



NEWPORT BEACH

City Council Study Session Staff Report

Agenda Item No. SS2
November 12, 2013

TO: HONORABLE MAYOR AND MEMBERS OF THE CITY COUNCIL

FROM: Public Works Department
David A. Webb, Public Works Director
949-644-3330, dawebb@newportbeachca.gov

PREPARED BY: Chris Miller, Harbor Resources Manager
949-644-3043, cmiller@newportbeachca.gov

APPROVED: _____

TITLE: Harbor Rent – Look Back Review for Residential/Commercial Piers and Moorings

ABSTRACT:

Following an action to revise rents in Newport Harbor towards fair market value, the City Council made a commitment to “look back” in 2013 to review the process, including the rent implementation procedure for the residential and commercial piers as well as for moorings. City staff held two public workshops during August 2013. We have summarized the comments from the workshops and have suggested some of the ideas for City Council discussion and possible adoption.

RECOMMENDATION:

Review and discuss the comments received during the August public workshops and provide staff with input on the proposed recommendations to the harbor charges, if any, that the City Council would like to consider for adoption at a later City Council meeting.

DISCUSSION:

To fulfill the City Council’s commitment to “look back” at the harbor fair market rent implementation process in 2013, staff conducted two public workshops for the residential, commercial and mooring permittees to listen to their feedback and to assemble those comments for City Council review and possible adoption. These public workshops were well attended and every comment from both meetings has been documented, posted online and opportunity provided for the persons making the comments to review and provide input to ensure the comments were accurately documented. See Attachment A.

Staff is recommending the following adjustments to the harbor charges, effective March 1, 2014, for the City Council to consider, and to provide guidance to staff when returning to the City Council at a later date, if needed.

1. **Area defined.** The area to be considered for rent calculation purposes is defined as: (1) Footprint of the pier, gangway and float over City tidelands; (2) Interior of the U-shaped float; and (3) Buffer area of 10' around the float, except the backside. If there is less than 5' of usable water space, then do not charge.
2. **Charges.** Rent shall be charged for: (1) Footprint of pier, gangway and float over City tidelands; (2) 50% of interior of the U-shaped float and 10' buffer area.
3. **Simplified permit for residential piers.** Streamline and simplify the residential pier permit language by removing some provisions and adding other language regarding the City's intent to annually renew the permit. Also offer a five or ten year permit, at the option of the permittee, with rent for each year in accordance with the annual rent calculation. See Attachment C for a draft simplified permit.
4. **Homeowner's Associations ("HOA's") re-designated as residential.** HOA marinas are currently classified as commercial marinas. Staff proposes changing this classification to "residential" provided that the use of the docks is solely for the residents of the HOA. If the HOA decides to rent slips to the public, then the small or large commercial rate will apply, based upon the size of the marina. Some examples of HOAs that would be favorably affected by this change are: Lido Isle Community Association street end beaches and community piers, Beacon Bay piers, and perhaps other HOA communities.
5. **For very small piers, step down to the 2018 rent immediately.** Because of an anomaly in calculating residential pier rent for very small piers (190' square feet or less), the rent for these piers actually *declines* each year until 2018. We propose to immediately go to the lower 2018 level. There are approximately 136 piers within this category in various locations in the harbor (Grand Canal, West Newport, the peninsula etc...).
6. **Maintain the current rent schedule for moorings.** We heard several comments from mooring holders, and discussed this extensively. We concluded that the mooring rental rates remain appropriate, and have not proposed any changes to mooring rents in this "look back."
7. **Use rental revenue collected for rental of vacant moorings by the Harbor Patrol for mooring amenities or other beneficial harbor programs.** Through a cooperative agreement with the City, the Harbor Patrol collects *rental* fees from boaters who are visiting Newport Harbor on a short or long term basis. These boaters rent the moorings that are currently vacant (e.g., the permittee on file does not currently have a boat on the mooring). The Harbor Patrol collects these daily rental fees and sends 100% of the rents back to the City every quarter (approximately \$80,000 per year). We propose a policy that would earmark in the City's annual budget these funds for specific amenities in the Harbor that would benefit all mooring permit holders, to the extent that desirable projects are identified each year.

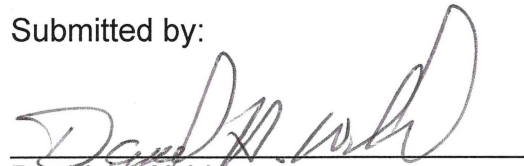
In addition to the above recommendations, we have compiled information for the public and Council relating to what the State Lands Commission (“SLC”) is doing for similar properties (private uses of public tidelands) in the areas of the State that the SLC directly administers residential dock permits or leases. These areas include Lake Tahoe, Huntington Harbor, and the Sacramento/San Joaquin River Delta. As you can see from Attachment D, Newport Harbor has not been the only location addressing the challenging issue of the appropriateness of rental rates for these public properties.

We welcome the public’s thoughts on these matters as well as those of the City Council. We realize that the issue of charging fair market rental rates for residential piers, commercial piers, and moorings has been difficult. We very much appreciated the participation and input of the harbor stakeholders and others in the August workshops, and believe that the recommendations included with this staff report will make substantive improvements to the prior work of the City Council.

NOTICING:

This Study Session agenda item has been noticed according to the Brown Act (72 hours in advance of the meeting at which the City Council considers this item).

Submitted by:



David A. Webb
Public Works Director

- Attachments:
- A. Public Comments Received from Workshops
 - B. Examples of Piers and the Area Currently Charged
 - C. Simplified DRAFT Residential Pier Permit (Redline and Clean)
 - D. California State Lands Rental Rates for Residential Piers in Lake Tahoe, Huntington Harbor and Sacramento/San Joaquin River Delta

Workshop: Implementing Harbor Charges Public Comments Received

Thursday, August 15, 2013
OASIS, Classroom #1
3-5:00 pm

Mooring Comments – Thursday, August 15, 2013

1. When using the basket of marinas to determine the mooring fees, the City used the “book rate” (published rate) from each marina instead of using the actual (negotiated) rate that marinas offer. There is a difference. The City should ask the marinas what their actual slip prices are, and also ask to see their revenue.
2. The current rules allow a permittee to leave the mooring “vacant” (i.e. they still keep the permit, but don’t have a boat). If the mooring is vacant, the City may rent the mooring to visiting boaters. Question: Why does the rental fee go the City rather than the mooring permittee who is responsible for the buoy, tackle and weight?
3. Why are residential pier permittees allowed to rent their pier, but mooring permittees are not allowed to rent their mooring?
4. The rate charged to moorings is not equitable with the rate charged to residential piers (i.e. the mooring rate is too high). Moorings are meant to be affordable and accessible, and as an alternative to marinas. It appears that moorings are paying more than residential piers.
5. Per the Resolution, if a mooring is transferred to a person on the wait list today, that person shall pay the fully phased in 5-year rate. Instead, they should pay the current mooring rate.
6. Please see additional comments submitted at the end of this document.

Residential Pier Comments – Thursday, August 15, 2013

1. Why not charge a flat rate for residential piers? (i.e. \$1,000 which is higher than the current rate). More equitable. Do not carve out the buffer area.
2. Charge a residential pier permit fee for every pier, even those not on City tidelands.
3. Call the charge a “fee” or some other name. The term “rent” is not tax deductible.
4. I was told by Harbor Patrol that I was not allowed to use the end of my residential pier. So, why am I charged for it?
5. The local realtors requested a residential pier summary fact sheet to give to their clients.
6. If I choose to rent out my residential pier, I shouldn't be charged the commercial pier rate which is too high. The residential rate for renting should be different.
7. The residential pier rate causes a loss in property value. I am paying taxes on my pier.
8. The residential pier rate should be reduced to mitigate possible equity loss of my property value.
9. Why do we need a residential permit at all? Eliminate the permit and the buffer area. The City has lien rights. Charge a flat rate instead.
10. Newport Island area is a restricted area due to tides and bridge. Not all boats can navigate in those channels. This area needs to be readdressed for a lower residential pier rate.
11. The buffer area for residential piers should be the beam of the boat that is at the dock, not a standard 10' area. The average beam in the harbor is 6'.
12. There should be a minimum buffer zone for residential piers. If the maximum is currently 10', there should also be a minimum like 5'. (i.e. If there is 5' or less to the property line, then don't charge for that area.) Some buffer areas are unusable.
13. Can we use a better term than “buffer”? It's not nautical, and might cause problems.
14. The pier transfer fees for residential piers should be waived if it is for inter-family transfers.

15. If I am only using one side of my float on my residential pier, why am I being charged for all 3 sides?
16. If I have no boats on my dock, why do I have to pay?
17. If I choose to rent one slip of my multi-slip residential pier, will I be charged for all of the slips, or just that one slip?
18. The Grand Canal residential piers should not pay for the 10' buffer because they can't tie a boat to those docks.
19. What are the rental rights for residential piers? Is there a way to enforce the use?
20. Since we are paying fees for use of the tidelands at our residential pier, can we therefore restrict access to the public for using that space? (i.e. under the pier, in the water next to the pier etc...) Fishermen in inner tubes use my water space all the time. Young sailors use my dock as well. Can the 10' buffer be enforced?
21. What if there is a mooring buoy within the 10' buffer of my pier. (i.e. on-shore moorings on Balboa Island). I shouldn't be charged for this buffer area if I can't use it.
22. If I rent my dock for a fraction of the year, can I revert back to regular residential billing when not renting it?
23. There is no equality between the mooring permit which can be cancelled in the event of a default vs. the residential pier which can also be confiscated. The pier is worth up to \$1 million vs. the smaller value of a mooring.
24. If I am renting the house which comes with a pier, is the pier then considered commercial or residential?
25. Maybe give residential piers a longer term lease instead of a permit.
26. Please see additional comments submitted at the end of this document.

Commercial Pier Comments – Thursday, August 15, 2013

1. Why are HOA's in the commercial category? Many HOA marinas are only open to their members, and not open to the public. Should be considered residential piers.
2. Why not reduce the rent by the percentage of the marina vacancy in the harbor?
3. It's unfair to use the Irvine Company as an example of the 20% rate.
4. Commercial marinas should not pay for the dock space that they are not using.
5. Please see additional comments submitted at the end of this document.

General Comments – Thursday, August 15, 2013

1. Why not charge other users of the harbor (i.e. paddle boarders, fishermen etc...). Create a user fee.
2. City needs to be consistent in their methodology for charging all three user groups. Moorings are based on linear footage, but residential and commercial piers use square footage. Using linear feet of tidelands would be a consistent approach – reduces ambiguity.
3. What is the liability in the tidelands if someone gets hurt? Private vs. City? Where does it stop? At the Bulkhead Line, or the Pierhead Line, or...?
4. Incremental revenue from harbor fees should be shown as a line item on Tidelands Expenditures and Revenue balance sheets.
5. Please see additional comments submitted at the end of this document.

Miller, Chris

From: Miller, Chris
Sent: Wednesday, August 21, 2013 12:19 PM
To: Miller, Chris
Subject: Yesterday's Harbor Charge Workshop

From: Pete Palette
Sent: Friday, August 16, 2013 12:33 PM
To: Miller, Chris
Subject: Yesterday's Harbor Charge Workshop

Good day, Chris,

As agreed yesterday, I'll address herein a couple of my "talking points." But first, let me note that this enormous expenditure of energy could have been avoided if only the City had taken a more acceptable approach to the subject of adjusting harbor fees by embracing stakeholders in a "constructive" way a long time ago. The vast majority of us are passionate about our community, and willing to "pay our way" if it is equitable. But this program has been jammed down our throats, and most of us are livid. Now, on to clarification.

A lady opined that there was (at 14%) debatable equality between mooring and residential dock rent charges. Be that as it may, my point spoke to the fact that there is no equality between the mooring permit which allows the City to cancel a mooring-holder's rights in event of default - and thereby retake the mooring as its (sole?) remedy, whereas in the event of default by a dock owner the City can confiscate an asset (pier and dock) worth as much as \$1 million. In the first case, it only costs the mooring-holder his investment in the ground tackle, and a place to keep his boat. In the second, the cost to the dock-owner is (potentially) enormous, can cause a mortgage default by taking underlying collateral, and can result - in extreme cases - in the loss of a domicile. This isn't even remotely close to parity (equality). And how do you quantify (and justify) the impact on a waterfront business if the confiscatory process eliminates a livelihood? Not right, not fair!

Later in the discussion, I tried to offer a solution which could defuse some of the tension we continue to experience. That solution advocated scrapping the onerous - and extremely controversial - permit which unilaterally expands the City's rights to our personal assets (piers and docks) by threatening to confiscate them in the event of a (perceived) default. The City already has a right to lien a property in the event of a default, and - as you pointed out - has for decades done business (satisfactorily) with the residents pursuant to the prior permit which provided reasonable remedies in the case of default. Why change a system that works? In brief, "If it ain't broke, don't fix it." So let's simply adjust fees appropriately, and use the old permit. It works, and should mitigate the hostilities. Short version: adjust fees, scrap new permit.

Sadly, this topic has opened Pandora's box. The potential conflicts are endless. The process is, at best, cumbersome, and probably closer to impossible to apply equally to all since there seem to be nuances which accrue individually to each property. The City, in the opinion of many of us, has failed to negotiate in good faith with the community, and by so-doing has unwittingly invoked the law of unintended consequences. As some sage once noted, "The biggest problem could have been solved when it was small." Let's deal with this while we can!

Cordially,

Pete Palette

Miller, Chris

From: Miller, Chris
Sent: Wednesday, August 21, 2013 12:20 PM
To: Miller, Chris
Subject: Photos from Aug 15, 2013

From: gail rosenstein
Sent: Friday, August 16, 2013 9:02 AM
To: Dept - City Council
Subject: Photos from Aug 15, 2013

the 10ft. waterway from our dock

The action going on in the ten foot waterway around our Dock. We will never have a boat blocking our view so why are we paying the city and the public is using it free ? Outrages!! just because the city needs money !!!???



Miller, Chris

From: Miller, Chris
Sent: Wednesday, August 21, 2013 12:22 PM
To: Miller, Chris
Subject: Meeting today at Oasis

-----Original Message-----

From: Jane Farwell
Sent: Thursday, August 15, 2013 6:55 PM
To: Miller, Chris
Subject: Meeting today at Oasis

Dear Chris,

I first want to compliment you on diffusing a potentially volatile meeting made up of people mostly unhappy with recent dock fees, tax or what ever you call it.

I did not speak, as others said most of it for me. I think a key item said by Pete Pallette was the fact that the City is supposed to do what is best for its community. This current tax is certainly putting a very large wedge between a large portion of the community and the City Council. This is not a good thing.

After hearing everyone's comments I became aware that there are too many inequities. The rules for all the situations will take up a book to address. You are making a "mountain out of a mole hill" I do not think we mind an increase in the pier tax (fee) as much as the complexities of each persons situation. Not to mention what this is costing in time and personnel energies that could go toward something more constructive.

The HOA's alone on Lido Isle will cause a lot of concern and inequities:

- 1 The Question of the true property values less a leasehold attachment, may cause a reduction in property tax for many, The city might have to ask for insurance naming them as additional insured and so on.. The problems will escalate and there will be no assurance of a permanent situation. The problems of lawsuits could increase.
2. Consider the many Association managed piers and docks on Lido Isle, plus boat gardens and launch areas are in question. Any increase in tax will be past on as additional Association dues to all Lido residents. How do you decide who pays if many do not use these facilities. A nightmare.
3. This will detract from people wanting to live here

Please have the Council consider a straight fee based on one formula for private mooring and residences.

Jane Farwell

CNB Private/Residential Dock Rental User/Area/Calculation Methodology Issues

Background

Newport Harbor has had a long history of informal shared no-cost use and rentals of private docks by dock permit holders/waterfront property owners to a number of user groups: (categories defined by this analysis, not CNB)

- a. waterfront and interior street neighbors with boats (most prevalent on Balboa Peninsula, CDM, Balboa Island, Lido Isle, other islands, frontages;
- b. family relatives-both NB resident and non-resident, using property owner home/dock as seasonal or holiday base of activities;
- c. non-relative/neighbor/NB resident renters (both private/recreational use and quasi-commercial use categories), and rental “agents” .

Docks as Means of Meeting SLC, CNB Water Access

One of the important CA and CNB policy document goals achieved by all of these user categories is the optimization of the use of docks as means of achieving access and use of the public waters by the general public using existing facilities, both public and private. Range of vessel usage is from paddleboards to megayachts. Some dock owners do not have boats.

Some Private Docks Used For Revenue Purposes, No CNB/SLC Compensation

It is recognized that the historical demand vs supply for NH dock facilities has created a secondary financial market and usage activity driven by user category “c” above. This occurred without appropriate “pass-throughs” to the CNB of proportionate rental rates and revenues for the use of public waters from the overall income of the dock’s owner/permittee.

CNB New “Small Commercial Marina” Dock Definition & Fee Approach Not Flexible

CNB has attempted to address this secondary market/loss of revenue in the initial efforts of dock fee-setting by defining this “user category c” use as a “small commercial marina” use and assigned that new rate structure to these docks. Several issues are created by this approach which need further consideration and refinement by CNB:

- CNB definition of “marina” is five (5) boats/berths+-most private docks/boat use not this big
- Defines a “commercial use/operator” rather than a “private dock with multiple user groups”
- Creates confusion for insurance companies/lenders/taxing agencies regarding owner/user
- Use of comm'l rate to all dock/water area, does not allow for partial private dock use/rate
- Imposes commercial rate to entire area of shared-owner docks, even if only one rents out
- Under “sm. comm'l marina” vs “private dock” definition, could require new design, fire, elec.
- Could encourage hidden, illegal rentals as in past, because of big gap in definitions, rates

- Could negatively impact older property owners on limited/fixed incomes w/ inflated value homes

CNB Private/Residential Dock Rental User/Area/Calculation Methodology Concepts

Base upon the above-described private-dock history and issues regarding use, user groups, commercial vs private, marina vs private dock/multiple users and the related legal and fee issues, the following concepts, possible solutions are suggested for CNB consideration:

- 1: Do not use initial CNB definition of “small commercial marina”, but use “private dock with non-owner rentals or mix of owner/renter use” or some similar more accurate description.
- 2: Do not characterize as a “commercial use/operator “ but as a “private dock with multiple uses/user groups”, avoiding confusion for insurance companies/lenders/taxing agencies and CNB Harbor deign regs, regarding owner/user and dock type.
- 3: Develop new accurate dock definition and rate category (“private dock with multiple uses/user groups” or similar) with new rate between small commercial and private dock rates
- 4: Limit potential rental area/length of dock and water to not more than 49% of total, or some similar percentage, to retain intent of “private dock used for multiple purposes/partial rental”
- 5: Apply new dock definition and rate only to portion of dock and water area actually used for rental rather than to entire area of dock and water, irrespective of use. Owner/owner boats also using dock are penalized under this “one definition/rate fits all” approach.
- 6: As in 5, above, distinguish rental vs owner areas on shared-owner docks, so that if only one owner on a shared dock rents, the other is not penalized above a “private dock” rate.
- 7: Clarify CNB dock design, fire code, etc. under “private dock with multiple user groups” use (rental vs private owner use, etc)” to determine if it would require new design, fire, elec. requirements-avoid if possible. Where major/total rentals occur, require written solutions to parking, restrooms, noise, etc. to prevent commercial/charter operations and usage.
8. Consider allowing older property/dock owners with limited/fixed incomes and without boats, to rent entire dock if they can show hardship. Not everyone who has been living on the NH waterfront in the same house since the 40’s or 50’s is a cash millionaire and some want to stay there till the end. We as a City should honor this social aspect/reality of our waterfront use and history along with getting the money for CNB/SLC, since this approach generates funds for both owner and public agencies. Outreach may be needed-many are not mobile or capable of responding to a new issue like this.

To: Harbor Resources
From: Patricia Newton

Date: August 21, 2013

I received notification of the August 15th & 21st meetings on August 10th and have had limited time to review this situation with respect to fairness and consistency prior to these meetings. The postmark on the envelope was August 9th for a letter dated August 8th. This constitutes inadequate notification.

I have focused my analysis on only two of the stakeholders, offshore mooring permittees and residential pier permittees. I did not have enough time to include commercial Marinas, other commercial uses, etc. I would like a reply to my comments below and the graphs included on the following:

- Comparison of Tideland Charges and Allowed Transactions for Mooring Permittees vs. Residential Pier Permittees. There is an inconsistent application of the concept of Fair Market Value and the interpretation of what constitutes a “gift of public funds.”
 - By 2016 a 50’ mooring permit will be over 3 x a residential pier permit (moorings have no parking, water or electricity available).
 - Residential pier permittees retain effective control and benefit from the real value of a residence with rights to a pier permit – i.e. capital gains and potential rental income.
 - Comparison of accumulated **cost** to 2020 for a mooring permittee is approximately **\$80,758** vs a residential pier permittee who elects to charge rent could realize a **profit** of approximately **\$139,300** over the same period.
- Newport Harbor Index is not a fair market index for the calculation of mooring permit fees. If the 2013 index was charged at 14%, the fee would be 27% higher than Shelter Bay in San Diego.
- Limitation on transfer of mooring permits is not applied to families, which is discriminatory – they potentially could hold this scarce permit into perpetuity under current rules.
- Limitation of the transfer of mooring permits is shortsighted as it represents a loss of potential income to the city. The city could take a percentage of the transfer fee – historically there have been approximately 50 per year (or so).

Issues:

“Gift of Public Funds” & Fair Market Value Inconsistencies

- The reason given for changing the rules regarding transfer of mooring permits was based on the notion the transfer of permits was a gift of public funds as the moorings are located in Tidelands. It is inconsistent that residential piers are freely traded with the sale of property and the potential capital gain accrues to the seller.
- There is an inconsistency in allowing residential pier owners the right to charge rents for piers located on Tidelands to offset the cost of their fee which are substantially less than mooring fees.
- The fees charged for a mooring are based on a contrived Marina Index and the residential pier fees are based on two appraisals. This is an inconsistent application of the concept of Fair Market Value and the interpretation of what constitutes a “gift of public funds.”

- Data should be made available annually to determine the impact of the adopted changes and whether an adjustment should be made to the allowed period of transfer given the financial burden imposed on permittees who are in a position of financial loss due to the changes in the transfer practice.

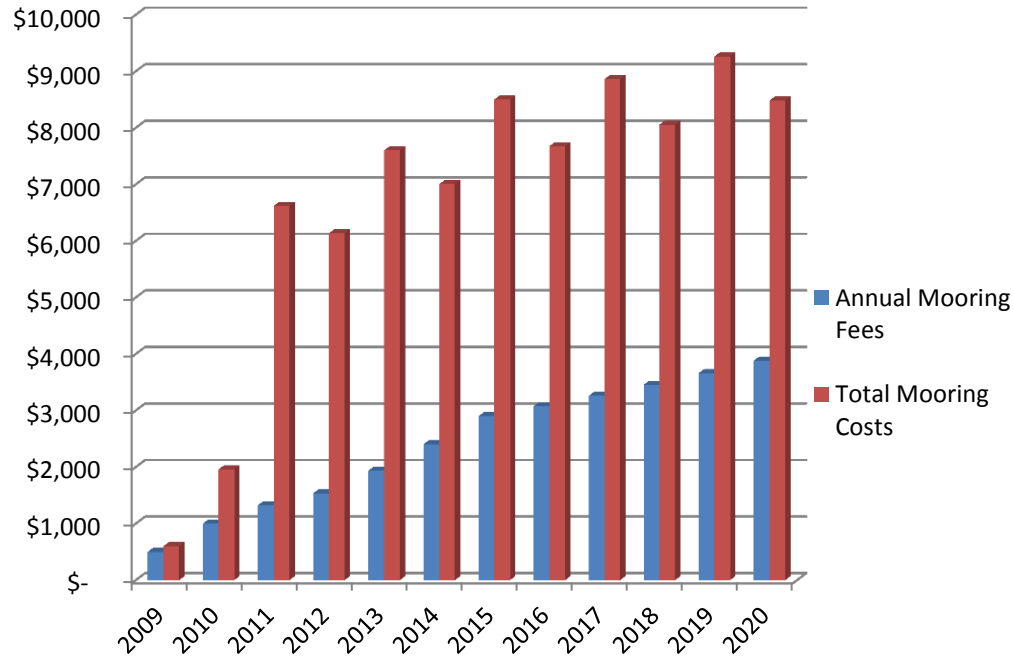
Mooring Fees & Harbor Index –

- City should make available annually a transparent analysis of fees including the data for the harbor index, which is independently verifiable.
- Public forums should be held annually to discuss the fairness of the index and the resulting changes to mooring permit fees.

Comparison of Tideland Charges and Allowed Transactions for Mooring Permittees & Residential Pier Owners
 Inconsistent application of the concept of Fair Market Value and the interpretation of what constitutes a "gift of public funds"

Projected Loss:													
50' Mooring													
(Permit acq. June 2009)													
	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	Accum. Loss Mooring
Annual Mooring Fee	\$ 501	\$ 1,000	\$ 1,326	\$ 1,536	\$ 1,937	\$ 2,405	\$ 2,901	\$ 3,075	\$ 3,260	\$ 3,456	\$ 3,663	\$ 3,883	\$ 28,941
Maintenance			\$ 693		\$ 1,064		1000		1000		1000		\$ 4,757
Realignment	\$ 100	\$ 360											\$ 460
Shoreboat Service		\$ 600	\$ 600	\$ 600	\$ 600	\$ 600	\$ 600	\$ 600	\$ 600	\$ 600	\$ 600	\$ 600	\$ 6,600
Amortised cost of 50' mooring (zero value in 10 years)			\$ 4,000	\$ 4,000	\$ 4,000	\$ 4,000	\$ 4,000	\$ 4,000	\$ 4,000	\$ 4,000	\$ 4,000	\$ 4,000	\$ 40,000
Total Costs	\$ 601	\$ 1,960	\$ 6,619	\$ 6,136	\$ 7,601	\$ 7,005	\$ 8,501	\$ 7,675	\$ 8,860	\$ 8,056	\$ 9,263	\$ 8,483	\$ 80,758
	* 1/2 year												

Projected Profit:													
Residential Pier Owner Lido Isle													
(ex capital gains if sold)													
	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	Accum. Profit Res. Pier
Rental Fee Income L	\$ 15,000	\$ 15,500	\$ 16,000	\$ 16,500	\$ 17,000	\$ 17,500	\$ 18,000	\$ 18,500	\$ 19,000	\$ 19,500	\$ 20,000	\$ 20,500	\$ 213,000
Pier Permit Fee	\$ 150	\$ 150	\$ 150	\$ 150	\$ 300	\$ 500	\$ 700	\$ 900	\$ 1,000	\$ 1,000	\$ 1,000	\$ 1,000	\$ 7,000
Property Tax (assessed value \$500,000)	\$ 5,000	\$ 5,000	\$ 5,000	\$ 5,000	\$ 5,000	\$ 5,000	\$ 5,000	\$ 5,000	\$ 5,000	\$ 5,000	\$ 5,000	\$ 5,000	\$ 60,000
Dock Maintenance	\$ 1,000		\$ 1,000		\$ 1,000		\$ 1,000		\$ 1,000		\$ 1,000		\$ 6,000
Total Profit	\$ 8,850	\$ 10,350	\$ 9,850	\$ 11,350	\$ 10,000	\$ 12,000	\$ 11,300	\$ 12,600	\$ 12,000	\$ 13,500	\$ 13,000	\$ 14,500	\$ 139,300



50' Offshore Mooring:

Accumulated Mooring Costs **\$80,758**

Mooring Fee in 2017 projected to be \$3,260 (over 3 X Res. Pier)

No allowed sale of mooring tackle/permit after 2020

Within Families transfer permits is allowed indefinitely

Marina Index is tied to Cal Rec Marinas - 5.7% increase in index

Marina Index is not FMV - it's contrived to get 6% increases

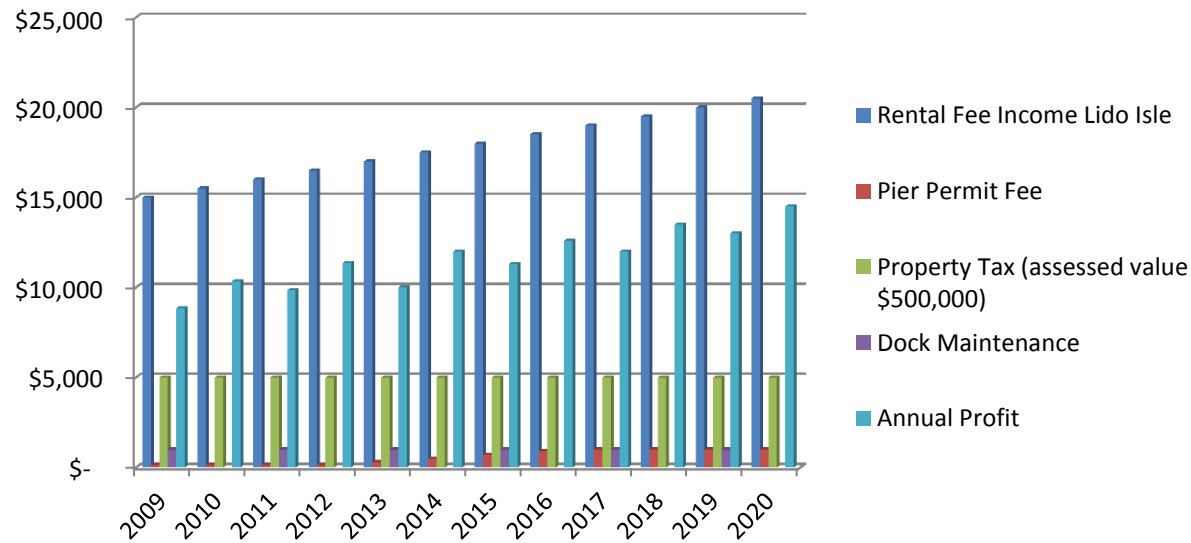
Residential Pier Lido Isle:

Accum. Profit from rental of res. slip **\$139,300**

Res. Pier Permit \$1,000 (less than 1/3 of mooring permit)

Home values increased by \$500K - \$1MM

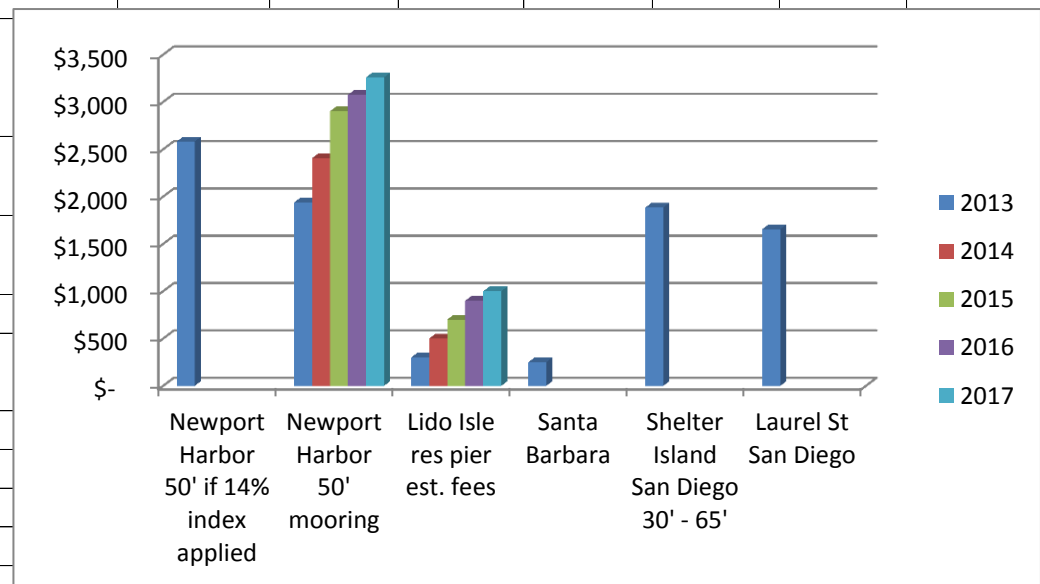
Substantial capital gains possible due to the pier



Comparison Marina Index to Cal Rec & CPI						Projected						
	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020
Base rate for Marina Index			\$ 26.52	\$ 29.08	\$ 30.74	\$ 32.58	\$ 34.54	\$ 36.61	\$ 38.81	\$ 41.14	\$ 43.61	\$ 46.22
Ramp up of % of index			7.10%	8.80%	10.50%	12.30%	14%	14%	14%	14%	14%	14%
Fee 50' Mooring	\$ 501	\$ 1,000	\$ 1,326	\$ 1,536	\$ 1,937	\$ 2,405	\$ 2,901	\$ 3,075	\$ 3,260	\$ 3,456	\$ 3,663	\$ 3,883
Percentage increase Marina Index	0	0	0	0	5.7%	6.0%	6.0%	6.0%	6.0%	6.0%	6.0%	6.0%
Cal Rec/Irvine Co. % increase 40' slip	4.99%	0.00%	6.55%	6.07%	5.71%							
Consumer Price Index	-0.30%	1.60%	3.10%	2.10%								

Due to the holdings of Cal Rec, they can command above market price increases
Use of this index guarantees at least a 6% increase per year

Comparison Mooring Fees & Newport Residential Pier Permit					
	2013	2014	2015	2016	2017
Newport Harbor 50' if 14% index applied	\$ 2,582				
Newport Harbor 50' mooring	\$ 1,937	\$ 2,405	\$ 2,901	\$ 3,075	\$ 3,260
Lido Isle res pier est. fees	\$ 300	\$ 500	\$ 700	\$ 900	\$ 1,000
Santa Barbara	\$ 250				
Shelter Island San Diego 30' - 65'	\$ 1,884				
Laurel St San Diego	\$ 1,656				



If the full 14% Marina index were applied 2013
Cost of 50' mooring would be \$2,582 - 27% higher than Shelter Island San Diego



The Dock Tax

www.StopTheDockTax.com

A Project of THE NEWPORT BEACH PRIVATE DOCK OWNERS ASSN.
Bob McCaffrey = Chairman

HOW WE GOT HERE & OUR PLAN GOING-FORWARD

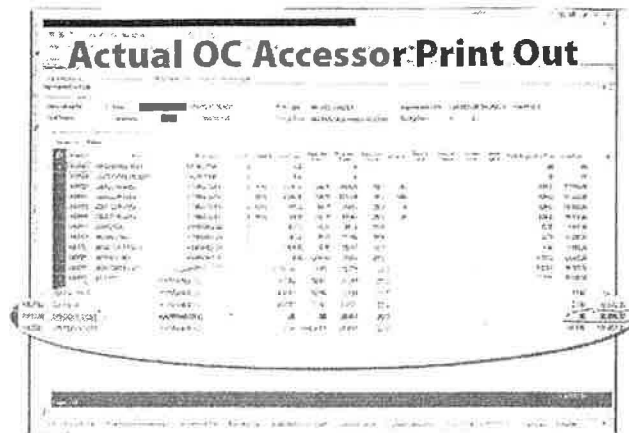
The city council of Newport Beach has done a wonderful job of convincing the public that the Bay Front owners have not paid our fair share of harbor costs. Consider the taxes we already pay that should be credited to the Tidelands Fund:

1. Property tax on the increased value the Dock creates [Dock's increase value up to \$1 million]. The city receives 17% of this increase in property tax payments because a Dock exists.
2. Boat taxes. There are 9,000 registered pleasure boats in Newport Harbor, including the boat(s) tied up to your Dock. Each is assessed an unsecured property tax bill. The City receives a 17% of the unsecured property tax.
3. Possessory Interest Tax. Some are on long-term leases that trigger "Possessory Interest Tax" – a tax similar to property tax. The City receives a percentage of this tax.
4. Annual permit fee. We're not sure what we received for paying this fee, but we paid it for decades.

The City's budget does not reflect any of these revenues in the Tidelands Fund.

To claim we don't pay our fair share is absurd. This is an outrageously false statement due to the City's lack of homework on the issue.

If they done their homework prior to assessing the Dock Tax, they would have realized that in that the County Assessor's data contains a line item that shows the value of the dock, and what the Assessor is charging dock owners. This information has been available for decades – and the city has been aware of it.



For decades they have received 17% of this amount – without ever properly crediting it to the Tidelands Fund. Instead millions have been inaccurately (possibly illegally) applied to the General Fund for salaries, benefits, pensions, and city operations. This is likely violation of the of the State of California law.

Therefore, Bay Front owners have paid their fair share plus via multiple taxes and additional yearly permit fee. The outrage of this approach is that the Bay Front homeowners have been blamed for the wrong reasons have paid more than their share and additionally, the money has gone to the wrong fund. All these years the city has complained that the general fund has had to bail out the Tidelands while keeping these funds.

STEALING OUR EQUITY

In their haste to levy the Dock Tax, the politicians stripped us of our "property right" to our docks. The second issue is that the City and the general public do not understand the financial effect on the bay front property owners. In forcing us to accept the new annual permit triggering the Dock Tax, there is language allowing the city to confiscate your dock for a "cause." Translation: Your property right to your dock is removed. Future city councils can take this further and by legislative fiat deem your dock a public asset and confiscate it.

Let me explain. If own a vacant lot without a dock on the bay front it could maybe worth x, if your neighbor had basically the same lot, with a dock, lot could easily be worth \$500,000 to \$1,000,000 or more. By establishing a yearly permit, the city at any time, can cancel your permit, or charge huge yearly funds, and who knows what future councils may demand?

The owner no longer has any rights to the dock that they paid for and the equity they paid for, at purchase. The city has taken a valuable asset, the owner paid for, and the owner is expecting to recoup that equity at sale time. So in essence, the home owner has been stripped of the equity value of the dock and what does he do when he wants to sell?

The seller cannot guarantee a secured dock future. What will that do to property owners? What will lenders do if the future of the dock is unknown? How does that affect loan amounts to the future buyer? Valuations will go down and if values go down, taxes go down and that is not good for the city. And what will the buyer now offer?

ONE BBI HOMEOWNER LOSES \$800,000 DUE TO DOCK TAX

We have already seen a case of a bay front in escrow to close for almost \$5,000,000, until the buyer reviewed the Dock Tax Permit and subsequently reduced the offer to \$4,200,000. The buyer quickly surmised that the dock is no longer the property of the upland owner and counter-offered accordingly.

Basically what the city has done is to take away property rights by legislative fiat. It's a clever way of "taking" your property without triggering an adverse

possession, which they would lose in court. This will certainly affect the thinking of potential buyers think considering buying a Bay Front Home in Newport Beach.

My personal opinion as a Bay Front owner, is that the city did not realize the Bay Front owners were already paying way more, and for years, more than the city knew about and did not give any consideration as to the stripping of the owners dock equity, and therefore the value of the Bay front itself.

It's been eight months since the City crammed down the Dock Tax. Now they have agreed to take a look back at this situation in two public meetings. There are two basic issues, between the dock owners and the City that I feel can be resolved by coming back to the negotiating table, and addressing these two issues in a professional, non-contentious atmosphere on both sides.

We want our equity back, and we understand the need to financial support the Bay.

ATTEND THE CITY SPONSORED DOCK OWNERS COMMUNITY MEETINGS

It's been eight months since the City crammed down the Dock Tax. Now they have agreed to take a look back at this situation at two public meetings. There are two basic issues, between the dock owners and the City that I feel can be resolved by coming back to the negotiating table, and addressing these two issues in a professional, non-contentious atmosphere on both sides. We want the our equity in our docks back, to understand that we pay our fair share, and we understand the need to financially support the Bay.

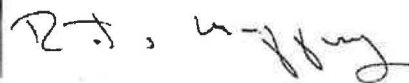
Thursday, August 15, 2013

3:00 – 5:00 p.m.
OASIS Senior Center
Classroom #1
801 Narcissus
Corona Del Mar

Wednesday, August 21, 2013

6:00 – 8:00 p.m.
OASIS Senior Center
Classroom #1
801 Narcissus
Corona Del Mar

Sincerely,



Bob McCaffrey Chairman,
Stop The Dock Tax

www.stopthedocktax.com Please check with our web site for the latest information

Your donations keep us in court and communicating with the community. You can safely **donate on line** [here](#) to help continue our campaign to Stop the Dock Tax.

YARD SIGNS ARE AVAILABLE

Miller, Chris

From: Miller, Chris
Sent: Monday, August 26, 2013 2:12 PM
To: Miller, Chris
Subject: Harbor Charges Look-Back Workshop on Thursday, August 15

From: Patricia Newton
Sent: Friday, August 23, 2013 7:45 AM
To: Miller, Chris
Subject: Re: Harbor Charges Look-Back Workshop on Thursday, August 15

Hi Chris,

Can you please include the remarks I made in the first workshop in **your notes**. I think they are important points and deserve to be highlighted "up front".

The concept of what constitutes a "gift of public funds" and fair market value is not applied consistently across the harbor users. In the case of transfer of permits mooring holders lose the right in 2020 whereas residential pier owners can sell and take the capital gain. It has been said a pier can add 1 million to the value of a bay front home.

It is inconsistent with the concept of a "gift of public funds" to allow residential pier owners to rent their docks at a profit. The mooring permittees are only in a position to lose, and in our case a substantial sum despite following the guidance of the harbor resources and DMV when we acquired our permit in 2009.

The use of different methods of determining fair market value for the Tidelands is inconsistent and has resulted in a very unfair valuation for the calculation of mooring fees compared to other users.

Thank you
Patricia Newton

Workshop: Implementing Harbor Charges Public Comments Received

Wednesday, August 21, 2013

OASIS, Event Center

6-8:00 pm

Moorings Comments – Wednesday, August 21, 2013

1. Moorings and piers are treated differently. Why is this, when both are personal property?
2. The public piers should be accessible for dinghies and not taken up by unattended vessels using the piers for restaurants or loading and unloading.
3. Can parking at street ends be relaxed to allow mooring users better access their boats?
4. Piers can be rented by residential pier permittee but moorings cannot be rented by mooring permittee. Why?
5. Why are mooring fees higher than pier fees?
6. Mooring permittees should be informed of the code changes upon transfer.
7. Private transfers should be reconsidered.
8. Is there still an interest list for moorings that revert to the City?

Residential Pier Comments – Wednesday, August 21, 2013

1. Is there an option for a residential lease instead of a residential pier permit?
2. Does this recent revision in the residential pier permit affect the assessment of my property?
3. How do these fees affect my property tax? Some parcels are paying property tax on these areas already.
4. What is the maximum fee we can expect?
5. Are residential piers always guaranteed a permit?
6. Grand Canal docks are charged the same rate but the Grand Canal is unusable when the tide is low.
7. West Newport/Newport Island should be evaluated separately because of location specific issues as previously discussed. Docks and backyards flood. (See attached pictures.)
8. What would happen if a residential pier was confiscated?
9. Why the 10' buffer?
10. The charges are discriminatory based on the configuration or shape of the dock.
11. Was income lost when some residential piers were characterized as non-City tidelands and therefore are no longer paying a residential pier fee? Are the other permittees expected to make up the loss?
12. City Council should take into consideration the fairness of the charges and all other contributions the permittees are making such as property taxes.
13. Why do we have a new permit? It is complicated, and the old one worked fine.
14. Does the buffer go to the lot line or 10'? There should be a minimum buffer zone.
15. Some problems with the 10' buffer include other users (fishermen) using that area, and the area may be unusable due to site specific issues.
16. Permittees should not pay for the buffer area. Only the usable areas should be chargeable.
17. Since the permittee doesn't have exclusive use of the waterway, just the physical improvements, what rights are there to the water area?
18. How does this permit affect equity? Property owners were paying their fair share all along.
19. Property values were assessed including docks.
20. Has the residential pier permit changed? Can I have a permit each year?
21. How is Newport Shores charged for piers?
22. The homeowner, not the City, maintains the beaches and seawalls in front of their parcel, but the public has access to this area. Why should I be paying for this?
23. Why has permit changed to include eminent domain/taking of property for non-payment rather than a lien like the previous permit?

Commercial Pier Comments – Wednesday, August 21, 2013

None.

General Comments – Wednesday, August 21, 2013

1. Will Council take public comments into consideration?
2. There are public areas all around with improvements like seawalls. There is a community divide between those with waterfront interests and the rest of the City.
3. This issue should be reviewed by a new City Council one not comprised of those who made the previous decision.
4. Those who aren't paying for City tidelands (County and private waterways) should be paying for access to the harbor. Does the City have the right to charge others for access to the Tidelands and Newport Harbor?
5. How are other water bodies categorized? Are they paying too? What are they paying?
6. Is there a revenue expectation?
7. What gives the City the ability to charge for tidelands? Why are people paying for it? Do other areas (County Tidelands) have different criteria?
8. Other harbors or tidelands should have a similar valuation.
9. The City should give all the City Tidelands to the County so the City doesn't have to charge for them.
10. Is there a way to bill for fees on a one-time annual fee versus a bimonthly line item on the Municipal Services Statement?
11. This process went way too fast.
12. Can this be placed early on the Council's agenda?
13. If this is a land lease, why is the City charging based on the area being used instead of the area available to be used (linear footage out to the Pierhead Line)?

LAW OFFICES
THOMAS E. RUBBERT & ASSOCIATES
A PROFESSIONAL CORPORATION
790 EAST COLORADO BOULEVARD
PENTHOUSE SUITE, 9TH FLOOR
PASADENA, CALIFORNIA 91101
E-MAIL: RUBBERTLAW@AOL.COM
(626) 793-2773
(626) 793-2790
FAX (626) 240-0700

9 August 2013

City of Newport Beach
Public Works Dept
Harbor Resources Division

Att'n: Chris Miller, Manager

Dear Mr Miller;

We have received your Notice regarding meetings scheduled for Aug 15 and 21, 2013 regarding residential and commercial piers and floating docks. I'll be in litigation out-of-state on those occasions unfortunately, but wanted to outline my analysis of the issues you identify and suggest some helpful solutions.

As you know better than many others, the impact of this revenue-raising project affects those impacted by it unequally. Obviously a large multiple-use dock and float, or those used commercially are treated differently. Some having docks and floats escape this issue altogether such as those many bayfront homes on Lido Nord -- the north shore of Lido Island with no docks nor floats. And a great many with docks and floats also escape. Not everyone using Newport's facilities and living here with all the police/fire/medical protection are equally figured in the City's tax equation.

All of us in California recognize an ever increasing tax landscape as various governmental entities address loss of revenue and their pressing desire to increase tax revenue. The scheme the City proposes is a *tax* regardless of the *nomenclature* utilized. For the person receiving the vastly increased billing, it is yet another tax. Some label it a *Dock Tax*, which indeed it is. As it impacts my dock and float, it is a 1300+ % increase, but provides me and all other similarly impacted dockowners with *no additional* services from the City.

You know already that waterfront property owners with docks and floats already pay taxes for such -- and these revenues are called, honestly, just that -- a *tax*. But I am not arguing nomenclature. Nor am I arguing that there should be *no* increase on these taxes whatever -- I live in the real world where expenses are increasing constantly, and the City experiences this as well. Hence, I and many of my similarly situated neighbors (we have indeed discussed this in great

detail over much time) do not reject a reasonable tax increase, but 1300+% is not reasonable. An adjustment based on the Orange County Assessor's 2013 tax database for our waterfront properties would not be an unreasonable basis upon which to calculate a dock tax.

The Users of the Newport Facilities

A huge audience of others use the City's facilities, like the thousands using Newport's beautiful ocean beaches, with lifeguard/police/medical protection, beach-cleaning, restrooms, showers, etc. They should pay their share of the costs. As any fisherman must get and pay for a license, so should those using our beaches *contribute*, but not just their *trash*. You pay to use Yosemite, Sequoia Park, etc, etc. This is no different. Those who come to our City and use our facilities must pay their share.

It is grossly unfair to ask a select few who have docks to pay for all others using our bay, ocean and bay beaches, restrooms, lifeguards, etc. Yes they pay the parking meters and pay on the parking lots -- so do I. In short, this is *unequal* treatment and protection under the law which is contrary to fully established law.

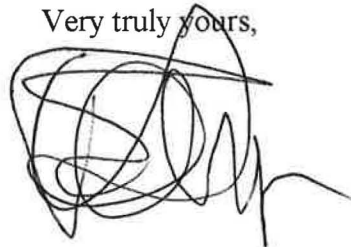
Fully Transparent Disclosure by City Urgently Needed

The explanation offered by the City does not indicate where these new funds will go -- how will this money be spent and for whose benefit? I fail to see how any bayfront dock/float owner benefits in any way *whatever*. A complete, detailed *accurate* accounting by the City is urgently needed before **ANY** new tax/fee or "rent" is assessed on these facilities. In the long tradition of American History, there can be no taxation without representation. Yes, you are soliciting representation of the public at your meetings, but that public **MUST** be armed with all the facts first before voting or expressing opinions. I urge the City to do this immediately -- who gets this money? Who are the beneficiaries? The summer throngs using our beaches for nothing?

Do these funds go into to General Treasury/Fund? How is this to be spent? Paying for the new Newport Civic Center? I do want to help, as do many of us. But the bayfront property owners cannot be seen and treated as cash-cows to be milked dry, or as easy-cash ATMs.

Please let me know how I can help. I very much appreciate your attention.

Very truly yours,

A handwritten signature in black ink, consisting of several overlapping loops and a long horizontal stroke extending to the right.

Chris Miller

City of Newport Beach

Harbor Resources Manager

Dear Mr. Miller,

As I indicated to you over the telephone yesterday , I am a Newport Beach resident for over 25 years. I like everything about my city. Well.. almost everything. I believe city council and all managements doing great job. Of course there are certain things that I wish would have been done differently. As a very long time business owner (63 years) I some time wish to go the city council and express my opinion on certain agenda items. One of them was the discussion and debates on the use of prior location of the city hall.

The second issue was the city's charge on the on shore moorings. My personal opinion on that. \$ 57.96. bi- monthly charge is little bit too high. If we compare with other charges, this one looks out of proportion.

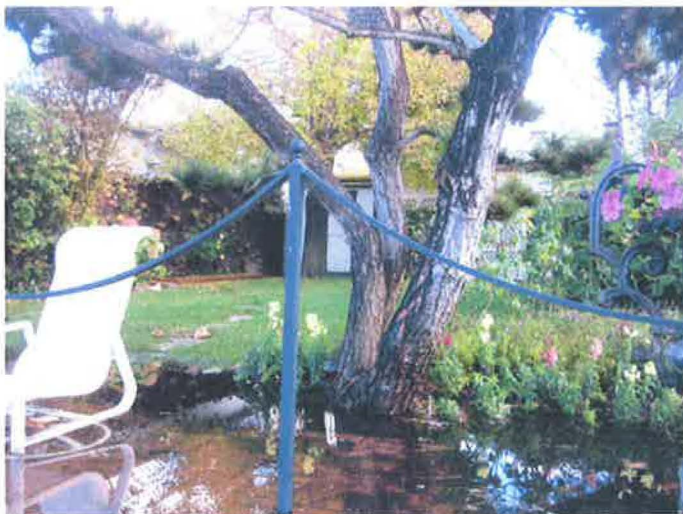
I respectfully demand that city take my opinion under consideration and lower these charges to a reasonable level, which should be minimum 35% less than current rate.

With Best Regards.

Antranik O. Zorayan

Submitted by
Jim Miller

Newport Island Area





Attachment B

Examples of Piers and the Area Currently Charged



1902 sf





BULWHEAD

PIERHEAD

COLLINS ISLE

PARK AVE



-  Single Pier
-  Shared Pier
-  Rental Pier
-  Bulkhead & Pierhead Lines

3 COLLINS ISLE

Total Permit Area = 1,902 sq. ft.

- * Aerial Imagery taken May 27-30, 2011
- * Pier Exhibit created 03/18/2013
- * Shared Piers split area cost by 25%, 33.3%, or 50%
- * Rental Piers charged by area (sq. ft.)



Harbor Resources
City of Newport Beach



1286 sf

34

2238

2242

2250

2254





2258

CHANNEL RD

BULKHEAD

PIERHEAD



-  Single Pier
-  Shared Pier
-  Rental Pier
-  Bulkhead & Pierhead Lines

2254 CHANNEL RD

Total Permit Area = 1,286 sq. ft.

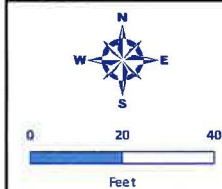
- * Aerial Imagery taken May 27-30, 2011
- * Pier Exhibit created 03/18/2013
- * Shared Piers split area cost by 25%, 33.3%, or 50%
- * Rental Piers charged by area (sq. ft.)







Harbor Resources
City of Newport Beach



1889 sf



-  Single Pier
-  Shared Pier
-  Rental Pier
-  Bulkhead & Pierhead Lines

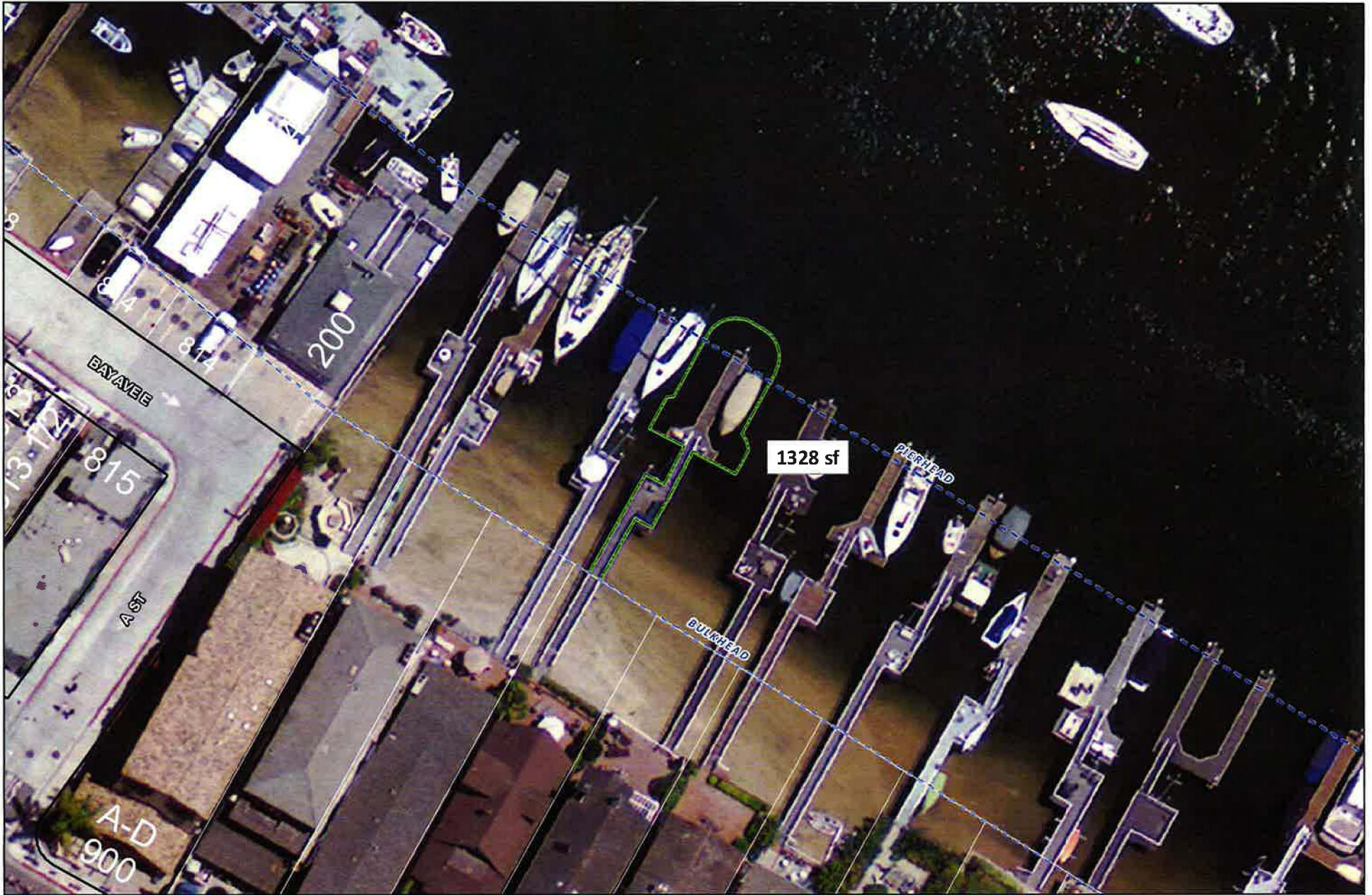
204 VIA LIDO NORD

Total Permit Area = 1,889 sq. ft.

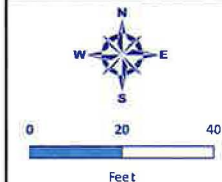
- * Aerial Imagery taken May 27-30, 2011
- * Pier Exhibit created 03/18/2013
- * Shared Piers split area cost by 25%, 33.3%, or 50%
- * Rental Piers charged by area (sq. ft.)







Harbor Resources
City of Newport Beach



1328 sf



-  Single Pier
-  Shared Pier
-  Rental Pier
-  Bulkhead & Pierhead Lines

908 BALBOA BLVD E

Total Permit Area = 1,328 sq. ft.

- * Aerial Imagery taken May 27-30, 2011
- * Pier Exhibit created 03/18/2013
- * Shared Piers split area cost by 25%, 33.3%, or 50%
- * Rental Piers charged by area (sq. ft.)



Harbor Resources
City of Newport Beach



3435 sf





BULKHEAD

PIERHEAD

STRADA BARCELONA

VIA LIDO SOUD



-  Single Pier
-  Shared Pier
-  Rental Pier
-  Bulkhead & Pierhead Lines

221 VIA LIDO SOUD

Total Permit Area = 3,435 sq. ft.

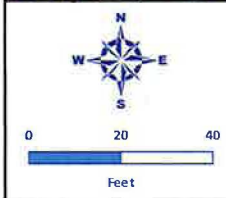
- * Aerial Imagery taken May 27-30, 2011
- * Pier Exhibit created 03/18/2013
- * Shared Piers split area cost by 25%, 33.3%, or 50%
- * Rental Piers charged by area (sq. ft.)







Harbor Resources
City of Newport Beach



3136 sf



-  Single Pier
-  Shared Pier
-  Rental Pier
-  Bulkhead & Pierhead Lines

119 BAY FRONT E

Total Permit Area = 3,136 sq. ft.

- * Aerial Imagery taken May 27-30, 2011
- * Pier Exhibit created 03/18/2013
- * Shared Piers split area cost by 25%, 33.3%, or 50%
- * Rental Piers charged by area (sq. ft.)







Harbor Resources
City of Newport Beach



10,383 sf



-  Single Pier
-  Shared Pier
-  Rental Pier
-  Bulkhead & Pierhead Lines

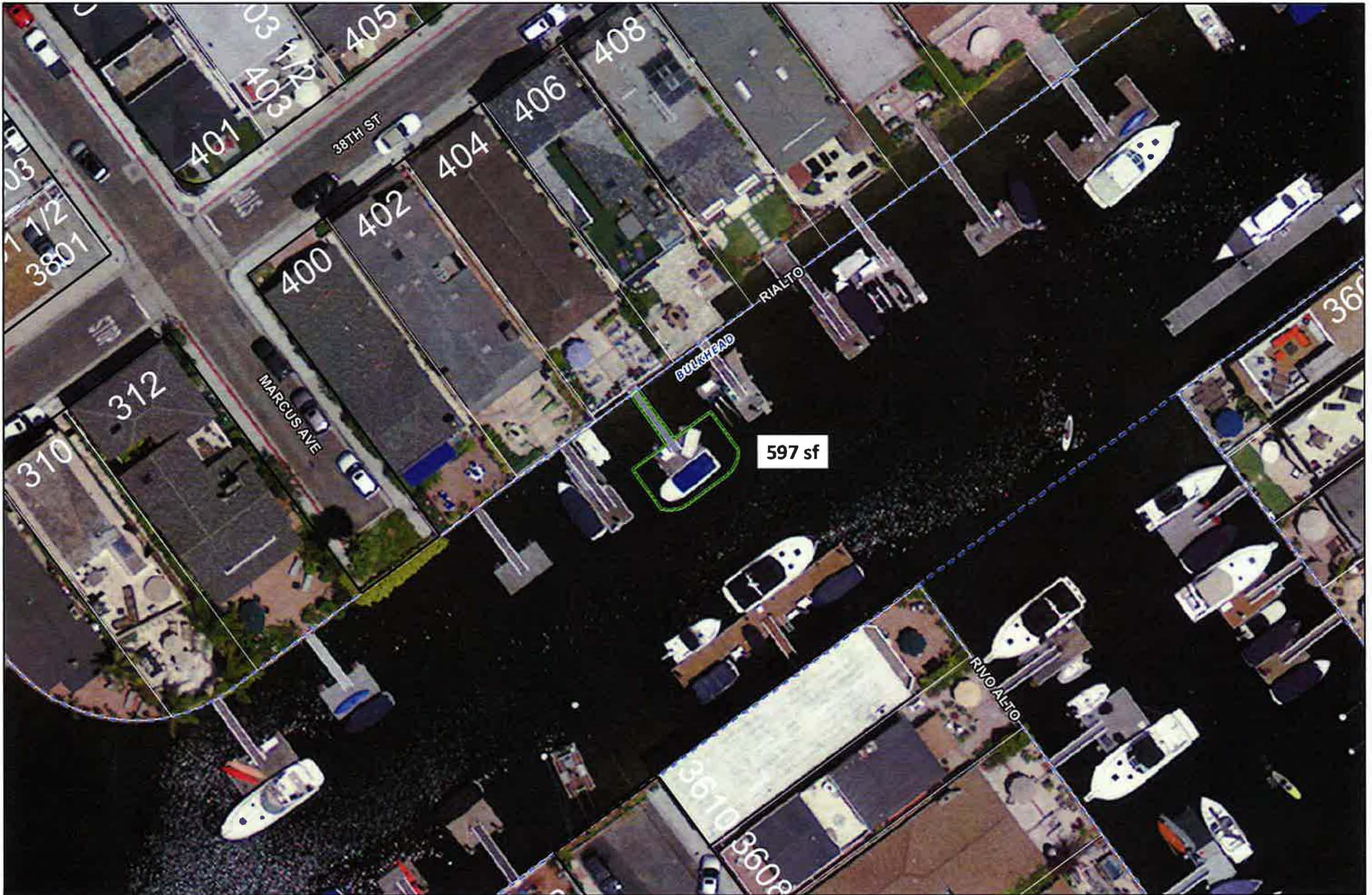
3344 VIA LIDO


Total Permit Area = 10,383 sq. ft.

- * Aerial Imagery taken May 27-30, 2011
- * Pier Exhibit created 04/16/2013
- * Shared Piers split area cost by 25%, 33.3%, or 50%
- * Rental Piers charged by area (sq. ft.)



Harbor Resources
City of Newport Beach



-  Single Pier
-  Shared Pier
-  Rental Pier
-  Bulkhead & Pierhead Lines

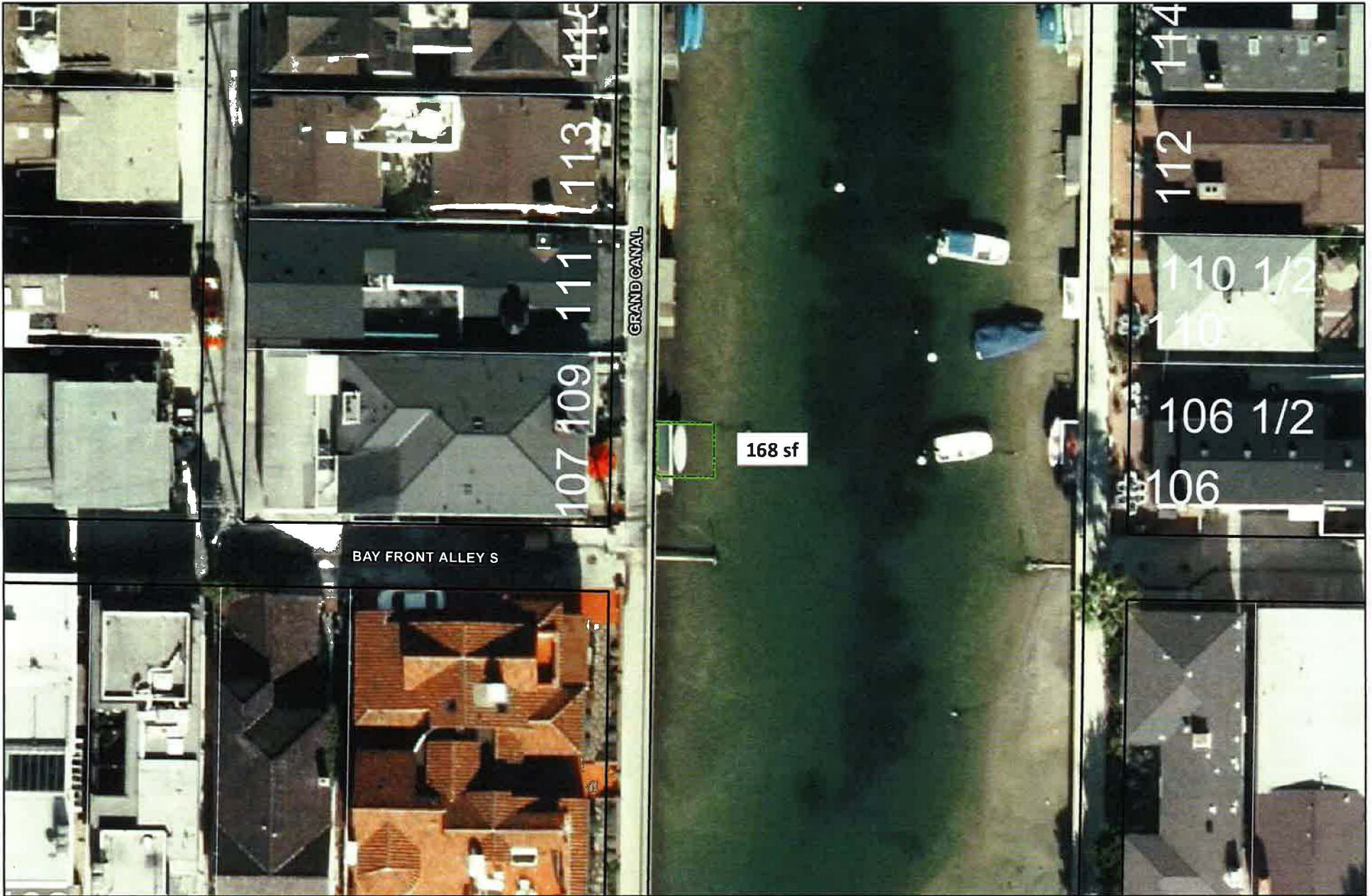
404 38TH ST





Total Permit Area = 597 sq. ft.

- * Aerial Imagery taken May 27-30, 2011
- * Pier Exhibit created 03/18/2013
- * Shared Piers split area cost by 25%, 33.3%, or 50%
- * Rental Piers charged by area (sq. ft.)



Harbor Resources
City of Newport Beach



-  Single Pier
-  Shared Pier
-  Rental Pier
-  Bulkhead & Pierhead Lines

107 GRAND CANAL

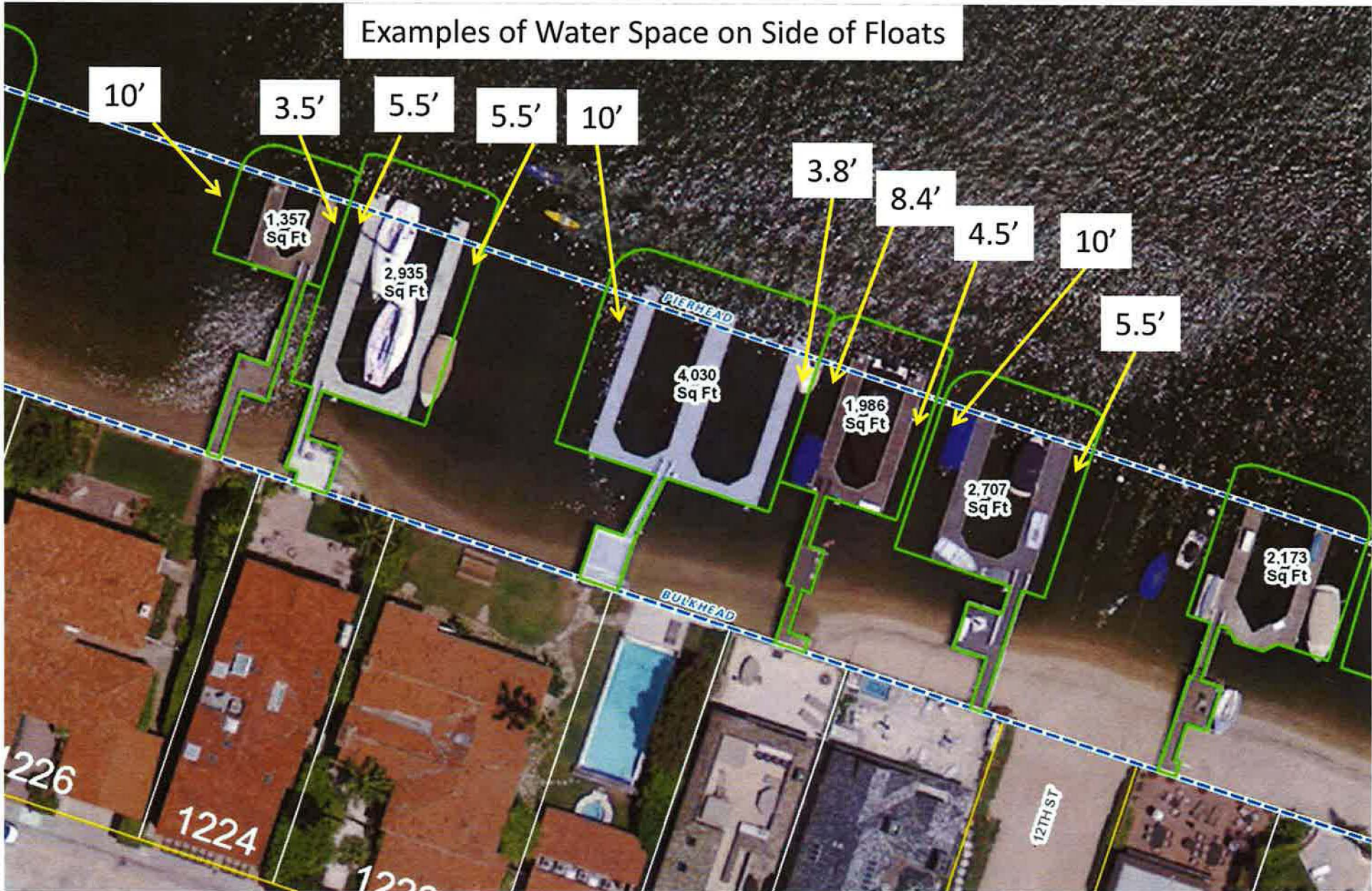
Total Permit Area = 168 sq. ft.

- * Aerial Imagery taken October/2012
- * Pier Exhibit created 03/28/2013
- * Shared Piers split area cost by 25%, 33.3%, or 50%
- * Rental Piers charged by area (sq. ft.)



Harbor Resources
City of Newport Beach

Examples of Water Space on Side of Floats



Disclaimer: Every reasonable effort has been made to assure the accuracy of the data provided, however, The City of Newport Beach and its employees and agents disclaim any and all responsibility from or relating to any results obtained in its use.

Imagery: 2009-2011 photos provided by Eagle Imaging www.eagleaerial.com

DRAFT Residential Tidelands Pier Permit (Redline)

(1) Permittee: This Permit is issued on _____ to _____ (“Permittee”) to construct/maintain a residential pier located upon City of Newport Beach (“City”) tidelands, as more particularly described and depicted in Attachment 1 (“Premises”), which is attached hereto and incorporated by reference. By acceptance of this Permit, the Permittee agrees to be bound by the terms contained in this Permit.

(2) Term: This Permit shall be valid for a period of twelve (12) calendar months beginning on March 1, 20____ and expiring on February __, 20____, unless terminated earlier as provided herein. A new permit may be automatically issued annually, provided rent is paid and the pier is maintained. The City’s longstanding policy is to re-issue residential permits annually to the upland property owner, who also owns the physical dock associated with the Premises.

(3) Rent: Rent shall be calculated pursuant to Resolution No. 2012-____, or any successor/amended resolution. Resolution No. 2012-____ and any successor/amended resolution are automatically incorporated by reference into this Permit, without any further action by the parties, when adopted by the Newport Beach City Council.

(A) Periodic Payment of Rent: One-sixth (1/6) of annual rent for a particular year shall be received by the City within nineteen (19) days after the mailing of the Municipal Services Statement to Permittee. Bi-monthly rent will be billed with the Permittee’s Municipal Services Statement.

(B) Place for Payment of Rent: All payments of rent shall be made in lawful money of the United States of America and shall be paid to City on line at www.newportbeachca.gov, in person or by United States’ mail, or overnight mail service, at the Cashier’s Office located at 100 Civic Center Drive, Newport Beach, CA 92660, or to such other address as City may from time to time designate in writing to the Permittee. The Permittee assumes all risk of loss and responsibility for late charges and delinquency rates if payments are not timely received by the City regardless of the method of transmittal.

(C) Late Charges: A ten percent (10%) late charge, or the maximum rate allowable under State law, shall be added to all payments due but not received by City by the due date.

(D) Third-Party Use: This Permit allows / does not allow (check one) the Permittee to rent/lease the Premises to a third-party.

(4) Utilities and Taxes: The Permittee is solely responsible for obtaining all utilities and paying all taxes (including possessory interest tax, if applicable), fees and assessments for the Premises or improvements located thereon.

~~(5) Possessory Interest Tax Notice: The City hereby gives notice to the Permittee, pursuant to Revenue and Tax Code Section 107.6 that this Permit may create a possessory interest that is the subject of property taxes levied on such interest, the payment of which taxes shall be the sole obligation of the Permittee. The Permittee shall advise in writing any sublessee, licensee, concessionaire or third party using the Premises of the requirements of Section 107.6.~~

~~(6) — Compliance With Applicable Laws: The Permittee is required at its sole expense to comply with all applicable City, County, State and Federal laws, policies and regulations.~~

(57) Maintenance: The Permittee assumes full responsibility for operation and maintenance and repair of the Premises and associated improvements throughout the term of this Permit at its sole cost, and without expense to the City.

(68) Transfer/Assignment: This Permit may be transferred or assigned by the Permittee as provided in the Newport Beach Municipal Code.

~~(9) — Termination: This Permit may be terminated for cause (e.g., failure to abide by the terms of this Permit, etc.) by the City with no less than thirty (30) calendar days prior written notice to the Permittee. In the event of termination under this section, the City shall owe no compensation to the Permittee and the Permittee shall remove all improvements from the Premises within ninety (90) calendar days. The Permittee shall continue to pay rent to the City during the period in which the improvements are removed. Alternatively, the Permittee, with the City's prior written consent, may quitclaim all fixtures, equipment, and improvements on the Premises to the City. Notwithstanding any other provision of this Permit as permitted by California Public Resources Code Section 6312, or any successor statute, the parties agree that upon expiration or earlier termination of this Permit the City shall have no liability or obligation to pay compensation for any improvements made to the Premises.~~

~~(10) — Insurance: The Permittee shall maintain liability insurance for the Premises and the improvements located thereon. The City may in its sole and absolute discretion require a Permittee to produce written evidence of the insurance required under this section.~~

Attachment 1

Description & Depiction of Premises

Premise's Address (or description of general location):

Premise's Square Footage:

Premise's Depiction:

DRAFT Residential Tidelands Pier Permit (Clean)

- (1) **Permittee:** This Permit is issued on _____ to _____ (“Permittee”) to construct/maintain a residential pier located upon City of Newport Beach (“City”) tidelands, as more particularly described and depicted in Attachment 1 (“Premises”), which is attached hereto and incorporated by reference. By acceptance of this Permit, the Permittee agrees to be bound by the terms contained in this Permit.
- (2) **Term:** This Permit shall be valid for a period of twelve (12) calendar months beginning on March 1, 20____ and expiring on February __, 20____, unless terminated earlier as provided herein. A new permit may be automatically issued annually, provided rent is paid and the pier is maintained. The City’s longstanding policy is to re-issue residential permits annually to the upland property owner, who also owns the physical dock associated with the Premises.
- (3) **Rent:** Rent shall be calculated pursuant to Resolution No. 2012-____, or any successor/amended resolution. Resolution No. 2012-____ and any successor/amended resolution are automatically incorporated by reference into this Permit, without any further action by the parties, when adopted by the Newport Beach City Council.
- (A) **Periodic Payment of Rent:** One-sixth (1/6) of annual rent for a particular year shall be received by the City within nineteen (19) days after the mailing of the Municipal Services Statement to Permittee. Bi-monthly rent will be billed with the Permittee’s Municipal Services Statement.
- (B) **Place for Payment of Rent:** All payments of rent shall be made in lawful money of the United States of America and shall be paid to City on line at www.newportbeachca.gov, in person or by United States’ mail, or overnight mail service, at the Cashier’s Office located at 100 Civic Center Drive, Newport Beach, CA 92660, or to such other address as City may from time to time designate in writing to the Permittee. The Permittee assumes all risk of loss and responsibility for late charges and delinquency rates if payments are not timely received by the City regardless of the method of transmittal.
- (C) **Late Charges:** A ten percent (10%) late charge, or the maximum rate allowable under State law, shall be added to all payments due but not received by City by the due date.
- (D) **Third-Party Use:** This Permit allows / does not allow (check one) the Permittee to rent/lease the Premises to a third-party.
- (4) **Utilities and Taxes:** The Permittee is solely responsible for obtaining all utilities and paying all taxes (including possessory interest tax, if applicable), fees and assessments for the Premises or improvements located thereon.
- (5) **Maintenance:** The Permittee assumes full responsibility for operation and maintenance and repair of the Premises and associated improvements throughout the term of this Permit at its sole cost, and without expense to the City.
- (6) **Transfer/Assignment:** This Permit may be transferred or assigned by the permittee as provided in the Newport Beach Municipal Code.

Attachment 1

Description & Depiction of Premises

Premise's Address (or description of general location):

Premise's Square Footage:

Premise's Depiction:

California State Lands Rental Rates for Recreational Piers
in
Lake Tahoe, Huntington Harbor, and Sacramento/San Joaquin River Delta

Location	Rate	Notes
Lake Tahoe	<ul style="list-style-type: none"> • \$0.79 sq/ft for actual pier + 50% of \$0.79 for “impact area” around pier (typically 10’ around pier) 	<ul style="list-style-type: none"> • Supposed to update benchmark rate every 5 years. • Large increase in 2007. Last review was 1992. (Did not follow every 5 year plan during this time.) • 2011 State law to charge for residential piers. • 2012 residential pier rent began. Public hearings to explain rental rate appraisal amounts.
Huntington Harbor	<ul style="list-style-type: none"> • \$0.33 sq/ft for entire water area • 2005 rate: \$0.22 sq/ft 	<ul style="list-style-type: none"> • Entire water area = bulkhead to pierhead and across property width regardless of size of dock.
Sacramento River	<ul style="list-style-type: none"> • \$0.19 sq/ft for dock footprint + 10’ impact area on “river side”. If “bank side” can accommodate a boat, then charge for that as well. 	
San Joaquin River Delta	<ul style="list-style-type: none"> • \$0.15 sq/ft for dock footprint + 10’ impact area on “river side”. If “bank side” can accommodate a boat, then charge for that as well. 	

Note: State Lands typically has 10 year leases with staggered renewal dates. New rental rates take affect when the lease expires.

Rate Comparisons for Piers in California

Newport Harbor		Lake Tahoe	Huntington Harbor	Sacramento River	San Joaquin River Delta	
With 10' Buffer @ \$0.525 sf (includes interior U) Existing	Pier, Gangway and Float + 50% of Buffer (includes interior U) Proposed	Percent Reduction from 10' Buffer (Existing) to 50% Buffer (Proposed)	\$0.79 sf of Pier, Gangway and Float + 50% of \$0.79	\$0.33 sf for entire water area	\$0.19 for dock + 10' buffer for "river side" (assumed 50% of buffer in Newport)	\$0.15 for dock + 10' buffer for "river side" (assumed 50% of buffer in Newport)

3 Collins Isle (1,902 sf with buffer, 936 sf without)	\$998.55	\$744.98	25.4%	\$1,109.16	\$741.84	\$269.61	\$212.85
2254 Channel Rd (1,286 sf with buffer, 792 sf without)	\$675.15	\$545.48	19.2%	\$938.52	\$937.53	\$197.41	\$155.85
204 Via Lido Nord (1,889 sf with buffer, 705 sf without)	\$991.73	\$680.93	31.3%	\$835.43	\$701.91	\$246.43	\$194.55
908 Balboa Blvd E (1,328 sf with buffer, 446 sf without)	\$697.20	\$465.68	33.2%	\$528.51	\$729.96	\$168.53	\$133.05
221 Via Lido Soud (3,435 ft with buffer, 1,091 sf without)	\$1,803.38	\$1,188.08	34.1%	\$1,292.84	\$1,195.59	\$429.97	\$339.45
119 Bay Front E (3,136 sf with buffer, 1,039 sf without)	\$1,646.40	\$1,095.94	33.4%	\$1,231.22	\$2,004.09	\$396.63	\$313.13
3344 Via Lido (10,384 sf with buffer, 2,546 sf without)	\$5,451.60	\$3,394.13	37.7%	\$3,017.01	\$4,047.45	\$1,228.35	\$969.75