

Newport Harbor Moorings Transferability, Affordability, and Responsibility

This report addresses current and past policies on the transfer of mooring permits in Newport Harbor. The report first looks at the history of the moorings, and then addresses how to best honor this history while at the same time increasing accessibility and affordability of moorings. The report also addresses how to encourage responsible use of the moorings and the boats on the moorings. The report concludes that the goals of Affordability and Responsibility are best achieved through an active, unrestricted market, together with the reduction of the current excessive annual fees being charged by the City for the use of moorings. In short, this report finds that, like other goods and services, a free market with rights to transfer results in affordability and promotes responsibility.

Historical Policy Supports Transfers

Moorings in Newport Harbor were pioneered by early boaters who were encouraged to contribute to the development of the harbor by establishing moorings which allowed boaters affordable use of the harbor.¹ These early pioneers experimented with different arrangements, including anchors, weights, single point and double point moorings, and various tackle. Some things worked, others didn't. Prevailing winds and differing currents in areas of the harbor were found to affect the moorings and boats. Adjustments were made for tides and the seasonal winds and storms which could come from different directions, including the occasional Santa Ana winds and winter storms. Equipment was placed, lost, broken, modified and redone at significant cost to the pioneers of the day. In some cases, costs resulted from property damage, and there was always the risk of injury from a boat breaking loose. The establishment of the moorings by individuals and some Yacht Clubs was encouraged by agencies having oversight, including the Federal Government, State Government and City of Newport Beach, all at the risk and expense of these boating pioneers.

With the addition of the moorings in the 1930s, boating activities flourished. Tourism and property values increased significantly, all to the benefit of the local businesses and property owners, as well as to the benefit of boaters. The symbol of Newport Beach became the sailboat. Moorings were given formal approval. The City did not question the right of the persons who developed the mooring to transfer his or her right to use the mooring to a family member, a friend, or to another boat owner. No one questioned the rights of those who received the mooring by transfer to do the same. Yacht Clubs were among these early pioneers. They and other groups were able to establish programs which developed sailing and boating skills for children, as well as educational programs which developed leadership skills.

In the 1970s, the City of Newport Beach took over the administration of the technical requirements for moorings and established use fees for boats on moorings. A reasonable fee was imposed for the use of the harbor and uniform regulations put in place. In doing so, the City was not charging a fee for something the City or State had developed. The development had been accomplished by these early pioneers at their risk, expense, and safety, not at the risk or expense of the City or State.

It is instructive to look at other public resources developed through the permit process. Permit holders with rights to use public resources have a long and accepted history in this country, to the benefit of both the permit holder and to the Nation. Radio and Television networks, for example, were developed knowing that the airwaves belonged to the public. Oil and Gas exploration is another example of a permitted use on and under public land. Grazing rights is a third example. Ranchers are allowed the use of public lands for grazing cattle. In every case, the development by the private sector would not have occurred unless the permit holder was assured that the permit could be transferred. Because of the great risk inherent in these early endeavors, the enterprise would never have been attempted by the early pioneers unless they had the implied understanding that what they developed was transferable to those who followed. Simply put, without transferability the endeavor would have been a waste of time.

In connection with these endeavors, the government, of course, had, and has, the right to ask the permit holders to give back something for the public good. In the case of oil and gas rights, a fee based on a percent of sales was, and is, charged, in the case of television airway rights, the station is required to offer programming with public content, such as news, election coverage, and other public interest services. In the case of moorings, the permittees give back significantly to the public. They give back by maintaining the equipment available to other boaters when boaters seek shelter from the sea. They give back by providing moorings for major events, such as the Newport to Ensenada race, the largest International Race in America. They give back by paying an annual fee to the City. They give back by being the eyes and ears of the Harbor, reporting problems to the City, and the permittees which are Yacht Clubs give back with the many educational and children's programs, including sailing, boating and water safety programs. Our system of transferable permits has a long history. It is a win-win for government, for the people, and for the permit holders. The denial of transferability to the pioneers and their transferees is not only contrary to the history and spirit of this great enterprise, the destruction of transfer rights hurts the City and the public. ⁱⁱ

The American people have benefited from the private sector's development of public resources. The few examples mentioned above demonstrate this: the development of radio and television, the development of oil reserves with the resulting reduction of dependence on foreign oil, and the availability of affordable meat as a result of grazing rights on public land. None of these activities are "giveaways," rather these are great benefits to the American people. These public benefits have been achieved at great risk to those early pioneers, and to those to whom the rights were transferred, and who continue to contribute to the development and maintenance of these resources. A look at this history provides an understanding of why transferability of mooring permits is good public policy.

Transferability Promotes Affordable Access

Affordable access to public resources, including access to sailing and boating activities in Newport Harbor is good public policy, provided that the activity is done safely and responsibly. While public access is something to be encouraged, it is not a right. Everyone, for example, does not have the right to own a radio or television station. There are only so many airwaves and channels. It would not be fair to the pioneers of these resources to lose their permits, just because some folks think that everyone should have the right to own a television channel by

putting themselves on a waiting list. CBS, NBC, and ABC should not be required to give up their permits to people on a waiting list who are unwilling to compensate the networks for the development they, or their predecessors, have done. The resource is limited. It was the early pioneers who, at great risk, developed these resources. They did so with the expectation of being able to transfer them in the future. These original permit holders and their successors should continue to have the right to transfer their permits without the threat of losing the permit to a person on an artificial list.

Affordable access is best achieved by acknowledging, furthering, and encouraging transferability. Here's how: A holder of a permit with full rights to transfer can transfer his or her rights by (a) a sale with full payment at the time of transfer, (b) a sale with a small down payment with payments over time (an installment sale), or (c) if allowed, a long-term rental or sublease (sublease rights are not currently allowed, but for the reasons below should be reconsidered).

On the other hand, when rights to transfer are limited, access is reduced or denied in three ways. First, with restrictions on transfer, there are fewer moorings available for purchase. Second, with fewer available, the price goes up, not down. Third, the current restriction on long-term rentals eliminates the availability of moorings to those who may not have the ability to acquire a mooring.

As mentioned above, the transfer of mooring rights can take many forms. The person selling the mooring rights can require a one-time payment, or he or she could require only an initial down payment and accept payments over time. The holder of the permit could also consider, if allowed, entering into a long-term rental of the mooring. Currently, long and short term leases of moorings are not allowed, but for reasons set forth below, eliminating this restriction would increase affordability and would provide much more public access.

1. Limitations On Amounts Received and High Transfer Fees Hamper Affordability and Access.

Limitations on the amount received on the sale of a mooring and high transfer fees result in less availability and higher cost to a person who is attempting to obtain a mooring. Basic economics holds that if there is a decrease in price, there is less incentive to offer it for sale, so fewer are available. If a significant portion of the sale price were to be given to the City, the seller would receive a significantly lower “net” amount. As a result, fewer moorings will be offered for sale. In addition, with fewer moorings offered for sale, the price for a boater to acquire a mooring increases. The fewer available, the higher the price.

Of course, if there were a reasonable transfer fee, such as a three or six month use fee, this would not have a major impact on mooring sales. But a higher fee will discourage sales, and therefore, fewer moorings would be available, and the asking price would increase. Using a percentage of the sale price (e.g. 5% of the sales price) would be difficult to administer and would present uncertainty in the process for a number of reasons. It is difficult to obtain accurate reporting of the sale price. Also, in cases involving a partial gift, the sale price would not be an indicator of value. In addition, when a boat is sold in combination with a mooring it is

impossible to differentiate what is being paid for the boat from what is being paid for the mooring. (The same model boat can vary in price by up to 300% based on its upkeep and condition, and on the boat's equipment). The best way to achieve transparency is to retain the current system of charging a portion of the annual fee as the transfer fee.

2. Auctions Would Hamper Affordability and Access.

Transfers which require auctions after a permittee decides to sell, even where the seller retains the proceeds of the sale, would hamper affordability and access for a number of reasons. First, an auction would make it difficult or impossible to offer a combination boat plus mooring, as often occurs with the sale of moorings. This limits access where a buyer is attempting to acquire a combination of boat and mooring. Required auctions would also make it difficult or impossible to sell a mooring using the popular "installment sale." Moorings are often sold with a small down payment, with payments over time. For example, a boater may ask if he or she could acquire permit rights for \$3,000 down and payments of a few hundred dollars each month, and this might be accepted. These sales are based, in part, on the credit worthiness and background of the buyer. Auctions would make an installment sale almost impossible. Even if some special form of auction could be devised to allow for time payments, few sellers would want to sell a mooring on an installment sale to an unknown person whose credit and background has not been investigated. It is also unlikely that the City would want to go into the loan business.

With no restrictions on transfers, people wanting moorings who have only a small down payment will have a chance to obtain a mooring. Auctions would eliminate that chance. Also, with no restrictions on transfers, it will be much easier to sell a boat and mooring combination. Auctions would eliminate that possibility. Auctions only add a level of complexity to the transfer process at the expense of reducing affordability and access to moorings.

Transferability Means Responsibility

It is a well-known fact of human behavior that the more a person has a stake in an enterprise, the more responsible the person will be. The corollary is also true. The lower the stake, the less one cares about the enterprise. Pick any human activity to see the principle at work. Pride of ownership is a well-known fact. Restrictions on transfers have resulted in lowering the value of mooring rights. If transfer rights are eliminated, there is little incentive for mooring owners (i.e. owners of the mooring equipment and the permit rights) to care about their moorings, or about how they are maintained, or about what boats end up on the moorings. Problems will result with the devaluation of mooring rights, including problems with pollution, equipment failure, safety, and crime. How safe will it be to kayak or paddle board through a future mooring field where the permittees have little or no stake in their moorings? Historically, permit holders had the right to transfer, and as a result, they maintained their boats and their moorings. They had pride of ownership. It is easy to see that transferability promotes the responsible use of the mooring fields. Surely, the public good is not served by the elimination of transferability. It is just the opposite - Transferability means Responsibility.

Transferability Means Fairness for those Who Followed the Rules

One of the effects of the prior change in policy was an immediate drop in the value of moorings. Many mooring holders paid large amounts of money to acquire moorings. At the time, they were told by City officials that this was the only way to realistically obtain a mooring. After following the rules, they have lost 50% to 75% of what they paid. This loss was not just a result of normal market forces, but was a direct result of the City reversing its long established policy which allowed the transfer of moorings. There is nothing fair about this reversal of policy at the expense of those who followed the rules, as explained by the City.

Transferability Promotes Transparency

With restrictions on transfers, permit holders may be less than candid about the transfer and use of their moorings. Restrictions take many forms: Not allowing any transfers, not allowing rental of mooring, and charging very high transfer fees. As restrictions are removed, there is little or no incentive for people to be less than candid in the transfer of moorings. With restrictions lifted, the City can simply require both the buyer and seller to state the purchase price. The City could establish a voluntary website where permittees could list mooring that are available with and without a boat, or the Mooring Association could establish the website and retain the date. The City could take over the website anytime it wanted. The City could adopt an ordinance that any false information on the transfer statements will result in the loss of the mooring. As more data is collected, it will be easy to see artificially low values. The system is self-regulating. Buyers will not want to lose the mooring they had paid for. They will know the City has a database against which to check any artificially low price. Transferability is the best path to Transparency.

Transferability Provides Revenue to the City

If transfers are no longer allowed, the City would receive no revenue from transfers. Allowing transfers means revenue to the City. Assuming, for example, 50 transfers per year, for an average 40 foot mooring, the revenue at the new proposed annual rate of \$26 per foot, per year, and using the current transfer fee of one-half the annual fee per transfer, the city would receive \$26,000 in transfer fees (\$260,000 over a 10-year period. Therefore, not only is transferability good for the boaters, good for the public, and fair to the current permit holders, it is good for the City.

Questions and Concerns about Transferability

In addressing transferability of moorings, a number of questions have been raised by the public, sometimes from those who do not understand the history of moorings and how they work. What follows addresses some of these questions and concerns.

1. Speculation on mooring values is overstated and would not affect availability or affordability of moorings.

The concern that may be speculators who would want to acquire moorings for resale is overstated. Even if a few people would consider purchasing a mooring for resale, this would not affect the availability or affordability of moorings. The number of moorings that transfer each year is relatively low. There is no data which support the view that a significant number of mooring transfers result from permittees who have only owned a mooring for a year or less, or that such sales resulted in any profit. Even if there were such sales, it would not affect affordability or access. If a would-be speculator did acquire a mooring in order to make a “quick” sale, then the mooring would be available for immediate sale, so the mooring would not be “unavailable.” On the other hand, if the would-be speculator were to hold the mooring for years, he or she would have to pay mooring fees and maintenance fees until the mooring is sold years later, thereby reducing or eliminating any profit. This concern about speculators is truly exaggerated, and any such concern would be resolved by only permitting one transfer per year (other than a transfer to a family member or to a trust).

2. Empty moorings are not a problem.

In most cases, empty moorings indicate that boaters are using their boats. They may be away for the day, for a week, or for months. Also, a reasonable number of empty moorings is good for the Harbor. In a few areas of the Harbor, moorings are very close together. This can present a problem in high winds with boats coming even closer to each other. Empty moorings provide some protection. Empty moorings also make it easier to navigate through mooring fields. Empty moorings are also used by the City to rent to boaters visiting from other Harbors.

3. Transferability does not result in windfall profits.

The idea that a person will always sell the mooring for more than he or she paid, is a myth. Whether a person makes a true profit depends on (a) what the person paid, (b) adjusting the selling price to counter the effects of inflation (CPI), (c) adjusting the selling price for any costs and fees paid if the mooring was vacant for months prior to the sale, and (d) the costs associated with selling, including advertising fees, referral or agent fees, and transfer fees to the City.

Any calculation of amounts received is further complicated when the person sells a mooring together with a boat. Older boats are hard to value. The value depends largely on how the vessel was maintained, its current condition, and the equipment on board. The same model boat built in the same year can vary in price by more than 300%. It is therefore hard, if not impossible, to calculate any profit (or loss) from the mooring portion of a sale when someone pays one price for a mooring with a boat.

An additional problem with penalizing a person who appears to receive more than what he or she paid, is the fact that a person can just as well lose money on the sale of a mooring. The complexities involved in attempting to figure out what is a “profit,” in trying to take into account the time value of money, the CPI, and other factors mentioned above, is a monumental task, a task which is not easily achieved, and a task which is prone to mistake. Adding to this problem is the fact that one can lose money on the sale of a mooring. No one is suggesting that the City reimburse a person for his or her loss. In short, any effort to calculate profits for the purpose of taking them away serves no public purpose. It only hampers the availability and affordability of moorings by discouraging sales and transfers.

Many of the questions and concerns about moorings and the boaters who use the moorings have often been based on misinformation. Public policy should be based on sound information, not myths or misinformation. Establishing sound public policy is best achieved through an understanding of the history of moorings, and how to best achieve accessibility and affordability in the future.

Annual Fees Should Be Fair and Reasonable

Just as important as Transferability is to Accessibility and Affordability, so too is a *reasonable* annual fee. The two, Transferability and Annual Fees, go hand in hand. Access and affordability are affected by both transferability and by the Annual Fees charged by the City. This report only addresses transferability. In a separate report on annual fees charged by the City, it is concluded that the City is currently charging two to three times more than is fair when proper comparisons are made, and two to three times what the fee would be if the original fees were simply adjusted with the cost of living increases (CPI). This report should be read together with the companion report on fair charges for the use of moorings, and the report on the historic CPI increases, as the current excessive fees impact Accessibility and Affordability just as much as the denial of transferability.

Conclusion – Transferability means Access, Affordability, and Responsibility

The City should repeal the current ordinance which eliminates the transferability of moorings. The City should also reduce the current excessive annual fee. The fee should be reduced to an annual fair use fee of no more than \$26 per foot, as set forth in the both the Comparable Fee Report and in the CPI Historical Report.

Responsibility is a two-way street. The City should acknowledge the debt it owes to the pioneers who came forward and who risked their time, money, and personal safety to establish the moorings. This debt should be honored by acknowledging what has always been known. Transferability is fair to those who created the moorings and to those who acquired the moorings from them.

With the restoration of transfer rights, more boaters will be able to enjoy boating and the harbor. In restoring transfer rights, the City will continue enjoy a significant revenue from transfers. Restoring transfer rights is the best way to be fair to permit holders, and the best way to provide affordable access for boaters wishing to enjoy this great harbor.

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Respectfully Submitted,

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ⁱ FOOTNOTE (I). This is an article from the Newport Harbor Yacht Club 1991 historical documents, referring in part advertisements in the 1930s encouraging individuals to establish moorings in Newport Harbor:

mense ballroom . . . large boat locker room
. . . sail loft . . . mooring and dock service
under the supervision of Leonard G. Swales
. . . house manager, Mr. Neal . . . house chef,
John Banks.

owners, Harry J. Bauer of Pasadena (club
member) takes advantage of the oppor-
tunity offered and keeps his 102-foot, all-
steel, topmast schooner *Puritan* at his front
door.

During this era the Newport Harbor Cham-
ber of Commerce ran a variety of advertise-
ments in the same magazine, to lure yacht
owners and their wallets to Newport Beach
with such attractions as:

- Pay no rent to the city for mooring space if you maintain a private mooring.
- You can keep your boat at your front door if you own a home at Newport Harbor.
- Year-round climate. Warmer ocean water. Every modern comfort and convenience. An hour from Los Angeles.
- Like numerous other Balboa home

The Log of the Newport Harbor Yacht Club

There is no record of a club yearbook, roster, or other official publication from 1929 through 1937. The last existing issue of the club's *Motor and Sail* yearbook was published in late 1923. After that, there appear to have been no club publications until a new yearbook was published in 1937. The annual Commodore's Scrapbook and short-lived "Main Brace" newsletter were launched in 1950, and *Hard On The Wind* was first published in February 1953. *Pacific Coast Yachting* magazine ran a monthly

THE DEPRESSION YEARS: 1929-1941 61

refers to April 1935 issue of *Pacific Skipper* magazine

From *The Newport Harbor Yacht Club*, © 1991 Newport Harbor Yacht Club, Allan Trane, Steve Barnard editors

ⁱⁱ FOOTNOTE (II). The federal government owns the airwaves and holds these lands, in effect, in a public trust. In the case of airwaves, they FCC was created by President Roosevelt in the 1930s, and only requires the permit holders (e.g. CBS, ABC, NBC) to give back to the community, with public

content (e.g. news, election coverage etc). In the case of Oil and Gas, the permittee is required to give about 12.5% of the selling price of the oil and gas to the government. The system of permits has a long history and only requires some "give back" by the permit holder.

Regarding permits for Television

airwaves: See <http://chm.gmu.edu/exploring/20thcentury/regulatingtelevision/>

The FCC was established by Franklin Roosevelt with the assumption that the airwaves, the broadcast "bandwidth," belonged to the people, much in the same way as, for example, federal forest land belongs to the people. Broadcasters applied for a license to use a section of that public property, a specific frequency. In return, broadcasters had: *an obligation to serve the interest of the community. This obligation requires the licensee to 'ascertain the needs of the community' and then provide program service to foster public understanding of those issues. How the licensee provides programming to serve the needs [was] left to the licensee's discretion.*

Regarding oil and gas permits, see http://ewg.org/oil_and_gas/part2.php

Since 1982, the federal government has leased or offered for oil and gas drilling 229 million acres of public and private land in 12 western states. Lessees pay a royalty of 12.5 percent to the Department of the Interior's Minerals Management Service on the amount or value of the oil or gas removed or sold from each lease.

Some references used in the above article

Bureau of Land Management (BLM LR2000). 2004. Correspondence from BLM to Environmental Working Group, July 19, 2004.

Bureau of Land Management (BLM Leasing Instructions). 2004. General Oil and Gas Leasing Instructions. Accessed online May 17, 2004 at http://www.ut.blm.gov:80/MineralsAdjudication/general_info.html

Bureau of Land Management Rawlins Field Office (BLM Rawlins Exceptions). 2003-2004. Wildlife, Greater Sage-grouse & Raptor Winter Range Exceptions to Date, October 1, 2003 to September 30, 2004. The report was last updated June 18, 2004.

Bureau of Land Management Pinedale Field Office (BLM Pinedale Wildlife Exceptions). 2003. Wildlife Winter Range Exceptions 2002-2003. The report was last updated December 26, 2002.

Bureau of Land Management Pinedale Field Office (BLM Pinedale Raptor Exceptions 2003). 2003. Raptor Winter and Nesting Exceptions 2002-2003. The report was last updated August 1, 2003.