

CITY OF NEWPORT BEACH

City Council Minutes

Study Session

November 12, 2013 -- 4:00 p.m.

I. ROLL CALL

Present: Council Member Gardner, Council Member Petros, Mayor Pro Tem Hill, Mayor Curry, Council Member Selich, Council Member Henn

Excused: Council Member Daigle

II. CURRENT BUSINESS

1. CLARIFICATION OF ITEMS ON THE CONSENT CALENDAR.

Council Member Gardner referenced correspondence received from Mr. Diamond regarding Item 4 (Woody's Wharf Use Permit Appeal - 2318 Newport Boulevard - Use Permit No. UP2011-010 - Variance No. VA2013-006) and inquired on the City's response. City Attorney Harp reported that there is no need to respond since the City has addressed all the issues raised and there is no merit to Mr. Diamond's claims.

Regarding Item 12 (Professional Services Agreement with Civil Works Engineers for Dover Drive and Westcliff Drive Street Rehabilitation Project), Council Member Gardner wondered whether the City can do anything to help bicycle transit. Public Works Director Webb reported that the City will repave and restripe the street, and will be looking at bicycle lanes as the median is installed.

Regarding Item 16 (Accept 2011 Homeland Security Grant Program Funds for Volunteer Emergency Management ID Badge System), Council Member Gardner commented on the amount being spent on identification badges. City Manager Kiff stated that it involves an entire system and added that Fire Chief Poster is prepared to provide additional information, if desired.

In response to Council Member Petros' question regarding Item 11 (Bayside Drive and Area Streets Pavement Rehabilitation - Award Contract No. 5212), Public Works Director Webb stated that the existing sharrows will be included.

Mayor Pro Tem Hill commented on Item 6 (Adoption of Ordinance No. 2013-21 Approving Code Amendment No. CA2013-005 Amending Newport Beach Municipal Code Section 20.90.060 (Residential Equestrian District: SP-7 (REQ)) Removing Annual Use Permits for the Noncommercial Keeping of Three to Six Horses (PA2013-114), noting that there is zero setback on the equestrian training areas. He asked whether the City can work with the equestrian community to see if there is something that can be done to ensure that runoff does not accrue from those areas.

Regarding Item 13 (Professional Services Agreement for Ongoing Commissioning Services for Civic Center with GLUMAC), Council Member Henn noted the costs and believed that it is unfortunate that the City has such a complicated system where special resources will be needed.

2. **HARBOR RENT - LOOK BACK REVIEW FOR RESIDENTIAL/COMMERCIAL PIERS**

AND MOORINGS. [100-2013]

Staff Report

PowerPoint

Public Comments

Written Comments

Council Member Selich recused himself from this item since he owns a residential dock.

Harbor Resources Manager Miller presented details of the report and addressed the process Council consideration and actions, implementation of the process, workshops, and implementation of residential pier rates. He presented recommended changes as highlighted in the staff report and presented examples of the different piers, configurations, and options. He asked Council to consider how to classify the Lido Isle Community Association/Yacht Club noting that not everyone on Lido Isle is a member of the Yacht Club and that the Clubhouse serves a dual purpose.

In response to Council Member Gardner's question, Harbor Resources Manager Miller reported that the pier is used 100% for sailing instruction and short-term visiting yachts.

Council Member Petros asked if the Lido Isle Association could tear down existing floats and build as many floats as they wanted to within the prolongation of the property lines. Harbor Resources Manager Miller reported that they are currently rebuilding the entire structure and in theory, if they wanted a marina designated as a commercial pier they could tear down the existing structures and build a 30 slip marina.

Mayor Pro Tem Hill believed that, if they are not renting the pier and are using it for educational and homeowner visitation purposes, they should be charged the residential rate.

Council Member Henn noted that the dock is not being used for revenue-raising purposes and should not be considered to be a commercial pier. He asked if the usage of the dock is similar to other yacht clubs in the City. Harbor Resources Manager Miller reported that the closest comparison would be the Balboa Yacht Club which is solely for instructional use and short-term visiting vessels. He added that they have a mix of City and County tidelands and that for the small sliver of City tidelands they are charged \$1.02. Mayor Pro Tem Hill noted that the Balboa Yacht Club has a mix of marina and non-marina, and that part of the marina belongs to The Irvine Company.

There was consensus by Council to direct staff to charge the Lido Isle Community Association/Yacht Club the residential rate.

Harbor Resources Manager Miller confirmed for Council Member Henn that the revenue collected would be used for mooring amenities and other beneficial harbor programs and presented an example of a potential program. Additionally, he addressed State Lands comparisons for various locations in California. Council Member Henn noted that the preponderance is to charge for the entire buffer area.

Mayor Pro Tem Hill addressed the purpose of the exercise and indicated he understands its importance. He commented on the possibility of charging the appraised prices for the pier/dock area, the gangway to it, and the captured water that exists for u-shaped docks, but not the buffer area. He added that the Harbor has a lot of small floating device operations and noted that everyone uses the 10 foot buffer area. Additionally, he indicated that it is hard to say that the side lines are not arbitrary and requires a unique decision on each one. He stated that this

is not about revenue, but rather meeting the State Tidelands requirements and those administrative costs will be offset by what we would lose in revenue. He suggested eliminating the buffer, except what is in the u-shaped dock area.

Council Member Henn reported that the City acts in a fiduciary capacity on behalf of the State in managing the Tidelands and that the State Lands Commission manages pier rentals, excluding Newport Harbor. He believed that it is unwise to go far from the methodology used by State Lands and suggested keeping the 50% charge which is in line with their methodology. He agreed that it is not about the revenue and addressed administrative costs. He pointed out that the only change would be the elimination for not charging for the buffer and stated that it would be a one-time exercise. He added that pier owners do not have exclusive use of the buffer area, but that, since there is no boat on only a small percentage of the piers and that the greater number of pier owners have boats that are tied to the pier 90% of the time, effectively there is some exclusive use of water area around the pier. He indicated that discounting it by 50% is a significant reduction in charges and agreed with the discount as well as all of staff's recommendations.

Fred Barnes, President of the Lido Isle Community Association, referenced a letter submitted to staff and highlighted points made in the letter. He addressed other fees being paid, including the increased Tidelands Fee since March 2013, and believed that adjustments should be made retroactively.

Council Member Henn believed that adjusting the rate from commercial to residential retroactively, would be appropriate in this case.

Kevin Muldoon, Legal Counsel for the Claremont Institute, a property-right non-profit, read from the Beacon Bay Bill regarding real property parcels and added that until recently, the Newport Beach Municipal Code, case law, and legislation allowed for recreational piers to exist in Newport Harbor without any rents. He added that the Council is not bound to charge rents, let alone, a fair market value rent. He stated that a fiduciary duty to charge rent does not arise simply because the State decided to change its policy.

Steven Baric, General Counsel for the Newport Beach Dock Owners Association, thanked Council for bringing the issue forward and believed that the process has raised more questions than it answers. He addressed the arbitrariness of the process and discussed issues related to the Brown Act. He reported that the fact-finding process of litigation will commence soon and hoped that a favorable resolution can be generated.

John Gunderson asked if the permits for the docks and moorings are the same over Tidelands and if the mooring length of time to be traded can be extended, noting that it is presently at 7 years and it should be 10 years. He asked whether it can be extended in perpetuity and noted effects on mooring values.

Kristine Thagard, attorney for Newport Beach Dock Owners Association, reported that lenders are looking for a commitment on price and terms, and noted that Council can change the price at any time which has created uncertainty in the marketplace. She looked forward to working with Council and agreed with the need for a simple application process and hoped that confiscation issues are eliminated.

Patricia Newton, mooring permittee, referenced the analysis she submitted after the workshop as presented in the staff report and noted omissions and inconsistencies in the report. She believed that application of fair market value is not used consistently, mooring fees were not based on appraisals, and there are variations as to what is deemed a gift of public funds. She indicated that residential pier permittees are now able to charge rent and believed that this is a gift of public funds. She reported analyzing mooring charges versus residential piers and relayed the results of her analysis. She asked that Council eliminate the use of the marina index as a basis for assessing mooring fees in favor of a Tidelands appraisal and to reinstate the

Harbor Commission recommendation with respect to allowing mooring permit transfers. She also requested a written answer relative to the inconsistencies in the report.

Pete Palette commented on the expense of the Civic Center and increased debt taken on by the City without voter approval. He expressed opposition to the fee and the permit that allows the City to confiscate property for a cause. He asked for the definition of "cause" and believed that Council is undermining real estate values. He addressed property taxes already paid by residents and stated that Council should listen to all its constituents. He asked that Council renegotiate the matter.

Stacy Kline implored Council to allow the transfer of moorings.

Brian Ouzounian suggested giving half of the \$80,000 back to the mooring owners who made the improvements so that they can maintain them. Regarding piers, he requested zero transfer fees between families and commented on enforcement of the buffer area. He stated that he is encouraged with Mayor Pro Tem Hill's comments and that, regarding docks, the process is aggravating because there is a disparity. He added that residents now have additional liability for the buffer area and wondered how it will be handled.

Scott Peotter commented on property rights and believed that the State owns the Tidelands, the City is enforcing it, and that property owners have no rights. He suggested the possibility of leasehold rights in perpetuity.

Harbor Resources Manager Miller addressed the request for more time to sell a mooring and reported that there are seven 7 years left and that Council direction allows for two mooring transfers within a 10 year period. He reported that a mooring permittee is required to maintain their moorings every two years and cannot rent their mooring individually for a long term but can do so up to 30 days at a time. He addressed transfer fees within the family and noted that the City does not charge a fee for inspections.

In response to Council Member Gardner's question regarding confiscation by the City, Harbor Resources Manager Miller reported that the language was removed from the permit.

Regarding the alleged gift of public funds, City Attorney Harp reported that the City has an obligation to charge fair market value for the use of the property.

Council Member Gardner noted that a future Council can make changes, addressed outreach, and noted that while Council may not necessarily agree, Council is listening.

Council Member Petros agreed with applying residential rates to the Lido Isle Community Association/Yacht Club. He reported being compelled by Mayor Pro Tem Hill's comments regarding the issue of the buffer and believed that the City should not be charging for it and it should be restricted to the property that is static and stationary. He expressed interest in learning about the projects that the harbor fees will be funding and knowing what leasehold rights would be versus risks of possessory interest.

Council Member Henn reported there never was a private property right for water owned by the State. He agreed with removing the language regarding the potential for confiscation as well as offering a 5 or 10 year permit and stated that there never was a surety in terms of the value of the water. He reported that what the City is proposing is only making it better as it relates to the issue of the ability to finance an abutting residential property. He commented on the 10 year transfer right period and on his belief that there is no additional personal liability relative to the proposal to change the buffer area.

City Attorney Harp reported that how the rent is calculated should have no impact on the overall liability for the buffer area.

In response to Council Member Henn's question, Harbor Resources Manager Miller reported that he can speak with the Harbor Patrol about nuisance activity and, if someone calls, they can be asked to assist residents. Council Member Henn stated that it would be beneficial for Harbor Resources to meet with Harbor Patrol regarding nuisance enforcement. Regarding the comments from the Claremont Institute, City Attorney Harp reported that the passage read from the Beacon Bay Bill was selective and deals with other circumstances. He added that there are other provisions within the bill that require the City to charge fair market value.

Mayor Curry expressed support for the re-characterization of Lido Isle Community Association/Yacht Club and noted that language regarding confiscation should be removed. He believed that the 5 and 10 year option will be helpful and that this action reflects the feedback received in previous meetings.

Following discussion regarding charging fees for the buffer zone, it was the consensus of Council to not do so.

Harbor Resources Manager Miller reported that the intent is to return to Council with an Ordinance at its next meeting.

In response to City Manager Kiff's question, Council agreed with charging the full rate for u-shaped dock areas.

3. **CIVIC CENTER COMMUNITY ROOM NON-PROFIT USE. [100-2013]**

Written Comments

PowerPoint

Recreation and Senior Services Director Detweiler introduced Recreation Supervisor Harmon who manages the Civic Center Community Room. She provided a PowerPoint presentation, addressing room rental prices and fees, costs associated with managing the Community Room, direct and indirect costs, cost recovery, and applicable policies according to the Newport Beach Municipal Code Section 3.36 and Council Policy B-13. She presented an overview of Community Room and Lawn rates and levels of rates, rentals to date, allowances for one- and two-hour rentals and non-profit room rental rates and market comparisons.

Council Member Gardner stated that the City is fair relative to its rental rates and discounts offered to non-profits and youth-serving organizations, which was supported by the consensus of Council.

III. PUBLIC COMMENTS, INCLUDING PUBLIC COMMENTS ABOUT ITEMS ON THE CLOSED SESSION AGENDA

Jim Mosher commented on Harbor charges and noted that, when Council enacted the Ordinance changing the permit structure, it changed Harbor Code 17.60.060(E) with no explanation. Commercial uses under the Code are exempt from provisions requiring involvement of the owner or long-term lessee in abutting property. He added that the City Attorney agreed with the need for clarifying language and commented as to the intent in relation to applying for a permit and believed that the matter needs to be revisited. Additionally, he commented on Closed Session and the City Attorney's role and indicated that in this agenda, there is an item relative to Council Member Henn entering into negotiations with the City Attorney about salaries and benefits. He expressed hope that City Attorney Harp will not be advising Council on the matter.

Council Member Henn confirmed that City Attorney Harp will not be participating in Item 2.B of the Closed Session agenda.

Council Member Gardner requested clarification of the issues raised by Mr. Mosher in the future.

City Attorney Harp reported that Council will recess into Closed Session at this time and read the issues to be discussed, as listed on the agenda.

IV. ADJOURNMENT - Adjourned to Closed Session at 5:35 p.m.

The agenda for the Regular Meeting was posted on November 7, 2013, at 4:00 p.m. on the City's website; on November 7, 2013, at 4:00 p.m. on the City Hall Electronic Bulletin Board located in the entrance of the City Council Chambers at 100 Civic Center Drive; and on November 7, 2013, at 4:00 p.m. in the Meeting Agenda Binder located in the entrance of the City Council Chambers at 100 Civic Center Drive.

Recording Secretary

Mayor

City Clerk