

# RESIDENTIAL PIER RENTAL RATES

November 28, 2012

# What We'll Cover

- City's Obligation
  - ▣ Tidelands Trust
  - ▣ Public Trust Doctrine
- Background on Harbor Rents
- Recommendation – Changes from Workshop
- Examples
- Tidelands Revenue Uses
- Comments/questions
- For more information

# What are Tidelands?

- Tide- and Submerged Lands are:
  - Publicly-held waterways (including land below the waters) that are:
    - Owned by the people of California
    - Assigned to the City via specific legislation (“**Beacon Bay Bill**”)
      - *Chapter 74 of the Statutes of 1978, as amended*
    - Operated by the City in accordance with:
      - CA Constitution
      - Beacon Bay Bill and Public Trust Doctrine
      - City Charter & Municipal Code
  - Not all waterways in Newport Harbor are tidelands
  - Many of the ocean beaches are tidelands



# County (and State) Tidelands



# How Tidelands Are Managed

1st

- People of California (all of us)
- Owners of all tidelands

2nd

- California State Legislature
- Assign Tidelands to City via Beacon Bay Bill, California Constitution, Public Trust Doctrine, etc.

3rd

- State Lands Commission (SLC)
- Oversees City's compliance with Beacon Bay Bill
- SLC also manages some Tidelands (Huntington Harbor, Tahoe, more)

4th

- City of Newport Beach
- Manages State's tidelands as Trustee per Beacon Bay Bill, Public Trust Doctrine

# City's Obligation is to...

- Comply with the Beacon Bay Bill, Public Trust Doctrine, and CA Constitution, including:
- Charge Fair Market Value (FMV) for use of the tidelands.
  - ▣ **These are the State's lands**
  - ▣ Not charging FMV can be a Gift of Public Funds, prohibited by the California Constitution (Article XVI, Section 6):

*The Legislature shall have no power to ...to make any gift or authorize the making of any gift, of any public money or thing of value to any individual, municipal or other corporation whatever.*

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New in 2011 & 2012



# SB 152 (Pavley) Becomes Law (2012)

## LEGISLATIVE COUNSEL'S DIGEST

SB 152, Pavley. Public lands: general leasing law: littoral landowners.

Existing law authorizes the leasing of lands owned by the state and under the jurisdiction of the State Lands Commission for purposes the commission deems advisable. Existing law requires the commission to appraise lands and fix the annual rent or other consideration upon receipt of an application to lease the land.

This bill would require the commission to charge rent for a private recreational pier, as defined, constructed on state lands and would require the rent to be based on local conditions and local fair annual rental values.

The bill would except a lease in effect on July 1, 2011, for the term of that lease, and a lease for which the application and application fees were submitted to the commission prior to March 31, 2011.

# CA State Auditor Report #2010-125

- *State Lands Commission: Because It Has Not Managed Public Lands Effectively, the State Has Lost Millions in Revenue for the General Fund*
- **Audit Findings:**
  - “The Commission Is Undervaluing Certain Types of Leases”
  - “The Commission’s Failure to Appraise Its Properties Regularly May Cause Them to Be Undervalued”
  - “The Commission Does Not Always Promptly Conduct Rent Reviews”

# City Council Effort to Date

- Update Rents, Fees and Charges in Newport Harbor:
  - ▣ Fees based on cost-of-service – **completed November 2010**
  - ▣ Mooring rents – **completed November 2010**
  - ▣ Balboa Yacht Basin rents (slips, apartments, garages) – **completed December 2011**
  - ▣ Commercial Marinas – **completed Nov 13, 2012**
  - ▣ Other Commercial uses (gas docks, shipyards, etc) – **completed November 13, 2012**
  - ▣ Residential Piers – **currently**
  - ▣ At conclusion (by 12-31-2013), review all past work to ensure that it was fair and equitable.



# How to Set Rent

# How to Set Rent

- **NBMC §17.60.020(E)** ...rental or lease  
...reflective of fair market value ...as established  
by appraisal.
- **NBMC §17.60.060(D)** Rent ...based upon fair  
market value, as determined by the City Council.  
Such determination ...based upon the findings of a  
City-selected appraiser.

# How to Set Rent (cont'd)

## □ Council Policy F-7(A)

- Whenever a lease .... is considered by the City, an analysis shall be conducted to determine ...market value of the property. This analysis ...conducted using appraisals or other techniques to determine the highest and best use of the property and the highest value of the property.

# Two Appraisals

- **Mr. Netzer - 2012:**

- \$0.55/SF of all tidelands useable for a residential pier, bounded by property line, bulkhead line, and pierhead line.

- **Mr. Rasmuson - 2012**

- \$0.50/SF of all tidelands useable for a residential pier, bounded by property line, bulkhead line, and pierhead line.

*Both appraisals on City website.*



# Workshop Recommendation

November 19, 2012



# Rent Recommendation

- Rent should be **\$0.525/SF/year**.
- But should **NOT** apply to all the tidelands off of a private property.
- Should apply only to:
  - ▣ Dock & Float area +
  - ▣ Waters of the internal slip (if any) +
  - ▣ Dockable/useable waters around the float (<10 feet generally – but adjacency of neighboring docks will reduce this)
- Phase-in increases over three (3) periods (at 2015).

# Other Recommendations

- We will measure SF off of existing plans or existing structure (not our GIS aerials)
  - ▣ Notices after 1-1-13, specific arrangements made with pier owners to measure. Done by 3-1-13.
  - ▣ Appeals process TBD
- With your permit, you must:
  - ▣ Maintain dock in good order
  - ▣ Maintain appropriate insurance levels (\$1M General Liability)
  - ▣ Hold harmless/indemnify City
- Amend NBMC to make it legal to rent residential piers.



# Revised Recommendation

November 28, 2012

# Revised Recommendations

Subject	Initial Recommendation	Revised Recommendation (if any)	Notes
Rental Charge	\$0.525/SF/year	No change	Splits the difference between two appraisals - \$0.50/SF and \$0.55/SF
Area Subject to Rent	Float + Gangway + Internal Slip (if any) + up to 10' around float.	Float + Gangway + Internal Slip (if any) + up to 10' around float, unless "backside" and other portions not useable.	If property line is <10' from sides, then property line is determinative. City will review waterway useability on a permit-by-permit basis - if some portion of the dock is not useable, it won't be in permit area.
Phase-in of Increase	3 years - to 2015	5 years - to 2017	Similar to mooring rental increase (5 periods), not BYB rental increase (3 periods). Phase-in amount would be adjusted by CPI between 2014 and 2017.
Periodic Adjustments	By change in CPI, then re-set based in part on appraisal.	No change	The \$0.525/SF would be adjusted by CPI annually until such time as the City Council conducts another residential pier appraisal.

# Revised Recommendations

Subject	Initial Recommendation	Revised Recommendation (if any)	Notes
Square or curved corners	Square corners	Curved corners	This is re: the 10' strip of waters around a float. Workshop attendee noted that it should be curved around the float, not boxed around it.
Should waters around Newport Island be the same as rest of Harbor?	Yes	No change	Appraisers on 11-20 confirmed that the values should be the same regardless of where a dock is in the harbor.
\$100/year permit fee's applicability to private or County waters.	No recommendation	Review fee, consider reduction or deletion.	City will review this with fee consultant in early 2013.

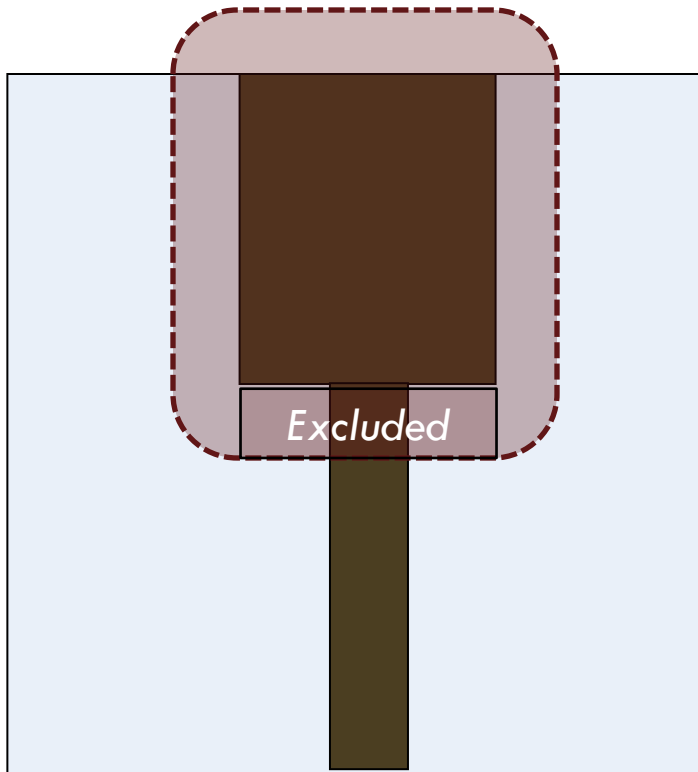
# Revised Recommendations

Subject	Initial Recommendation	Revised Recommendation (if any)	Notes
If residential pier space is rented out	Amend NBMC to allow it.	Amend NBMC to allow it, charge Small Commercial Marina rental rate for that portion rented.	Marinas have expressed concern that allowing rentals at \$0.525/SF undermines the business model of all legal marinas.
Terms Included in Written Permit			
- Insurance	Require \$1M of General Liability	Permits would have general statement requiring insurance w/no identified amount.	
- Transferability	Permits not transferable if property is sold.	Allow transfer.	
- Notice	7 days	30 days	Re: notice of termination of permit for unpaid rent.

# Examples

*NOTE: Examples estimate SF using City's GIS systems – more definitive measurements will be done for each permittee.*

# General Example (not to scale)



- Waters = 3,000 SF (50' x 60')
- Float = 400 SF (20' by 20')
- Gangway = 100 SF (4' by 25')
- Berthing Area = ~1,000 SF (10' strip around float)
- Rental Calculation:
  - ▣ Float & Gangway = 500 SF
  - ▣ Berthing area = ~1,000 SF
  - ▣ Subtract berth area & gangway overlap SF = (40 SF)
  - ▣ Total SF = 1,460 SF
    - Rent per SF = \$0.525/SF/year
  - ▣ **Rent = \$767 /year**

*Appraisals suggested 3,000 SF x \$0.50-\$0.55/SF = \$1,500 - \$1,650/year*



# Example – Rialto/West Newport

- Dock Area = 204 SF
- Water Area = 700 SF
- Total = 904 SF
  
- Rent = \$475/year



*Examples estimate SF – more definitive measurements needed*

# Example – E Bay Front/Little Balboa Island

- Dock area = 515 SF
- Water area = 910 SF
- Total area = 1,425 SF
  
- Rent = \$748/year



*Examples estimate SF – more definitive measurements needed*

# Example – 125 E Bay Front (Little BI)

- Float & Gangway = 1,190 SF
- Exterior Waters = 1,200 SF
- Total SF = 2,390
  
- Rent = \$1,255/year
- Split w/2 = \$627/year



*In this shared pier example, there is at least 20' between piers.*

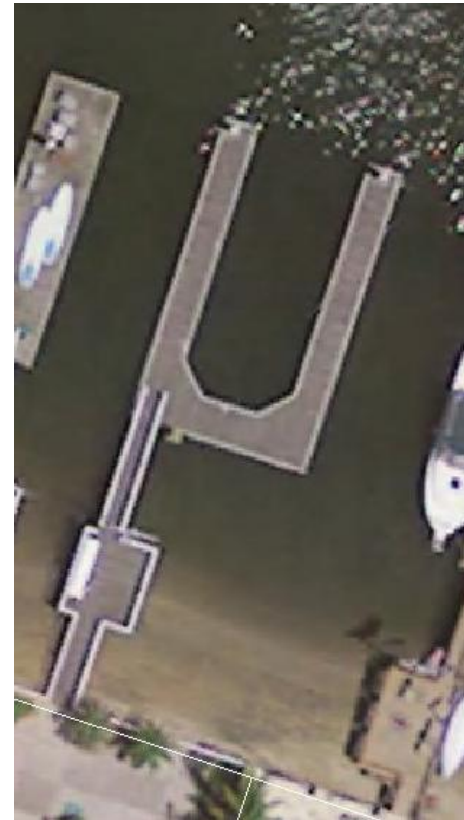
*Examples estimate SF – more definitive measurements needed*

# Examples – S Bay Front, BI



# Example – 13<sup>th</sup> Street/ Balboa Peninsula

- Dock area = 1,257 SF
- Water area = 860 SF
- Total SF = 2,117 SF
  
- Rent = \$1,111/year



*Examples estimate SF – more definitive measurements needed*

*In this example, there is less than 20' between piers. As a result, side water SF is less.*

# Edgewater Place, Peninsula



at,  
des.

# Examples – Via Lido Soud



# Examples – Channel Road





# Rental Phase-In Examples \*

Examples	2012	2013	2014	2015	2016	2017
General Example	\$ 100	$([A - \$100]/5) + \$100$	$([A - \$100]/5) + 2013 \text{ Rent}$	$([A - \$100]/5) + 2014 \text{ Rent}$	$([A - \$100]/5) + 2015 \text{ Rent}$	Fully Phased-in Rent (A)
Example #1 - 1,139 SF	\$ 100	\$ 199	\$ 299	\$ 398	\$ 498	\$ 597
Example #2 - 1,426 SF	\$ 100	\$ 229	\$ 358	\$ 487	\$ 616	\$ 748
Example #3 - 3,480	\$ 100	\$ 445	\$ 790	\$ 1,135	\$ 1,480	\$ 1,827

\* The above is in current dollars (therefore assumes no change to CPI over the period). Assuming about a 2.5-3% CPI each year, the rental rate would be somewhat higher (by CPI) as 2017 approaches.

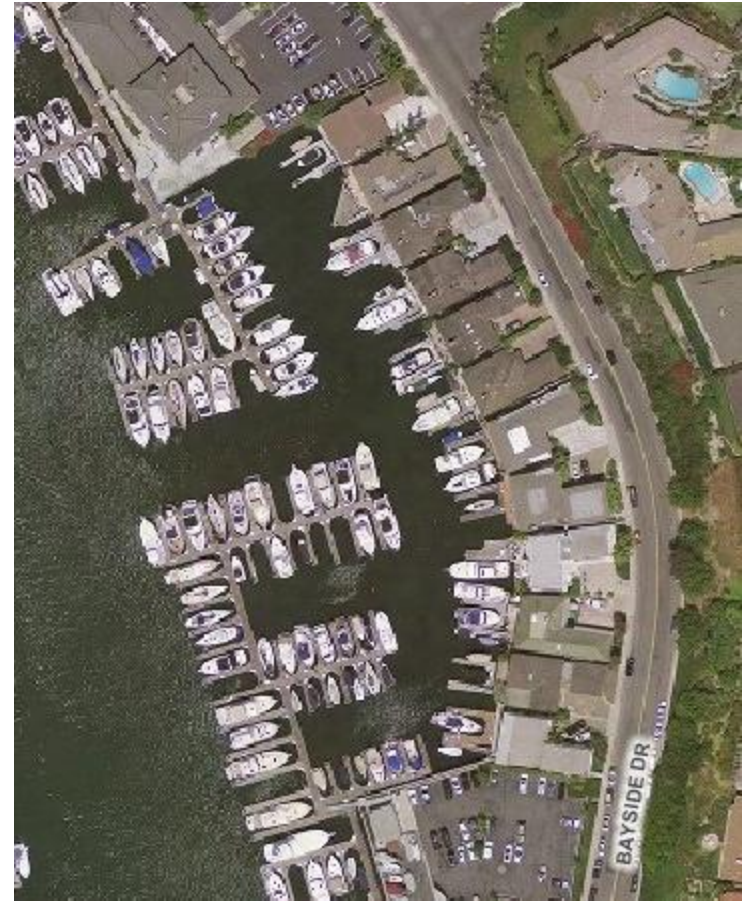
# Specific Areas Excluded

*Areas reflect our best understanding of specific circumstances and may need follow-up verification. The City cannot and will not charge rent where no City-administered public asset is being rented.*

# Portions of Bayside Drive

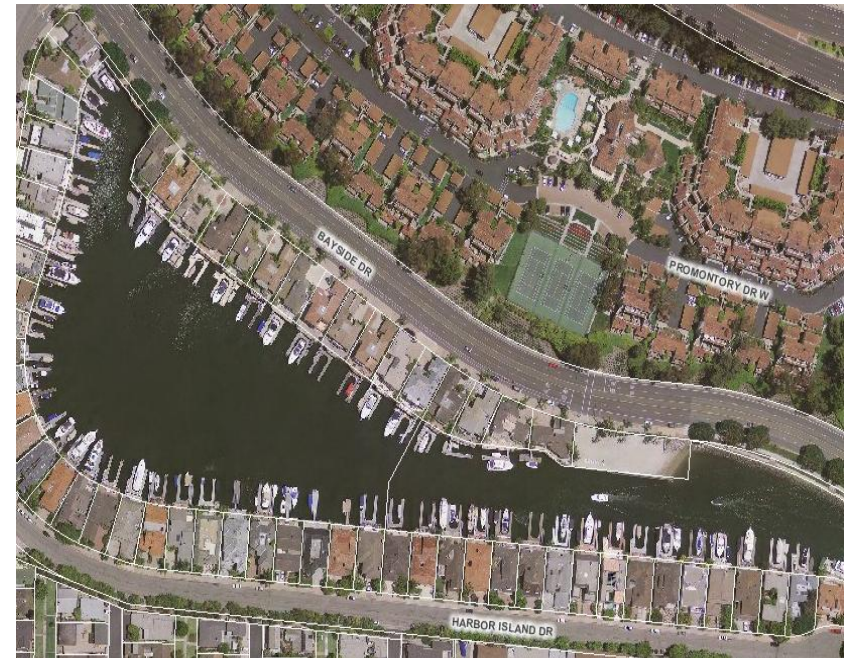
- County Tidelands or Private Waters:
  - 1611-1657 Bayside Dr.
  - 2015-2323 Bayside Dr.
  - 101-117 Bayside Place

*(Unless piers extend into City tidelands – most do not)*



# Promontory Bay

- Generally, residential properties around Promontory Bay have recorded easements allowing a dock. These may preclude rent.
  - Bayside Drive (16)
  - Harbor Island Drive (45)



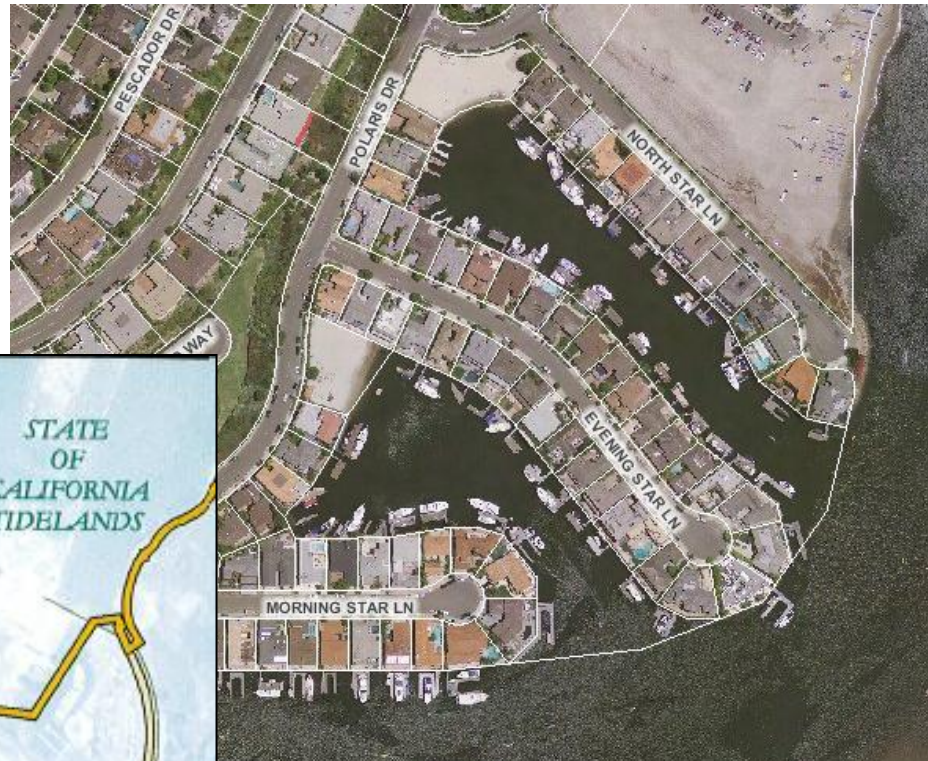
# Linda Isle, Harbor Island

- Linda Isle - County Tidelands or Private Waterways
- Harbor Island – mostly County tidelands



# Dover Shores

- Private Waters or County Waters/  
County Tidelands





# Uses of Tidelands Funds

# Tidelands Revenue Uses

- ❑ Beacon Bay Bill says:
  - ❑ For the establishment, improvement, and conduct of a public harbor...
  - ❑ For the establishment, improvement, and conduct of public bathing beaches, public marinas, .. and similar recreational facilities open to the general public...
  - ❑ For the preservation, maintenance, and enhancement of the lands in their natural state...



# Tidelands Revenue Uses

- Tidelands Capital Plan – including:
  - Dredging
  - Sea Wall maintenance and repair
  - Public docks, other harbor amenities
  - Marinas
  - Water Quality protections

# For More Information

- City Website:
  - [www.newportbeachca.gov](http://www.newportbeachca.gov)
  - “Projects and Issues”
  - “Harbor Charges” (both appraisals)
- City Staff:
  - Dave Kiff, City Manager
    - [dkiff@newportbeachca.gov](mailto:dkiff@newportbeachca.gov) or 949-644-3001
  - Michael Torres, Assistant City Attorney
    - [mtorres@newportbeachca.gov](mailto:mtorres@newportbeachca.gov) or 949-644-3131
  - Chris Miller, Harbor Resources Manager
    - [cmiller@newportbeachca.gov](mailto:cmiller@newportbeachca.gov) or 949-644-3043



# Questions/Comments