

NEWPORT BEACH HARBOR COMMISSION SPECIAL MEETING MINUTES
Civic Center Community Room – 100 Civic Center Drive, Newport Beach, CA
Thursday, February 1, 2024
5 p.m.

1. CALL MEETING TO ORDER

The meeting was called to order at 5:02 p.m.

2. ROLL CALL

PRESENT: Steve Scully, Chair
Ira Beer, Vice Chair
Marie Marston, Secretary
Scott Cunningham, Commissioner
Rudy Svrcek, Commissioner
Gary Williams, Commissioner
Don Yahn, Commissioner (arrived at 5:22 p.m.)

ABSENT: None

Staff Members: Paul Blank, Harbormaster
Jennifer Biddle, Executive Assistant
Lauren Wooding Whitlinger, Real Property Administrator
Jeremy Jung, Deputy City Attorney

3. PLEDGE OF ALLEGIANCE – Led by Commissioner Svrcek

4. CURRENT BUSINESS

1. Review of Appraisal and Discussion of Rental Rates for Mooring Permits

Chair Scully welcomed and thanked all participants in attendance at the special meeting, the purpose of which was to review and receive input on the recently completed appraisal of rental rates related to mooring permits. He provided a brief historical overview of the process, noting that subsequent to an appraisal conducted in 2015, the City Council adopted fair market value rent for moorings in Newport Harbor in 2016 pursuant to Resolution No. 2016-17. Since 2016, these rental rates have been adjusted annually by changes in the cost of living pursuant to the Consumer Price Index (CPI). In addition, pursuant to Resolution No. 2016-17, new appraisals must be performed on the applicable rates every five (5) years under the direction of the Harbor Commission. The Harbor Commission's purpose is to support and advise the City Council on matters related to the Harbor. The City of Newport Beach has a responsibility to evaluate and charge market rents for tidelands water space pursuant to California State law and the City's Municipal Code.

Chair Scully outlined the rules of decorum, stating that there will be no Harbor Commission action taken at this meeting. The purpose of the meeting is to receive a staff and Harbor Commission subcommittee report on the subject matter and to receive public input from stakeholders and any other interested parties. Public input and feedback, including email and other written correspondence, will be incorporated into the meeting record and compiled and publicly presented prior to any final decision-making. This meeting's presentation order will commence with a staff report from Real Property Administrator Lauren Wooding Whitlinger, a report from Harbor Commission subcommittee member Vice Chair Ira Beer, and a twenty (20) minute presentation by the Newport Mooring Association. After each presentation, the floor will be open to inquiries from the Harbor Commissioners. After the close of the three presentations, the public comment period will be opened, allocating three-minutes to each speaker.

Real Property Administrator Lauren Wooding Whitlinger provided a summary of the City's legal obligations and requirements concerning on and off-shore mooring rental rates on tideland property owned by the State of California and managed by the City, whose governance is administered under California State statutes (Beacon Bay Bill), the City's municipal code, and City Council adopted policy. The governing documents stipulate that private, third-party use of City-managed tideland property requires payment of rent by permit or agreement. The City is fiduciary of the public tidelands and no gift of public funds may be provided to any individual or corporation. When used by private parties, there need to be at least a City-issued permit, a lease of less than 50 years, and non-discriminatory practices in rates, tolls, or charges. Values can be different for on and off-shore mooring rates. City Council Policy F-7 requires fair market value rates for private use of public lands, however exceptions exist where there is a public benefit. Under such conditions, the City Council may waive the policy to charge less than fair market value for use of the public asset. A PowerPoint presentation was displayed which provided visual images of the subject public lands and assets, current mooring rental rates, applicable Consumer Price Index (CPI) increases, appraisal history, the different types of appraisal analyses. The appraisal reports concluded the on-shore mooring monthly proposed rental rate (\$20 per linear foot for a maximum 18-foot vessel), and the monthly proposed rental rates for off-shore moorings, which range from \$10.50 per linear foot to \$23.25 per linear foot, based on the length of the mooring . Further analysis of the appraisal rates was prepared by the subcommittee and would be presented by Harbor Commission subcommittee member Vice Chair Beer in the next presentation.

At this juncture, Chair Scully opened the floor to inquiries from the Harbor Commissioners on Real Property Administrator Lauren Wooding Whitlinger's presentation. Seeing none, Chair Scully opened the floor to the next presenter.

Harbor Commission subcommittee member Vice Chair Beer provided a summary of the Harbor Commission's obligations and requirements to conduct appraisals, review, and provide a recommendation to the City Council establishing fair market rents for on and off-shore moorings in Newport Beach, pursuant to their aforementioned fiduciary trustee obligations and applicable governance documents. The City is obligated by law to charge rents at a reasonable value for the use of these public assets, which include moorings commercial marinas, yacht clubs and fuel docks. These charges are not taxes or fees but are rent for the private exclusive use of public assets. Mooring rental rents have not been adjusted since 2016, apart from applicable CPI increases. Revenue generated from applicable rents is directed exclusively to the City's Tidelands Fund, of which the primary purpose is to fund the City's Harbor Department, maintenance and enhancement of public tidelands, environmental protection initiatives, and support public access and recreation activities. Charging of fair market rates is required pursuant to the California Constitution and prevents the subsidization of private parties using public lands. It also reduces the burden on the City of utilizing the General Fund to subsidize deficits within the Tidelands Fund. 2023 deficit was approximately \$4.6 million and there has been a long history of below market rates charged for the applicable rentals by the City. The Harbor Commission subcommittee is in favor of proposing average rates that are about 24% lower than the current professional appraisal for off-shore moorings and about 60% lower for on-shore moorings. The subcommittee is also in favor of considering a stair-step implementation of any new rate structure over a multi-year period should new rates be approved by the City Council. A PowerPoint presentation was displayed which provided detail concerning the calculations and proposals for rental rates, including reduced rates proposed by the subcommittee.

At this juncture, Chair Scully opened the floor to inquiries from the Harbor Commissioners on Vice Chair Beer's presentation. Seeing none, Chair Scully opened the floor to the next presenter.

Representatives from the Newport Mooring Association (NMA), including Wade Womack, Jennifer Kreston, Dr. Richard Navarro, and Jerry La Pointe provided a summary of their views on the subject matter. This included comments requesting deferral of final decision-making until the NMA could provide the City with the results of their own independent appraisal, requesting additional public stakeholder meetings to

collaborate on solutions, consideration of negative impacts of arbitrary rates on mooring permit holders, suggesting use of the State's methodology for determining permit rates, the inappropriate comparison of public mooring permit rates with private real estate and full-service marina moorings which is founded on unreliable mooring-to-slip ratio, acknowledgement that the City has the authority to be flexible with rates, noting that historically, the City's moorings have provided affordable coastal access to diverse groups and increasing the rates may require those who can no longer afford them to vacate, and the potential negative impact of increased rates on senior citizens, those on fixed-incomes, live-aboards, and those who are not affluent, but whom enjoy the Harbor and utilize many of its regular activities and amenities. Further comments included allegations that the proposed rate increases are discriminatory and biased against mooring permittees as compared to dock permit holders, potential denial of access to moorings by lower-income wage earners, expressing concern that the current appraisal does not take into account the lack of access and lack of amenities in its comparison with other types of moorings, the unreliability of the slip-to-mooring ratio utilized in the current appraisal, the requirements of the City's General Plan to provide for affordable moorings, and a request to consider the mooring permits in a similar fashion as the dock permits. A PowerPoint presentation was displayed which provided detail of the presentation and information concerning the impacts of the proposed rate increases. *(The PowerPoint presentation is considered public record and can be obtained by contacting assigned staff).*

At this juncture, Chair Scully opened the floor to inquiries from the Harbor Commissioners on the Newport Mooring Association's presentation. Seeing none, Chair Scully opened the floor to public comments.

A member of the public commented expressing concerns with the proposed increase in rates, including that the current appraisal results are flawed as comparisons were made to moorings with amenities and shore services.

Eric Schoonover commented expressing concerns with the proposed increase in rates, including the proposed rates are in conflict with limitations placed by Assembly Bill 1482, limiting rate increases greater than 10%.

Scott Allen commented expressing concerns with the proposed increase in rates, including that proposed rate increases are disproportionately biased against those with smaller vessels.

Hein Austin commented expressing concerns with the proposed increase in rates, including that those with private docks have the opportunity to rent out their spaces for large amounts and that the current appraisal results are flawed as comparisons were made to moorings with amenities and shore services.

Don Potenza commented expressing concerns with the proposed increase in rates, including that the current appraisal results are flawed, mooring permittees are paying more than dock permittees and requesting the increased be based on CPI.

Adam Leverence commented expressing concerns with the proposed increase in rates, including that the current appraisal results are flawed, proper comparison inspections were not conducted, and the inaccuracies in the comparison metrics utilized. He referenced a document he submitted for the record.

Mike Fitzmorris commented expressing concerns with the proposed increase in rates, including that the current diversity in mooring permittees brings value to the Harbor and the unreliability of comparisons utilized in the current appraisal.

Dr. Long Pham commented expressing concerns with the proposed increase in rates, including that Proposition 13 information was not utilized and that double standards on rates are potentially being applied to new permittees versus existing permittees.

Rory Folsom commented expressing concerns with the proposed increase in rates, including that many veterans and non-affluent individuals will be priced out of mooring permits due to the increased costs.

Maureen Cotton commented expressing concerns with the proposed increase in rates, including that she appreciates the opportunity for public input, however, she referenced that the City has the ability to be flexible with the proposed rates and there should be considerations made for those with and without docks, especially those that provide amenities.

Bud Cummins commented expressing concerns with the proposed increase in rates, including that improper comparisons were made in the current appraisal and that proposed increases are not fair and equitable.

Chris Benzine commented expressing concerns with the proposed increase in rates, including that the current appraisal does not take into account relevant information from the previous appraisals conducted and that CPI increases are rental increases.

A member of the public commented expressing concerns with the proposed increase in rates, including references to the affordability of beach rentals at Crystal Cove, allowing those who normally could not afford a beach rental to do so and requesting consideration on this matter to those of varying incomes and families.

Barbara Walker commented expressing concerns with the proposed increase in rates, including that the current appraisal contains unreliable information and the proposed rate increases are discriminatory, with the potential for the media to focus on the City of Newport Beach's rental rate practices.

Cindy Bowmen commented expressing concerns with the proposed increase in rates, including that those who could previously afford mooring permits will be priced out, thereby preventing opportunities for families to enjoy boating and Harbor amenities. She also requested additional parking opportunities for those with mooring permits.

Anthony Ling commented expressing concerns with the proposed increase in rates, including that many lower-income wage earners will not be able to continue to afford mooring permits or to live affordably in Newport Beach.

A member of the public commented expressing concerns with the proposed increase in rates, including that the current appraisal includes unfair comparisons, more revenue is coming from permittees without docks, those with docks can charge others for use, and current mooring permittees may elect to go elsewhere.

Barbara Lawlor commented expressing concerns with the proposed increase in rates, including that the current appraisal is flawed, requesting a new appraisal from an independent appraiser, and noting the City has flexibility in establishing rates to keep boating affordable for all.

Elijah Speier commented expressing concerns with the proposed increase in rates, including that no amenities or services are provided with current mooring permits and he was able to afford the mooring permit originally as a seasonal lifeguard, as well as open a commercial charter business.

Mr. Nobody commented expressing concerns with the proposed increase in rates, including that no amenities or services are provided with current mooring permits and current permittees supply their own water, trash disposal, pump outs, and power.

Dawn Winsome commented expressing concerns with the proposed increase in rates, including that there is a large disparity between the mooring permittees and dock permittees, requesting use of the State's methodologies for calculating rates, and noting the City has flexibility with establishing reasonable rates to prevent gentrification.

Dale Winsome commented expressing concerns with the proposed increase in rates, including that he does appreciate the efforts of the Harbor Commission and City in this endeavor, noting that all stakeholders love the Harbor, and that lower income earners may not be able to afford mooring permits if the rates are increased.

Robert Kinney commented expressing concerns with the proposed increase in rates, including that his private boat-related business is built on the patronage of all levels of boaters, increased rates may drive out lower-income earning customers, and to protect the Harbor and its usage for all boaters.

Travis Lisman commented expressing concerns with the proposed increase in rates, including that it is the Harbor Commission's obligation to establish the value of the asset and fair market value is established where stakeholders are all part of the process of establishing value. He requested additional public workshops and input on the matter before final decision-making.

George Wongs commented expressing concerns with the proposed increase in rates, including a request that the City consider grandfathering in long-term permittees who have been faithfully paying mooring fees over the years.

Jim Mosher commented expressing concerns, including that there is a change in the definition of "fair" historically as related to appraisals, noting that he does not have any suggestions as to how the concept of "fair" should be applied in this situation, that the subcommittee is operating under the assumption that the City has a long history of undercharging due to the Tidelands Fund operating at a deficit. He noted that fair does not mean you have to generate a profit.

Eric Bantry commented expressing concerns with the proposed increase in rates, including that he researched and purchased a mooring permit for \$50,000 approximately 30 days previous and expressed concern that mooring fees are now increasing. He expected approximately 3% annual increases, but not quadruple the fees.

Mike commented expressing concerns with the proposed increase in rates, including that he has reviewed information from the City site regarding mooring and dock pier permits and revenues associated with each, citing that dock permittees do not pay as much as mooring permittees and can rent out their docks for high prices. He requested that all tideland permittees are treated without prejudice.

Jim Palmer commented expressing concerns with the proposed increase in rates, including that those with private docks have the opportunity to rent out their spaces for large amounts commented expressing support for the Newport Mooring Association for their presentation and expressing concern with the results of the Metzger appraisal.

Brian Ozounian commented expressing concerns with the proposed increase in rates, including that the current mooring fees appraisal is flawed. He favored the State formula for establishing fees. He expressed concern that he was being overcharged for fees in Newport Beach.

Seeing no others, Chair Scully closed public comments on this item.

There was no action taken on this item.

5. PUBLIC COMMENTS ON NON-AGENDA ITEMS

Chair Scully opened public comments on non-agenda items.

A member of the public commented offering a vendor alternative to increasing dye tab testing, which would result in less employees and less costs to the City, as well as reduce potential pollution into the Harbor.

Chris Benzie commented expressing concern of a threat that dye tab testing was to be required four times per year, as once per year is excessive. He expressed a preference for dye tab testing to be conducted when a change to the mooring or boat occurs and then once every five or ten years thereafter.

Chair Scully confirmed the City is not requiring dye tab testing four times per year.

A member of the public commented expressing concern about increasing dye tab testing, long-term parking for live-aboards who need to travel for extended periods, and the lack of options for dinghy storage.

Chris Palmer requested a revision date be affixed to the 2024 Harbor Commission objectives document to ensure access to the most updated version. He noted the transferability issue was a point of contention when previously considered and requested a public stakeholder forum when taking into consideration options for Lower Castaways.

Hein Austin commented noting that the Sheriff's Department proposal to run the Harbor was significantly lower than the current costs to run the Harbor Department and that the Harbor should be serving people from all walks of life.

Pat Cummins commented concerning the large number of meetings held to address Title 17 and encourage the City to work together with mooring permittees to collaboratively find solutions to raise revenues in the Harbor.

Adam Leverage commented that City staff person Matt Cosylion stated at a recent Harbor Commission meeting that dye tab testing will be occurring every three months and that the failure rate number was low. He expressed concern regarding unnecessary dye tab testing and the negative impacts of mooring transfer fees.

In response to Chair Scully's inquiry, Harbormaster Blank confirmed that Mr. Cosylion's reference was exclusive to dye tab testing relative exclusively to large commercial vessels offering charters.

Chair Scully closed public comments on non-agenda items.

6. ADJOURNMENT

There being no further business to come before the Harbor Commission, the meeting was adjourned at 7:12 p.m.