

# **Attachment B**

Resolution No. 2024-46: Harbor Commission Recommendations

**RESOLUTION NO. 2024-46**

**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 Section 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**, 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**, the Harbor Commission held a meeting on April 10, 2024, and considered the appraisal recommendations and unanimously recommended to the City Council adjusting 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, to receive and consider the City Harbor Commission's recommendation regarding fair market value rental rates for moorings; 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:** Resolution No. 2016-17 is hereby repealed.

**Section 2:** 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, 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:

- a) Establishing the fair market rental rates for onshore and offshore moorings as equal to 24% of the City adopted Newport Harbor Marina Index used for determining slip rental rates at the Balboa Yacht Basin.
- b) 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 fiscal year beginning July 1, 2025.
- c) The total mooring rate adjustments will be phased in beginning January 1, 2025, through a final adjustment on July 1, 2029, as per the table:

Mooring Lengths/Ft	Price Per Linear Foot Per Month (\$)					
	Jan 1, 2025	July 1, 2025	July 1, 2026	July 1, 2027	July 1, 2028	July 1, 2029
18	2.27	2.88	4.08	5.29	6.50	7.71
25	3.74	4.19	5.08	5.98	6.87	7.77
30	3.91	4.53	5.78	7.02	8.26	9.50
35	3.98	4.68	6.06	7.45	8.84	10.22
40	4.16	5.04	6.78	8.53	10.28	12.02
45	4.19	5.09	6.90	8.70	10.50	12.30
50	4.42	5.54	7.79	10.04	12.29	14.54
60	4.66	6.02	8.76	11.49	14.22	16.96
70	4.74	6.19	9.09	11.98	14.88	17.78

- d) 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.

**Section 3:** The recitals provided above are true and correct and are incorporated into the substantive portion of this resolution.

**Section 4:** 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 5:** 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 6:** 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 9<sup>th</sup> day of July, 2024.

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Will O'Neill  
Mayor

**ATTEST:**

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Leilani I. Brown  
City Clerk

**APPROVED AS TO FORM:  
CITY ATTORNEY'S OFFICE**

  
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Aaron C. Harp  
City Attorney