



# Newport Mooring Association

## Newport Mooring Association Comments to Harbor Commission Agenda – Agenda Item 7 For November 9, 2020 Meeting

CITY OF NEWPORT BEACH  
HARBOR COMMISSION SPECIAL MEETING (DATE  
CHANGE DUE TO HOLIDAY) AGENDA  
City Council Chambers - 100 Civic Center Drive. Please See Notice  
Regarding COVID-19 for Public Comment Information.  
Monday, November 9, 2020 - 5:00 PM

To: Harbor Commission Members:

William Kenney, Jr., Chair  
Scott Cunningham, Vice Chair  
Ira Beer, Secretary  
Marie Marston, Commissioner  
Steve Scully, Commissioner  
Gary Williams, Commissioner  
Don Yahn, Commissioner

Copy to: Staff Members:  
Carol Jacobs, Assistant City Manager  
Kurt Borsting, Harbormaster  
Jennifer Biddle, Administrative Support Specialist

NMA's Comments on the Proposed new set of goals for the Harbor Commission.

NMA believes that the goals set forth below should not be addressed at this meeting, having less than one working day notice of these new goal.

**The NMA is requesting the discussion of these proposed goals should be delayed for 90 days for input from the public and stakeholders.**

The numbering below may not conform to the numbers on the redline or clean version of the exhibit related to the Staff Report.

All comments are on Agenda item: 7) 2.

Functional Area 1 – Number 4. Study and provide recommendations to the transfer permit policy for onshore and offshore moorings. (Beer, Cunningham).

**Comment: Why is this needed? – This was addressed just 4- 5 years ago after a 3 year long extensive study, of which many of the current members of the City Council were involved.**

**This should not be a stated goal without first allowing time for public input, stakeholder input, as well as advanced notice regarding any particular problems that need to be addressed along with some credible evidence of the problems.**

**If there is no creditable problem that needs to be addressed, it would be a waste of public resources to use staff time to address a non-existent problem, in addition to resulting in public and permittee concern over the uncertainty it would create.**

Functional Area 1, Number 5. Work with City staff on an update of the market rent to be charged for onshore and offshore moorings. (Beer, Cunningham)

**Comment: This was addressed just 4- 5 years ago after a 3 year long extensive study, of which many of the current members of the City Council were involved. The fair value was then set by resolution, with build in cost of living increases. Each year since then the annual fees have increased in accordance with the cost of living increases. Readdressing this issue now will take up a considerable amount of time and City resources, and the stated goal targets mooring fees running counter to the runs counter to legal requirements set forth in the City’s Grant of the tidelands management and the State Lands Commission oversight as discussed below.**

**The Tidelands (Harbor) is not a City Asset. The City manages the tidelands in trust under certain requirements and under the oversight of the State Lands Commission (SLC).**

**First, SLC does not requires market value as the criteria for establishing fees for use of State Lands and Waterways. Rather, there are numerous considerations, including the promotion of the use by the public, and promotion of navigation (including private boating use of the navigation waterways). For example, the City would not charge the market value for the public to sit on the public beach for the day. There are various considerations, not just market value of the area under management, which in the case of mooring include the promotion of the enjoyment of boating, the development of skills of responsibility, teamwork, and leadership for those involved in sailing and boating activities, which all require a place to keep a boat. Market value is only one consideration and needs to be addressed only with all other considerations. Without a reference to all other considerations, the stated goal runs counter to the manner in which the City holds the**

**Tidelands in trust for the general public and without a reference to the other considerations the stated goal is inaccurate and misleading.**

**Second, the grant to the City of management of the Tidelands specifically requires that the City make no discrimination among uses. The area around each mooring is, in effect, a place of storage for vessels. So too are the individual boat docks in front of homes in the Harbor. Targeting only the moorings for a reevaluation of annual fees without a similar stated goal of seeking an assessment and valuation for the fees related to private homeowner docks is clearly discriminating among uses and is unfair and prohibited. At a minimum, a legal opinion should be obtained, with input from the SLC regarding such a practice.**

*Functional Area 2, Number 3. Finalize a new Harbor Policy H3 to set guidelines for approving mooring extension requests by mooring permittees, and better defining the rows and fairways within the mooring fields for improved navigation, safety and optimization of space. (Beer).*

**Comment: This has been addressed separately over the last month in discussion between the Newport Mooring Association and the City. These discussions are ongoing, and there should be no action regarding this as a stated goal, without first completing the discussion with stakeholders. We had asked for information regarding any actual problems that need to be addressed (we have received none to date), and to identify the particular moorings where any problems are most likely to occur, so alternative solutions can be addressed if such problems or potential problems exist. The moorings fields have been in their current locations for almost 100 years, so we should have a history of problems if any have occurred. If there is no creditable problem that needs to be addressed, it would be a waste of public resources to use staff time and City resources in addition to resulting in public and permittee concern over the uncertainty it would create.**

*Functional Area 2, Number 4. Study options to reduce the number of onshore moorings. (Cunningham & maybe one other)*

**Comment: Stakeholders may not have been Notified, including Lido Isle Yacht Club and shore mooring permittees. We are aware of no evidence of a problem that requires looking for solutions. Problems and complaints and evidence should be presented for public comment before considering this as a possible goal for the Harbor Commission. If there is no creditable problem that needs to be addressed, it would be a waste of public resources to use staff time and City resources, in addition to resulting in public and permittee concern over the uncertainty it would create.**

Functional Area 2, Number 6. Review the On-shore mooring vessel specifications providing a long-term plan with the goal of insuring adequate spacing between moorings, residential docks, and street ends. (Scully)

**Comment:** Stakeholders may not have been notified, including Lido Island YC and Shore mooring permittees. We are aware of no evidence of a problem that requires looking for solutions. Problems and complaints and evidence should be presented for public comment before considering this as a possible goal for the Harbor Commission. If there is no creditable problem that needs to be addressed, it would be a waste of public resources to use staff time and City resources, in addition to resulting in public and permittee concern over the uncertainty it would create.

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*For reference:*

The State Statutes related to the Grant in Trust to the City of Newport Beach of the Tidelands, states clearly:

*In the management, conduct, operation, and control of the lands or any improvements, betterments, or structures thereon, the city or its successors shall make no discrimination in rates, tolls, or charges for any use or service in connection therewith*

**The same statutes provide:**

The lands shall be used by the city and its successors for purposes in which there is a general statewide interest, as follows:

(1) “ For the establishment, improvement, and conduct of a public harbor; and for the construction, maintenance, and operation thereon of wharves, docks, piers, slips, quays, ways, and streets, and other utilities, structures, and appliances necessary or convenient for the promotion or accommodation of commerce and navigation.”

(2) “ For the establishment, improvement, and conduct of public bathing beaches, public marinas, public aquatic playgrounds, and similar recreational facilities open to the general public.”

**Note:** The only reference to market value in these statutes is related only to the leasing of homeowner on the islands created by dredging activities, with leases of the homeowner lots of 50 years, not in relation to recreational uses of the waterways.