

Frequently Asked Questions Rental Rates for Residential Piers in Newport Harbor

Why is the City doing this now? The City needs to start complying with State and local laws which mandate charging fair market rental value for tidelands uses. The obligation to charge fair market rental value is in the California Constitution (Article XVI, Section 6), in the Newport Beach Municipal Code, and in State law (the “Beacon Bay Bill”). The City has been remiss in not charging what it should for residential docks. Raising rents is politically challenging and previous City Councils didn’t raise the issue. Unfortunately, ignoring it didn’t make the legal requirement go away. Previous to addressing residential piers now, the City started this process by adjusting mooring fees and fees at the Balboa Yacht Basin (December 2010), commercial pier permits (October 2012). It’s been at least a two year process.

Why is the increase so high? The City left rental rates at about \$8.33/month for many years, without doing an appraisal based on fair market value and without considering the size of the dock and waterways rented. A home on Lido Isle with a very large dock pays the same as a Newport Island home with a small dock. In 2012, the City asked two independent appraisers to look at what the fair market rental rate should be for residential piers. They came back within \$0.05/SF of each other (one was \$0.55/SF, one was \$0.50/SF). The City is recommending setting rental rates for residential piers at \$0.525/SF and phasing the increase in over five years, to 2017. Please review both appraisals on the City’s website.

Why isn’t it being phased-in? It is being phased-in. It will be phased-in over five periods to 2017.

But right before Christmas? If adopted in December 2012, folks will see the rental increases starting with the March 2013 billings. For someone who may pay \$800/year by 2017 (~\$800/year is a fairly likely charge for many piers), their rent will go from \$8.33/month in Feb 2013 to \$20.00/month in March 2013, and stay that way until March 2014, when it will go to about \$32.00/month, and so on.

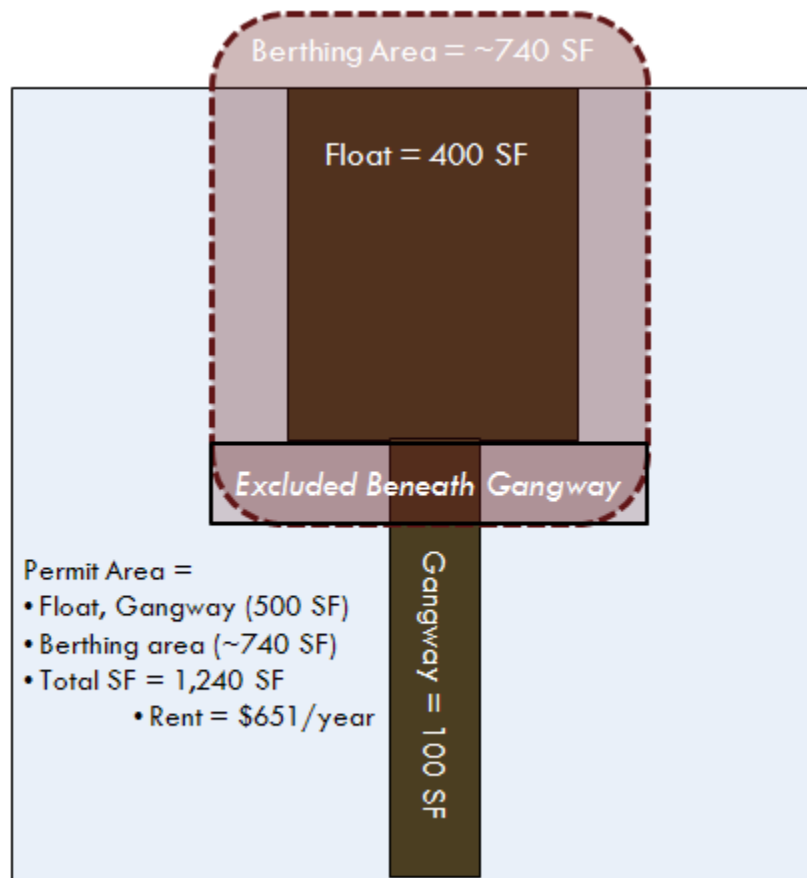
What will the funds generated be used for? State law directs that any revenue generated from the private use of public tidelands must be used for the maintenance and operation of the tidelands. The City Council has refined that further, suggesting that any increases in residential dock rents go specifically towards capital improvements (not operations) in Newport Harbor – like dredging, public sea wall replacement, and more.

Is the City just trying to pay for the City Hall with this? No. Revenue generated from the tidelands can only be used for the tidelands. The City is trying to step up and invest in Newport Harbor, a long-neglected location for capital investment until the last few years. Revenue from harbor rents will pay for long-needed dredging, public sea wall repair and replacement, and other projects that benefit the Harbor. Grant funds, State and Federal funds, and the rest of the community and our visitors will help fund these, too, but harbor users and dock permittees should chip in their fair share.

Is it a tax, a fee, or rent? It is rent and here's why: A residential dock is a private structure placed over the public's recreational waters – waters owned by each of us as residents of California. A large percentage of the residential docks in Newport Harbor are over these public recreational waters – considered “tide and submerged lands” or “tidelands” by the State. That dock owner is taking a piece of public property and making it private. The City also charges rent to other residents and businesses that take public waterways (or filled tidelands) and make them private or take a private profit – like the Balboa Bay Club, the homes at Beacon Bay, the Ruby's on the Balboa Pier, and many more. Some residents in West Newport Beach near the Santa Ana River jetty take public right-of-way for private purposes, and pay between \$330 and \$990/year for this use.

How can I determine what my dock rent might be? First determine the length and width (square footage) of your pier, gangway and your dock float over City tidelands. Once you get that number, add the “dockable” waters around it. If you have an interior slip, all of those waters are counted in your square footage. If you have waters around the bayward edge and sides of your dock that you can tie a boat up to, you'll add that square footage, too – up to 10' past the edge of the dock. Don't include the backside of your dock – that area is often non-navigable and will be excluded from the permit area. Stop measuring at your property line though. If your property line is, say, 7' from the side of your float, figure out the square footage of 7' out from the sides of your float.

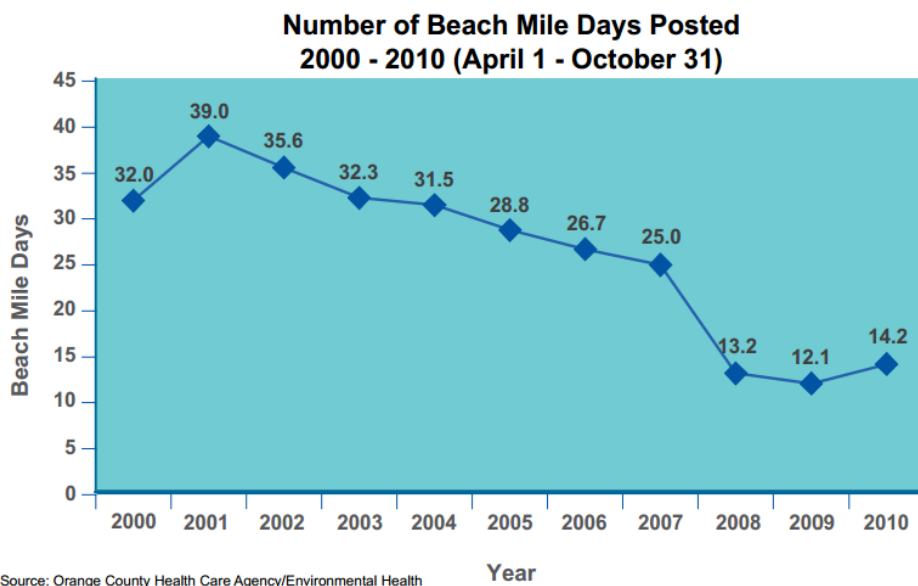
Here's an example:



But dock owners pay a higher property tax amount already because they have a dock. Some do and some don't, actually. If you purchased a home recently, and it's on the tax rolls at a recent purchase price, then yes, you are paying a property tax amount that may reflect the value of being able to have a dock outside on public waters. But if you have owned your home for a long time, the changes in taxable value likely have not kept up with the changes in actual value (that's the protection of Proposition 13). A waterfront home with a dock that hasn't changed hands – or has changed hands only within a trust – since before 1978 may be paying far less in property taxes than an interior lot home that has sold within the last 7-10 years. Remember too that the City gets about \$0.17 of every \$1.00 you pay in property taxes – and that's used to fund police, fire, libraries, parks, streets, and more. Regardless, the two appraisals set fair market value for the residential use of tidelands at between \$0.50/SF/year and \$0.55/SF a year, cognizant of the value a dock adds to a waterfront property.

Shouldn't the tidelands around Newport Island be valued at less than the rest of the harbor? We asked the two appraisers this exact question - both said no. The reduced footprint of tidelands under each pier in and around Newport Island – even at the \$0.525/SF/year rate – results in significantly lower rent rates for these piers than the rest of the harbor. By 2017, most would be between \$250/year and \$400/year (granted, that's up from \$100/year today).

But isn't the water quality around Newport Harbor worse than the rest of the harbor? Actually, no. The West Newport channels and Newport Dunes' lagoon used to have bacteria counts higher than some places in the harbor, but after the City's efforts to limit urban runoff, install catch-basin screens, and more, the water quality there is well within State standards for bacteria on a regular basis. The County of Orange's Health Care Agency (Environmental Health Division) routinely samples the water quality at three sampling stations in and around Newport Island (at 48th Street, 38th Street, and 33rd Street) – to see the most recent data there, access www.ocbeachinfo.com. The below chart shows the good progress Newport Bay as a whole has seen in recent years to reduce "beach mile day" postings.



How will dock rental rates be adjusted over time? The current proposal is to take the rate today (\$0.525/SF) and adjust that by the change in the Consumer Price Index (CPI) each year, but to cap that increase at 2% per year. During the phase-in period, the 2% cap per year would still apply.

Let's assume your rental price should be \$500/year today. Phased-in to 2017 would mean that, by 2017, the \$500/year should be \$541/year if the Consumer Price Index goes up 2% per year starting after 2013's charge. Therefore, at most the amount paid for rent each year would be in the second row below as follows:

Examples	2012	2013	2014	2015	2016	2017
Without any CPI	\$ 100	\$ 180	\$ 260	\$ 340	\$ 420	\$ 500
With CPI cap of 2%/year	\$ 100	\$ 180	\$ 265	\$ 354	\$ 446	\$ 541

After the 2017 billings, the City expects to conduct another harbor-wide appraisal, via an independent appraisal process. The rent suggested by that process would apply in 2018 and beyond (although a similar CPI-based adjustment is likely following the appraisal to ensure that the appraisal's results increase or decrease with CPI).

How will my dock footprint be measured? The City will measure dock footprints using aerial photos and our Geographic Information System (GIS), which has relatively precise measurements of everyone's dock. We have "truth tested" this method in recent days, comparing our GIS measurements to real in-the-harbor docks. Thus far, the GIS system's measurements slightly underestimate the square footage – the GIS measurements were about 96% to 99% of the actual SF. The City intends to use the GIS measurements first, and allow any private dock holder to suggest revisions to that using direct measurements.

What if I physically cannot dock a boat on the sides or back of my dock? The City Council decided not to charge any dock holder for the waters behind their docks. Additionally, if the waters along the sides or front of your dock are constrained by property lines, by sand, or by a neighbor's dock, the City staff will review this with you and consider reducing the square footage in your permit. You will want to contact the Harbor Resources Division of Public Works to discuss this further with Chris Miller (949-644-3043) or Shannon Levin (949-644-3041).

What if I disagree with how the City has calculated my dock's square footage? Please discuss the square footage provided with Shannon Levin or Chris Miller first. If you continue to disagree, an appeal process will be in place whereby an independent hearing officer will review the City's facts and your facts, and will make a determination.

Will I need additional insurance? Not if you have insurance already. It is always prudent to have insurance adequate to protect you and your household should anyone be injured on your dock. The City Council weighed whether the City should set a dollar threshold for this general

liability insurance and decided not to do so, even though the State of California does this with its residential tidelands leases. The City Council also decided not to require you or your policy to “hold harmless” or indemnify the City should anyone sue you and the City at the same time for an injury or accident on your dock. Instead, the City may simply require you to maintain insurance at no specified level, or have you ask your carrier to add the City as an additional named insured. The City Council will look at this issue further in January and February of 2013, previous to the next round of permit issuances.

What about my ability to rent out my dock? Currently, it is against the Newport Beach Municipal Code to rent out slips to other parties or have a commercial business (i.e. slip rentals) on residential piers. People who do so today are in violation of the code and could be cited. The City Council has proposed allowing rentals, but only if the dock owner declares he or she will rent, and pays \$1.26/SF (not just \$0.525/SF) for the entirety of the tidelands under permit. \$1.26/SF/year is the same rate that small commercial marinas must pay. Any decision to allow rentals of residential piers has pros and cons. The pros include the ability of property owners to recoup some of the rental increases, and the fact that more boats in the harbor make greater use of this important State asset. The cons, though, include that most residential piers are not in neighborhoods where the parking needs, restroom needs, or utility needs of a small marina can peacefully coexist with residential-only use of docks. Yours and your neighbor’s views can be impacted as well with multiple vessels on one pier.

Why are some places in Newport Harbor exempt from paying rent to the City? These rental changes only apply to waterways where the private party rents *City-administered* tidelands. There are some areas of the harbor that are not City-administered tidelands. Dover Shores, Linda Isle, Harbor Island, and parts of Bayside Drive are over private waterways or County-administered tidelands. Other areas, like Promontory Bay, have recorded easements which preclude rent. Please consult our Harbor Resources Division if you think that your dock – including just portions of it – is over an area not subject to paying rent to the City.

Is this rent adjustment happening only in Newport Beach? No. A law passed in 2011 (SB 152, Pavley) directed the State Lands Commission (SLC) to begin charging fair market rental value to residential or recreational piers up and down the state. The State Lands Commission is the agency that oversees our City’s administration of the State tidelands of Newport Harbor. They are, in effect, our landlord. If you look to the State Lands Commission’s website and review recent and upcoming agendas, you will see significant activity involving changes in rent in Huntington Harbor and other places where the SLC controls recreational piers.

How can I get more information? The City has a webpage on this issue. Please visit www.newportbeachca.gov, then select “Projects and Issues”, then “Harbor Charges.” You can also contact Chris Miller (949-644-3043) or Shannon Levin (949-644-3041) if you have specific questions about your dock. If you just want to express your concerns about the overall issue, please send us an e-mail at citycouncil@newportbeachca.gov.