

RESOLUTION NO. 2013-88

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF NEWPORT BEACH, CALIFORNIA, ADJUSTING THE RENTAL CALCULATION AND APPROVING A REVISED MODEL PERMIT TEMPLATE FOR RESIDENTIAL PIERS LOCATED UPON TIDELANDS AND AMENDING RESOLUTION NO. 2012-98 TO RECLASSIFY CERTAIN HOMEOWNER'S ASSOCIATIONS SLIPS FROM COMMERCIAL TO RESIDENTIAL

WHEREAS, pursuant to the 1978 Beacon Bay Bill, as amended, ("Beacon Bay Bill") the City of Newport Beach ("City") acts on behalf of the State of California as the trustee of tidelands located within the City's limits, including Newport Harbor;

WHEREAS, the Beacon Bay Bill and Chapter 17.60 of the Newport Beach Municipal Code ("NBMC") allow the City to authorize third parties to construct/maintain residential piers upon tidelands;

WHEREAS, the Beacon Bay Bill, California Constitution Article 16, Section 6, NBMC Section 17.60.060(D) and City Council Policy F-7(D) require the City to receive fair market value rent from third parties using the tidelands;

WHEREAS, the City Council has the exclusive discretion to determine fair market value rent based, in part, upon the findings of a City-selected appraiser;

WHEREAS, an appraisal report by Rasmuson Appraisal Services, and an appraisal report by Netzer & Associates, were prepared and delivered to the City and have been reviewed and considered by the City Council, which reports are part of the record for this matter;

WHEREAS, on November 13, 2012, the City Council adopted Resolution No. 2012-98, which established fair market value rental rates for various commercial tidelands uses, including, but not limited to, slips owned by Homeowners' Associations ("HOA");

WHEREAS, on December 11, 2012, the City Council adopted Resolution Nos. 2012-119 and 2012-120, approving a model residential pier permit for residential piers located upon tidelands and establishing fair market value rent;

WHEREAS, the City Council made a commitment to review the tidelands rent implementation process in its entirety to ensure consistency, gather feedback and to allow for improvement in the process;

WHEREAS, City staff hosted two look back meetings with tidelands users on August 15, 2013 and August 21, 2013, to review consistency, gather feedback on the recent tidelands rent implementation process and to listen to ideas for improvements going forward;

WHEREAS, on November 12, 2013, the City Council considered, at its regularly scheduled study session, the feedback and ideas gathered during the look back meetings and directed staff to bring back certain amendments contained in this resolution to improve the tidelands rent process;

WHEREAS, the City Council has considered all documents and comments in the record in connection with this resolution; and

WHEREAS, all previous resolutions, or portions thereof, and actions regarding the fair market value rent for residential piers and HOA's and the model pier permit template for residential piers that are in conflict with the provisions in this resolution are hereby repealed.

NOW, THEREFORE, the City Council of the City of Newport Beach resolves as follows:

Section 1: The Recitals provided above are true and correct and are incorporated into the substantive portion of this resolution.

Section 2: The City Council finds that the rent provisions contained in the attached Adjusted Residential Pier Tidelands Rent Calculations, which is incorporated by reference, provide for the charging of fair market value rent and that the rental rate (and adjustments) in the attachment constitute fair market value rent for residential piers located upon tidelands, which findings are made by the City Council in its exclusive discretion but are based, in part, on the information in the appraisals of its City-selected appraisers and, in addition, on other testimony and documents in the record for this matter. The City Council further finds and determines the rent for residential piers located upon tidelands, operating under a permit, shall be set in accordance with the attached Adjusted Residential Pier Tidelands Rent Calculations. The rent established in this resolution shall only be applicable to permittees with a residential pier located over tidelands.

Section 3: The City Council adopts the revised model residential pier tidelands permit attached to this resolution, and incorporated by this reference, for use by residential pier tidelands users. The City Council finds that the residential tidelands users subject to the attached model permit are not subject to the open bid process found in City Council Policy F-7 because redevelopment/reuse of the tidelands by a third party would require excessive time, resources and costs which would outweigh other financial benefits.

Section 4: The fair market value rent established for HOA's as provided in Section 3 of the "Commercial Tidelands Rent Calculations" of Resolution No. 2012-98 is hereby amended to read as follows:

Homeowners' Associations ("HOA") which provide slips for the exclusive use of its members, shall pay as fair market Base Rent the residential pier rental rate established in Resolution No. 2013-88, or any successor resolution, as phased in and adjusted pursuant to that resolution. In the event an HOA rents slips to non-members, depending upon the size of the Premises, the HOA shall pay fair market Rent for those slips equal to the "Large Commercial Marina Rent" or "Large Commercial Marina Rent Alternative" as established by Resolution No. 2012-92, or any successor resolution, or the Small Commercial Marina Rent established by this resolution. Depending upon the Rent applicable to, or selected by, a HOA, the HOA shall be subject to all of the applicable terms accompanying the Rent (*e.g.*, audit, *etc.*).

Section 5: The City Council finds the adjustment of residential pier and HOA rent and the approval of a revised model permit template for residential piers located upon tidelands is not subject to the California Environmental Quality Act ("CEQA") pursuant to Sections 15060(c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment) and 15060(c)(3) (the activity is not a project as defined in Section 15378) of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, because it has no potential for resulting in physical change to the environment, directly or indirectly. Alternatively, the City Council finds the adjustment of residential pier and HOA rent and the approval of a revised model permit template for residential piers located upon tidelands is entitled to a Class 1 Categorical Exemption pursuant to CEQA Regulation Section 15301 because the residential pier and HOA rent and permit contemplate the continued use of existing facilities, with no expansion of the proposed use. Further, the City Council finds the adjustment of residential pier and HOA rent for piers located upon tidelands is entitled to a Statutory Exemption pursuant to CEQA Regulation Section 15273(a)(1) because the fair market value rent established by the City Council will be used to meet operating expenses within the tidelands. Lastly, the City Council finds the adjustment of residential pier and HOA rent and the approval of a revised model permit template for residential piers located upon tidelands is not a project under CEQA Regulation Section 15061(b)(3) because it has no potential for causing a significant effect on the environment.

Section 6: If any section, subsection, sentence, clause or phrase of this resolution is, for any reason, held to be invalid or unconstitutional, such decision shall not affect the validity or constitutionality of the remaining portions of this resolution. The City Council hereby declares that it would have passed this resolution, and each section, subsection, clause or phrase hereof, irrespective of the fact that any one or

more sections, subsections, sentences, clauses and phrases be declared invalid or unconstitutional.

Section 7: This resolution shall take effect immediately upon its adoption by the City Council and the City Clerk shall certify the vote adopting the resolution.

ADOPTED this 26 day of November, 2013.



Keith D. Curry,
Mayor

ATTEST:



Leilani I. Brown,
City Clerk



Attachments: (A) Adjusted Residential Pier Tidelands Rent Calculations
(B) Revised Model Permit Template for Residential Piers

Revision to HOA Rent Section in Resolution No. 2012-98

Home Owners' Associations ("HOA") which provide slips for the exclusive use of its members, shall pay as fair market Base Rent the residential pier rental rate established in Resolution No. 2013-88, or any successor resolution, as phased in and adjusted pursuant to that resolution. In the event an HOA rents slips to non-members, depending upon the size of the Premises, the HOA shall pay fair market Rent for those slips equal to the "Large Commercial Marina Rent" or "Large Commercial Marina Rent Alternative" as established by Resolution No. 2012-92, or any successor resolution, or the Small Commercial Marina Rent established by this resolution. Depending upon the Rent applicable to, or selected by, a HOA, the HOA shall be subject to all of the applicable terms accompanying the Rent (e.g., audit, etc.).

Revised Residential Pier Tidelands Rent Calculations

Residential Pier Rent

- (1) Residential Pier Permittees shall pay as Rent Fifty-Two and One-Half Cents (\$0.525) per square foot of the Premises, as phased in and adjusted pursuant to this resolution. Two (2) examples of the Rent calculation are provided below for illustrative purposes:



- (2) Permittees that desire to rent/lease their Residential Pier shall notify the City in writing. Permittees that rent/lease their Residential Pier, either in whole or in part, shall pay the Rent applicable to Small Commercial Marinas as established in Resolution No. 2012-98, or any successor resolution, for the Premises.
- (3) To the extent a Residential Pier is shared by two (2) or more Permittees, the Rent shall be apportioned equally among the Permittees (i.e., if a

- (3) To the extent a Residential Pier is shared by two (2) or more Permittees, the Rent shall be apportioned equally among the Permittees (*i.e.*, if a Residential Pier is shared by two (2) Permittees half (1/2) of the Rent shall be billed to one (1) Permittee and the other half (1/2) of the Rent shall be billed to the other Permittee). The Permittees shall be jointly and severally liable for the Rent. Each Permittee shall receive a permit from the City indicating the percentage of the Premises apportioned to the Permittee.

Periodic Adjustments of Rent And Phase In

Rent for Residential Piers provided by this resolution, shall be phased-in and adjusted as follows in the table below. In the table, "A" represents the calculated rent based on the known square footage under permit in 2012, multiplied by Fifty-Two and One-Half Cents a square foot (\$0.525/SF):

Fifty-Two and One-Half Cents (\$0.525) Rent Phase-in Table and Adjustment

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

Rent for Residential Piers of one hundred ninety square feet (190') or less shall pay the fully phased in Rent immediately and be subject to CPI adjustment beginning in 2018. During the phase-in period there shall be no adjustment by the U.S. Department of Labor, Bureau of Labor Statistics, Consumer Price Index for All Urban Consumers ("CPI"), Los Angeles-Riverside-Orange County region or otherwise.

Beginning in 2018 and indefinitely beyond, the rental rate shall be adjusted by the change in the CPI or two percent (2%) whichever is less. The City may conduct a new appraisal of residential pier rental rates in Newport Harbor after March 1, 2018, and every fifth (5th) year thereafter, as part of the appraisal required by Resolution No. 2012-96, or any successor resolution. The City Council, at its discretion, may use the appraisal to adjust Rent for the following year (*i.e.*, the Rent determined by the appraisal following March 1, 2018 shall be effective March 1, 2019). If the City Council chooses not to adjust Rent across the Class of Permit, it shall use the appraisal's results to adjust the Rent of only those individual Permits that transfer ownership following each appraisal. Once adjusted, these transferred Permits shall be adjusted by the change in

CPI or two percent (2%), whichever is less, until such time that a new appraisal applies to this Permit or Class of Permit.

Definitions

Unless otherwise provided, the terms provided in the Newport Beach Municipal Code ("NBMC") shall apply to this resolution. The singular of any term also includes the plural.

- (1) Class of Permit means all Permits for Residential Piers in Newport Harbor.
- (2) Permit refers to a permit issued by the City authorizing a Residential Pier upon the Premises.
- (3) Permittee means a person who has a permit from the City to construct/maintain a Residential Pier.
- (4) Premises means those Tidelands which are subject to the applicable permit and are more particularly described and depicted in the applicable permit, excluding any Private Waterways and improvements owned by the Permittee or Tidelands subject to recorded easements for pier and slip purposes. The Premises shall include only the portion of the Tidelands located under a Residential Pier.
- (5) Private Waterways means privately owned submerged lands or submerged lands subject to recorded easements for pier and slip purposes.
- (6) Rent means the annual fair market rent charged on a square footage basis for the use of the Premises.
- (7) Residential Pier means a pier used by the owner(s), occupant(s), guest(s) or lessee(s) of the abutting residentially zoned upland property. A Residential Pier shall include the entire pier system, including, but not limited to, the float, gangway, gangway landing, pier, pier platform and internal area of a slip(s).
- (8) Tidelands means certain tidelands and submerged land (whether filled or unfilled), located in the City of Newport Beach, County of Orange, State of California granted to the City of Newport Beach, as trustee, by the State of California, pursuant to the Tidelands Grant.
- (9) Tidelands Grant means uncodified legislation related to the State of California's grant of certain rights in the Tidelands to the City of Newport Beach, including, without limitation, the Beacon Bay Bill (Chapter 74 of the Statutes of 1978, as amended [citations omitted]).

Revised Residential Tidelands Pier Permit

(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 ___ year(s) beginning on March 1, 20___ and expiring on February __, 20___, unless terminated earlier as provided herein. A new permit may be automatically issued upon expiration, provided rent is paid and the pier is maintained. The City's longstanding policy is to re-issue residential permits 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. 2013-___, or any successor/amended resolution. Resolution No. 2013-___ 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 online 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 at 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: