

**NEWPORT MOORING ASSOCIATION
HARBOR COMMISSION STUDY REPORT**

April 5, 2015

TO: Newport Harbor Commissioners
FROM: Newport Mooring Association
APPROVED BY: Newport Mooring Association Board of Directors
SUBJECT: Mooring Charges, Mooring Permit Transfers and Other Mooring Operations

RECOMMENDATION:

This report was approved by the NMA Board and is our recommendation to the Newport Harbor Commission that the following points be incorporated into its recommendation to the City Council.

The discussion and impact sections follow the standard City Staff Report format. The discussion section and attachments provide more detailed analysis including the legal and public policy rationale supporting the recommendations. The Impact section shows the effects of the proposed changes.

Four attachments are listed at the end of page 7. Attachment A, "Valuation Based on Tidelands Appraisal" has not been circulated until now. The other referenced documents (B, C, and D) have been circulated and are attached for the record. All are available on the NMA website.

Set annual permit fee at \$25 per foot and establish a uniform billing process

- Valuation based on 3 methods; 2013 Tidelands appraisal, San Diego Comparable & CPI
- Currently Newport residents are billed periodically for fees whereas non-residents must pay the annual fee in full. Adopt a billing process so all permittees are billed at the same frequency.
- Set initiation of the new rate retroactively

Allow mooring permit transfers and a market driven process

- Establish web based listing for moorings for sale
- Limit transfers to one per year
- Permit holder cannot hold more than 2 permits (current policy)
- Additional permits allowed at Harbor Resources Manager's discretion (current policy)
- Allow transfer of permit with or without Assigned Vessel (current policy)
- Allow inter family and Trust transfers (current policy)
- One for one exchanges allowed with permission of Harbor Resources Manager (current policy)
- Mooring permit is renewable annually(current policy)

Permit Transfer Fee

- 50% of annual fees (approximately \$500 for 40' mooring)
- Flat fee of \$ 150 for inter family, Trust transfers and transfers by inheritance

Allocation of City Rental Income of Vacant Moorings

- 50% of annual revenue is allocated to the general Tidelands fund
- 50% of annual revenue earmarked in the Tidelands fund for mooring permittee and visiting mooring renters amenities such as showers, wash down stations, dinghy storage, shore-line connections for dinghy's, etc.

Eliminate Mooring Wait List

- Over the last 4 years it is apparent the wait list is ineffective and does not serve the best interests of the boating public as envisioned

DISCUSSION:

The City's tidelands trust, also known as the Beacon Bay Bill (Chapter 74 of the Statutes of 1978), dedicates certain tide and submerged lands ("Tidelands") are held in trust by the City on behalf of the people of California. These lands include most of Lower Newport Bay, home to about 1,200 onshore and offshore moorings, as well as residential piers, commercial piers, and other operations.

The Beacon Bay Bill directs that the City manage the Tidelands as follows:

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; and for the construction, reconstruction, repair, maintenance, and operation of all works, buildings, facilities, utilities, structures, and appliances incidental, necessary, or convenient for the promotion and accommodation of any such uses.
3. For the preservation, maintenance, and enhancement of the lands in their natural state and the reestablishment of the natural state of the lands so that they may serve as ecological units for scientific study, as open space, and as environments which provide food and habitat for birds and marine life, and which favorably affect the scenery and climate of the area.

Further, 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.

In the opinion of the Newport Mooring Association, the Beacon Bay Bill obligates the City to charge appropriate and non-discriminatory rates for the use of tidelands. Allowing mooring permit transfers as prescribed herein does not confer a benefit to private individuals for the use of public property and is not in violation of the California Constitution (Article XVI, Section 6) prohibition on gifts of public funds. Allowing transfers of mooring permits is a matter of Council policy and is not a question of law.

On January 27, 2015, the City Council instructed the Harbor Commission to study and make a recommendation regarding mooring permit transfer procedures, fees charged for moorings and administration of the moorings. It was apparent that with the Ordinance No. 2010-26 and the resolution 2010-132, that there were significant inconsistencies with respect to the City's obligations as noted above including, but not limited to:

- annual fees;
- permit transfers allowed;
- permit transfer fees; and,
- administration of moorings.

Under Resolution 2010-132 mooring rates were increased over a five period duration (starting with an increase in 2011 and ending in advance of the 2015 billing) to **14%** of an average of low- to moderately priced marinas' berthing rates in Newport Harbor. This Marina Index was structured as the basis for

charging both onshore moorings based on the length of the boat, and offshore moorings, based on the approved length of the mooring. This rate far exceeds a fair and reasonable charge when compared to professional methods of assessing fees:

- Appraised values of Tidelands useable for boat storage at 50 – 55 cents per square foot
- Adjusted comparable San Diego rate of \$25/ft
- CPI based adjustment of \$21-25 per foot

Under Ordinance No 2010-26 limitations were imposed to reduce and ultimately eliminate mooring transfers with the exception of inter family and Trusts. From January 1, 2021 any permits would revert to the city if a permittee decided to give up their permit. The objective of this change was in part to improve the prospects of those on the wait list for moorings. However in the years since this Ordinance has been in effect only one person from the wait list has elected to take a permit despite the availability of 5 moorings. For this reason and others it has been determined the wait list does not serve the boating public as envisioned.

- We believe a more market driven process with some limitations will deter speculation as the moorings should be an affordable option for Californian residents in particular.
- We also believe introducing greater transparency into the permit transfer process will further alleviate concerns about possible speculation.

There has been some concern expressed that if the City does not manage the Tidelands appropriately there is a danger of the State Lands Commission will take back control of the Tidelands. Based on the recommendations in this report and our own inquiries on the matter, we feel there is very little risk of such an action as the recommendations are fair, reasonable, and aligned with the Tidelands Trust. Further, the mooring permittees are contributing substantially to the Tidelands Fund and provide a significant public benefit as discussed in greater detail below.

Annual Mooring Fees and Permit Transfer Fees

The adoption of the Fee Resolution 2010-132 which implemented the Marina Index as the basis for assessing annual mooring fees has resulted in unreasonable fees for the use of Tidelands by mooring permittees. The use of an index based on commercial marina fees is an “apples to oranges” approach and it also guarantees at least 6% increases annually given the fee history of the commercial operators included in the index, which is far in excess of CPI measures. As discussed more completely in attached documents, the Marina Index should be scrapped in favor of evaluating fair and reasonable fees considering the results of three professional methods of valuation.

- The current fee of \$55 per linear ft. is unreasonable and out of line by several measures
- A reasonable fee is \$25 per linear foot (please see Attachments A, B & C):
 - Appraised values of Tidelands useable for residential piers is 50 - 55 cents per square foot this equates to \$21 to \$25 per foot.
 - Adjusted Comparable San Diego is \$20 to \$25/ft.
 - CPI based adjustment would be \$25/ft.
- How do we compensate permittees for the years overcharged?
 - Harbor Commissioners has advised this is a matter for the City Council to decide

History on Permit Transfers

Ordinance No. 2010-26 was intended to eliminate most, but not all mooring permit transfers. As a public policy this is unreasonable and it ended a Council policy that had been in place for 80 years. The concerns driving the change were overstated as to the level of speculation. Also the legal rationale

presented in public meetings and stated in the “Whereas” section of the Ordinance was incorrect and misleading. The City Attorney in 2013 acknowledged allowing mooring permit transfers is a matter of Council policy and was not a gift of public funds.

- Historical policy supports transfers (please see Attachment D)
 - Early boaters were encouraged by Government to set up moorings
 - Changing the long established policy on transfers was unfair
- Permit holders for other public resources are allowed to transfer permits
 - Radio & TV networks on public airwaves
 - Oil & Gas exploration
 - Grazing rights
 - Commercial Fishing

Transferability

Allowing a more market driven process will better serve the boating public as it will allow greater choice of location to suit the needs of interested parties. By limiting the number of permits allowed, concerns about speculation are alleviated. Establishing a web site for moorings for sale will provide greater transparency as to when moorings become available.

- Transferability Promotes Affordable Access (please see Attachment D)
 - Limitations on amounts received and high transfer fees hamper affordability and access
 - Auctions would hamper affordability and access
 - Transferability Means Responsibility
- Transferability Promotes Transparency
- Transferability Does Not Result in Windfall Profits

Public Benefit

Moorings in Newport Harbor have a long history and an important function in allowing greater access to the harbor by those wishing to store their boats. They also provide a safe haven and improved navigational safety as they are in well-defined areas in the harbor.

- Mooring transfers are not illegal...but value must be given back to the public.
- Mooring Permittees give back to the public in several ways:
 - Annual fees paid into the Tidelands Fund are the highest of any user group
 - Vacant moorings are used by visiting yachts and the fees paid go to the Tidelands fund
 - Permittees maintain the mooring tackle to ensure the harbor is a safe haven and safe for navigation
 - Yacht clubs sponsor races & regattas, education, youth programs and community fund raising activities

In the chart below there are the 2015 estimated contributions based on current fees (with the exception of Commercial which are shown with 2011 contributions). The total contributions to the Tidelands funds from moorings is **\$2.067 million** (combined Moorings, Yacht Clubs and Lido c.a.), based on the current annual fees, rental income collected by the City on vacant moorings and estimated transfer fees. However for a truly fair comparison to the other two user groups we need more accurate information, however it seems clear the current fees charges are substantially out of line with other users.

Current Fees	Annual Fees	Rental Income for Fund	Total Contributions
Moorings: 439 onshore 539 offshore	\$ 1,678,947	\$ 80,000	\$ 1,758,947
Yacht Clubs: 142 offshore moorings Lido Isle c.a.: 46 onshore moorings	\$ 308,638	\$ -	\$ 308,638
Commercial actual 2011	\$ 566,000	\$ -	\$ 566,000
Residential Docks assume 1220 * avg 982 sq. ft.	\$ 589,200	\$ -	\$ 589,200

Using recommended fees below, the contribution to the Tidelands Fund by mooring users is more reasonable at **\$966,963** (mooring, yacht clubs and Lido Isle c.a. combined) compared to Commercial and Residential Docks. As before we need more information as to contributions from Commercial and Residential Docks to make this comparison fair and accurate.

Recommended Fees	Annual Fees	Rental Income for Fund	Total Contributions
Moorings: 439 onshore 539 offshore	\$ 757,238	\$ 80,000	\$ 837,238
Yacht Clubs: 142 offshore moorings Lido Isle c.a.: 46 onshore moorings	\$ 129,425	\$ -	\$ 129,425
Commercial actual 2011	\$ 566,000	\$ -	\$ 566,000
Residential Docks assume 1220 * avg 982 sq. ft.	\$ 589,200	\$ -	\$ 589,200

Public Policy and Tidelands

- The transfer of mooring permits is a policy question to the Council, not a legal question.
- Administration of the Tidelands should be equitable for all using the Tidelands for essentially the same purpose, in this case boat storage.
- Mooring fees and charges should be on a par with residential pier permittees.
- Mooring permit transfers should be allowed as residential pier permits are allowed to transfer freely with the sale of property.
- There are inconsistent policies with respect to the administration of boat storage.
- Equal Treatment is required under the Tidelands Trust.

Below is a chart which illustrates some of the aspects of Tidelands administration where there are some inconsistencies in how Tideland users are treated under current policies. We believe there can be sensible modifications to better align the policies with the Tidelands Trust of fairness and equal treatment.

For example, one aspect of inconsistent administration is the Newport residents are billed periodically for their fees whereas non-residents must pay the full annual fee when billed. By issuing a utility type bill, this discrepancy can be eliminated.

	Permit Transfer Allowed	Permit Transfer Fee	Profit Allowed	Rental Income Allowed	Rental Income To Tidelands Fund	Annual Fee Adjustment
Offshore Moorings (assume 40')	Two times until 2021, thereafter only Intra family and Trust	\$1,100 (50% annual fee)	None after 2021 mooring tackle reverts to City	NO	\$80,000 per year	YES
Yacht Club & Lido c.a. Moorings	Yes moorings may be reassigned by Clubs/Lido	N/A	N/A	YES	NONE	YES
Residential Docks		\$285	YES	YES	NONE	NONE

The City's General Plan speaks to a broad goal that onshore and offshore moorings should remain a more affordable method of bringing boating to the general public (more affordable than berthing). This is in part described in the General Plan's *Harbor and Bay Element*, Section 5.2, which reads:

Provide a variety of berthing and mooring opportunities throughout Newport Harbor, reflecting state and regional demand for slip size and affordability...

- We believe the recommendations made in this report achieve the goal of the City's General Plan of affordable moorings and as importantly aligns with the Tidelands Trust that all Tideland users be treated fairly and equitably.

Rental of Vacant Moorings

Under the current ordinances, the City may rent vacant moorings and historically has collected about \$80,000 per year. Mooring permittees generally are in favor of allocating 50% of the revenue toward amenities that will benefit visiting boaters renting moorings and permittees, including but not limited to:

- Dinghy storage racks
- Convenient onshore toilet and shower facilities
- Parking permits in neighborhood parking areas
- Wash-down areas
- Sand lines for permittee dinghies in areas such as the Marina Park
- Public dock permits for mooring permittees to allow longer periods ashore for shopping, dining etc.

IMPACT

Mooring fees increase 25% over 2010 vs. 177%

Tidelands Contributions are more in line with the Tidelands Doctrine

	Permit Transfer Allowed	Permit Transfer Fee	Profit Allowed	Rental Income Allowed	Rental Income To Tidelands Fund	Annual Fee Adj.
Moorings (assume 40')	YES, with limits	50% annual fee (\$500 for 40' mooring)	Speculation limited by transparency, frequency & number	No	\$80,000 per year 50% goes to Mooring amenities fund	TBD
Residential Docks	YES	\$285	YES	YES	None	NO
Yacht Clubs and Lido Isle C.A.	N/A	N/A	N/A	YES	None	TBD

The Harbor Commission conducted study sessions during 2015 including February 11th & 23rd, and March 9th & 23rd

Attachments: A – Valuation based on Tidelands appraisal
 B – Establishing Fair Use Fees for Newport Harbor Moorings
 C – CPI Analysis
 D – Newport Harbor Moorings – Transferability, Affordability, and Responsibility