee issued a mooring permit pursuant to Section 17.60.040 (Mooring Permits) of the NBMC that has not been transferred as of the effective date of this resolution.

- b) The mooring rent established by Resolution No. 2016-17 shall apply for four years from the transfer date to mooring permittees that obtained their permit through a transfer pursuant to Section 17.60.040(E) of the NBMC between August 22, 2024 and August 21, 2028. Four years from the transfer date, the mooring permit will convert to a mooring license pursuant to Sections 17.60.040(B)(3), 17.60.040(E), and 17.60.040(F)(11) of the NBMC and the mooring licensee shall pay the short-term mooring license rent established by Resolution No. 2023-62.

- c) The mooring rent established by Resolution No. 2016-17 shall apply to the Balboa Yacht Club, Newport Harbor Yacht Club, and Lido Isle Community Association until August 31, 2032. As of September 1, 2032, the aforementioned yacht clubs shall pay the short-term mooring license rent established by Resolution No. 2023-62.

Section 2: The recitals provided above are true and correct and are incorporated into the substantive portion of this resolution.

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, Division 6, 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 statutorily exempt 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 on August 22, 2024, and the City Clerk shall certify the vote adopting the resolution.

ADOPTED this 9th day of July, 2024.

Will O'Neill
Mayor

ATTEST:

Leilani I. Brown
City Clerk

APPROVED AS TO FORM:
CITY ATTORNEY'S OFFICE



Aaron C. Harp
City Attorney