

# HARBOR COMMISSION AGENDA

City of Newport Beach  
3300 Newport Blvd.  
Council Chambers  
Wednesday, December 8, 2010  
Regular Meeting – 6:00 pm

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Don Lawrenz - Chairman

Doug West  
Duncan McIntosh  
Marshall Duffield

Karen Rhyne  
Ralph Rodheim  
Vincent Valdes

The Harbor Commissioners are citizens of Newport Beach who volunteer to serve on the Harbor Commission. They were appointed by the City Council by majority vote for 4-year terms. At the table in front are City staff members who are here to advise the Commission during the meeting. They are:

Chris Miller  
Manager, Harbor Resources

Shannon Levin  
Supervisor, Harbor Resources

## **NOTICE TO THE PUBLIC**

Regular meetings of the Harbor Commission are generally held on the second Wednesday of each month at 6:00 p.m. Staff reports or other written documentation have been prepared. The agendas, minutes and staff reports are available on the City's web site the Friday afternoon before the meeting. The address is: <http://newportbeachca.gov/> under Agendas & Minutes, then Harbor Commission. If you have any questions or require copies of any of the staff reports or other documentation, please contact the Harbor Resources staff at (949) 644-3034.

It is the intention of the City of Newport Beach to comply with the Americans with Disabilities Act (ADA) in all respects. If, as an attendee or a participant at this meeting, you will need special assistance beyond what is normally provided, the City of Newport Beach will attempt to accommodate you in every reasonable manner. Please contact Shannon Levin, Harbor Resources Supervisor at (949) 644-3041, at least 48 hours prior to the meeting to inform us of your particular needs and to determine if accommodation is feasible.

**NEWPORT BEACH HARBOR COMMISSION AGENDA**  
**City Council Chambers**  
**3300 Newport Blvd**  
**Wednesday, December 8, 2010**

**CALL TO ORDER**                    6:00 P.M.

**ROLL CALL / INTRODUCTION**

*The Commissioners sitting before you are citizens of Newport Beach who volunteer to serve on the Harbor Commission. They were appointed by the City Council at large by majority vote for 4-year terms. The people sitting at the table in front are City staff members and are here to advise us during the meeting. Immediately to my left are:*

*Chris Miller, Harbor Resources Manager  
Shannon Levin, Harbor Resources Supervisor*

**PLEDGE OF ALLEGIANCE**

**MINUTES**

**Recommended Action:** Approve minutes from October and November.

**PUBLIC COMMENTS**

*Public comments are invited on non-agenda items generally considered to be within the subject matter jurisdiction of the Harbor Commission – Speakers must limit comments to 3-minutes. Before speaking, please state your name and address for the record.*

*ALL TESTIMONY GIVEN BEFORE THE HARBOR COMMISSION IS TAPE RECORDED. SPEAKERS MUST LIMIT REMARKS TO THREE MINUTES ON ALL ITEMS. (Red light signifies when three minutes are up; yellow light signifies that the speaker has one minute left for summation.)*

**ACTION & APPEAL ITEMS**

**ITEM #1**

**Subject:**            **General Plan / Local Coastal Program Implementation Committee – Exploring the Harbor Commission’s Potential Involvement**

**Issue:**             The Harbor Commission will consider the potential to participate with the General Plan / Local Coastal Program Implementation Committee.

**Discussion:**

**Public Comments:**

**Action:**            Consider participating with the General Plan / Local Coastal Program Implementation Committee, and if so decided: 1) request the City Council to allow Harbor Commission representation; and 2) nominate a Harbor Commissioner as a representative.

**ITEM #2**

**Subject:**            **Mooring Fees and Mooring Transfer Rules – Review of Council Adopted Resolution and Ordinance**

**Issue:**             The Harbor Commission will be updated on the recent City Council action on November 23, 2010 concerning mooring fees and mooring transfer rules.

**Discussion:**

**Public Comments:**

**Action:**            Receive and file.

**ITEM #3**

**Subject:** **Mooring Support Service Center – Subcommittee Formation**

**Issue:** City Council Member Ed Selich has requested the Harbor Commission study the feasibility of creating a Mooring Support Service Center at the Balboa Yacht Basin, then return to Council in February 2011 with a recommendation for implementation.

**Discussion:**

**Public Comments:**

**Action:** Form a subcommittee to study the concept of a Mooring Support Service Center at the Balboa Yacht Basin, then submit a recommendation to Council in February.

**SUB-COMMITTEE REPORTS**

**QUESTIONS AND ANSWERS WITH COUNCIL LIAISON ON HARBOR RELATED ISSUES**

**HARBOR RESOURCES UPDATE** – Receive and File

**PUBLIC COMMENTS ON SUB-COMMITTEE REPORTS OR HARBOR RESOURCES UPDATE**

**COMMISSIONER'S ANNOUNCEMENTS OR MATTERS TO BE PLACED ON FUTURE AGENDAS FOR DISCUSSION, ACTION OR REPORT**

**RECOMMENDED TOPICS FOR FUTURE AGENDAS**

- Eelgrass
- Balboa Island bulkhead report
- Dinghy Dock at Lido Bridge – New public pier
- Bay Island update
- Bilge pump-out options
- Bulkhead and Pierhead Lines – Subcommittee report

**DATE AND TIME FOR NEXT MEETING:** Wednesday, January 12, 2010, 6:00 PM

# CITY OF NEWPORT BEACH

## HARBOR COMMISSION STAFF REPORT

Agenda Item No. 1  
December 8, 2010

**TO:** HARBOR COMMISSION

**FROM:** Public Works Department  
Chris Miller, Harbor Resources Manager  
(949) 644-3043, [cmiller@newportbeachca.gov](mailto:cmiller@newportbeachca.gov)

**SUBJECT: General Plan / Local Coastal Program Implementation Committee –  
Exploring the Harbor Commission’s Potential Involvement**

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### **ISSUE:**

The Harbor Commission will consider the potential to participate with the General Plan / Local Coastal Program Implementation Committee.

### **RECOMMENDATION:**

1. Consider participating with the General Plan / Local Coastal Program Implementation Committee, and if so decided: 1) request the City Council to allow Harbor Commission representation; and 2) nominate a Harbor Commissioner as a representative.

### **DISCUSSION:**

At the joint Harbor Commission / Planning Commission meeting on November 18, 2010, the Planning Commission recommended that the Harbor Commission should request to fill the currently available seat on the General Plan / Local Coastal Program Implementation Committee with a Harbor Commissioner. Currently, Council Resolution 2006-106 (attached) states that the Committee shall consist of three (3) City Council Members appointed by the Mayor and three (3) Planning Commissioners appointed by the Chair of the Planning Commission. The Planning Commission recommended to the Harbor Commission that they should request the Committee Resolution be revised to reflect membership of three (3) City Council Members, two (2) Planning Commissioners, and one (1) Harbor Commissioner. The Planning Commission suggested this because of the Harbor Commissioner’s ongoing concern over waterfront development.

### **ENVIRONMENTAL REVIEW:**

Staff recommends the Harbor Commission find this action 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.

**PUBLIC NOTICE:**

This agenda item has been noticed according to the Brown Act (72 hours in advance of the public meetings at which the Harbor Commission considers the item).

Submitted by:

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Chris Miller  
Harbor Resources Manager

Attachments: A – Resolution 2006-106

**GENERAL PLAN/LOCAL COASTAL PROGRAM  
IMPLEMENTATION COMMITTEE**

**AUTHORIZATION:** Established by Resolution No. 2006-106, adopted on December 12, 2006.

**MEMBERSHIP:** The Committee shall consist of the following members:

- A. Three (3) City Council Members appointed by the Mayor; and
- B. Three (3) members of the Planning Commission appointed by the Chair of the Planning Commission.

**TERM:** Not determined.

**PURPOSE &  
RESPONSIBILITIES:**

The Committee is charged with the tasks of developing a work program for the following items and overseeing their progress:

- A. Revision of Coastal Land Use Plan
- B. Revision of Zoning Code
- C. Completion of Local Coastal Program Implementation Plan
- D. Study of infrastructure needs associated with development authorized in the General Plan, and establishment of developer impact fees for infrastructure
- E. Revision of City Council policies
- F. Revision of Building Code
- G. Public participation on above items
- H. Any other means of implementing the General Plan that may be assigned to the Committee by the City Council.

# CITY OF NEWPORT BEACH

## HARBOR COMMISSION STAFF REPORT

Agenda Item No. 2  
December 8, 2010

**TO:** HARBOR COMMISSION

**FROM:** Public Works Department  
Chris Miller, Harbor Resources Manager  
(949) 644-3043, [cmiller@newportbeachca.gov](mailto:cmiller@newportbeachca.gov)

**SUBJECT:** **Mooring Fees and Mooring Transfer Rules – Review of Council Adopted Resolution and Ordinance**

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### **ISSUE:**

The Harbor Commission will be updated on the recent City Council action on November 23, 2010 concerning mooring fees and mooring transfer rules.

### **RECOMMENDATION:**

1. Receive and file.

### **DISCUSSION:**

Attached is the City Manager's Council staff report which outlines the details of both the new mooring fees and the new mooring transfer process. Also attached is the approved Council Resolution, Ordinance and comparison of the historical mooring rules vs. the newly adopted rules.

### **ENVIRONMENTAL REVIEW:**

Staff recommends the Harbor Commission find this action 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.

### **PUBLIC NOTICE:**

This agenda item has been noticed according to the Brown Act (72 hours in advance of the public meetings at which the Harbor Commission considers the item).

Submitted by:

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Chris Miller  
Harbor Resources Manager

Attachments: A – November 23, 2010 Council Staff Report  
B – Resolution 2010 - \_\_\_\_\_  
C – Ordinance 2010 - \_\_\_\_\_  
D – Comparison of Historical Mooring Rules vs. Newly Adopted Rules

**CITY OF NEWPORT BEACH**  
CITY COUNCIL STAFF REPORT

Agenda Item No. \_\_\_\_\_  
November 23, 2010

**TO:** HONORABLE MAYOR AND MEMBERS OF THE CITY COUNCIL

**FROM:** City Manager's Office  
Dave Kiff, City Manager  
949/644-3002 or [dkiff@newportbeachca.gov](mailto:dkiff@newportbeachca.gov)

Office of the City Attorney  
David Hunt, City Attorney  
949/644-3131 or [dhunt@newportbeachca.gov](mailto:dhunt@newportbeachca.gov)

**SUBJECT: Mooring Charges, Mooring Transfers: Resolution 2010-\_\_ Relating to Increasing Mooring Charges; Ordinance 2010-\_\_ Relating to Mooring Permit Transfers and Other Mooring Operations**

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**RECOMMENDATION:**

1. Adopt Resolution 2010- \_\_ establishing increased mooring charges for offshore and onshore mooring permits effective for the mooring permits issued in 2011;
2. Introduce Ordinance 2010-\_\_ relating to Mooring Permit Transfers and Other Mooring Operations and pass to 2<sup>nd</sup> Reading on Tuesday, December 14, 2010.

**DISCUSSION:**

The City's tidelands trust, also known as the Beacon Bay Bill (Chapter 74 of the Statutes of 1978), dedicates certain tide and submerged lands ("Tidelands") are held in trust by the City on behalf of the people of California. These lands include most of Lower Newport Bay, home to about 1,200 onshore and offshore moorings, as well as residential piers, commercial piers, and other operations.

The Beacon Bay Bill directs that the City manage the Tidelands as follows:

1. For the establishment, improvement, and conduct of a public harbor; and for the construction, maintenance, and operation thereon of wharves, docks, piers, slips, quays, ways, and streets, and other utilities, structures, and appliances necessary or convenient for the promotion or accommodation of commerce and navigation.
2. For the establishment, improvement, and conduct of public bathing beaches, public marinas, public aquatic playgrounds, and similar recreational facilities open to the general public; and for the construction, reconstruction, repair, maintenance, and operation of all works, buildings, facilities, utilities, structures, and appliances incidental, necessary, or convenient for the promotion and accommodation of any such uses.
3. For the preservation, maintenance, and enhancement of the lands in their natural state and the reestablishment of the natural state of the lands so that they may serve as ecological units for scientific study, as open space, and as environments which provide food and



habitat for birds and marine life, and which favorably affect the scenery and climate of the area; and

In the opinion of the City, the Beacon Bay Bill and the California Constitution (Article XVI, Section 6) obligates the City to charge appropriate and non-discriminatory rates for the use of tidelands, without conferring a benefit to private individuals for the use of public property in violation of the California Constitution’s prohibition on gifts of public funds.

On July 27, 2010, the City Council formed the *Ad Hoc Committee on Harbor Charges* (“Committee”). The Council asked the Committee to review harbor charges, including, but not limited to:

- Fees based on the cost of providing a service;
- Mooring rates – onshore and offshore;
- Balboa Yacht Basin charges – slips, garages, and apartments; and
- Commercial piers not already on leases.

The Committee analyzed fee-based charges in September and October, and brought a proposal to the City Council on November 9, 2010, to adopt updated charges. The measure passed 7-0.

The Committee’s next work was to address charges based on private use of public tidelands, including the slips, garages, and apartments at the Balboa Yacht Basin and the Bay’s onshore and offshore moorings. This agenda item focuses on moorings.

**ABOUT MOORINGS**

Moorings are locations (as well as equipment) to store vessels either off of local beaches (onshore moorings) or in the center of the Bay (offshore moorings). They consist of “tackle” (a “can,” chains, weights, and other equipment) placed at a designated spot compliant with the terms of the mooring permit.

There are two types of moorings in Newport Harbor:

Type of Mooring	# in Harbor	Rate Charged Per Year	When was Rate Last Adjusted?
Onshore	439 moorings plus: <ul style="list-style-type: none"> <li>• 46 assigned to the Lido Isle Community Assn (LICA) (792 LF)</li> </ul>	\$10/LF/Year (LF of the boat)	1996
Offshore	539 moorings plus: <ul style="list-style-type: none"> <li>• 72 assigned to the Balboa Yacht Club</li> <li>• 70 assigned to the Newport Harbor Yacht Club</li> </ul>	\$20/LF/Year (LF of the mooring)	1996

The City currently holds 3 offshore and 2 onshore moorings. Moorings generate about \$700,000 in revenue to the City’s Tidelands Fund each year.

The City’s General Plan speaks to a broad goal that onshore and offshore moorings should remain a more affordable method of bringing boating to the general public (more affordable than berthing). This is in part described in the General Plan’s *Harbor and Bay Element*, Section 5.2, which reads:

Provide a variety of berthing and mooring opportunities throughout Newport Harbor, reflecting state and regional demand for slip size and affordability...

Photo of onshore moorings



Moorings are well-loved and well-used in Newport Harbor. Persons who hold 12-month permits to moor their vessel in the Harbor include long-time boaters, some commercial operations, and more. Mooring permit holders in Newport Harbor own and maintain their own “tackle” – the cans, chains, and weights associated with their permit. The Newport Mooring Association (NMA) is an organization that represents more than half of all mooring permit holders.

**Rates and Transfers.** The City traditionally has not re-assigned these 12-month mooring permits each year when they expire. Instead, the City has allowed the mooring permit holder of record to maintain that permit indefinitely provided they (among other things) pay the annual fee, maintain the mooring, and, for a long period of time, maintained vessel on the mooring. In part as a result of this practice, mooring permit holders have transferred their permits from one person to another, often for a significant price (\$10,000 to \$60,000). The City’s records show that since 2003, about 560 mooring permits have transferred, including:

Calendar Year	# of Mooring Transfers
2007	57
2008	66
2009	44
2010 (to date)	54

As noted in the chart, the price that the City charges for moorings has not increased since 1996. As a result, moorings remain an inexpensive way to place and keep a vessel in Newport Harbor. Mooring rates now are about **5%** of the rate/cost that a boater would pay to store his or her vessel in a slip or berth. However, City staff and others have asserted that the low price has resulted in higher prices for mooring transfers, and indeed may have resulted in the transfer practice itself.

The Orange County Grand Jury, in 2007, came to the City to examine the City’s mooring management, issuing a report entitled, “*Newport Harbor Moorings: Are They Held in the Public Trust or for Private Profit?*” The report was highly critical of the City’s practices, alleging among other things that:

- Private profits are being made from the current procedures used in transferring the mooring permits located on the public tidelands in Newport Harbor.
- The mooring waiting list has not been reviewed or updated for years.
- The last assessment of the fair market value of mooring permit fees took place almost ten years ago (from 2007); and
- That mooring rates be based on a percentage of slip or berthing rates.

The City took the Grand Jury’s report seriously, and embarked with the City’s Harbor Commission and NMA on a plan to address transfers (but not rates). The result of the Harbor Commission’s work, which included many volunteer hours, is a “Transferability Document” set up as a proposed City ordinance. The Transferability Document and current transfer practices are summarized in **Attachment D** (note that the summary shows current practices which are not necessarily consistent with City rules and regulations). A redline of the Document itself is shown in **Attachment E**. The document has not been acted upon since it came into a near-final draft form in April 2009.

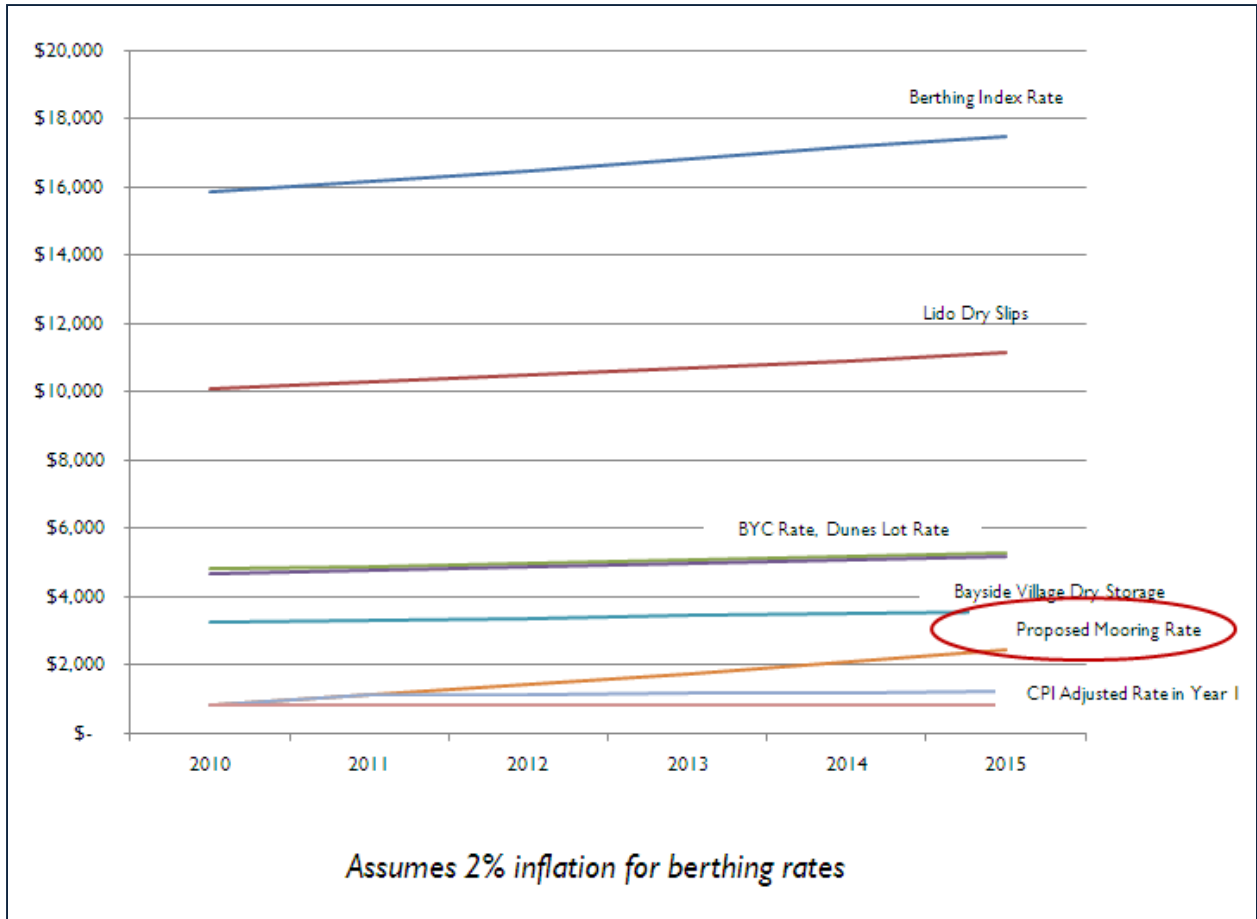
**BACK TO THE AD HOC COMMITTEE**

To address mooring charges (and transfers as a related item), the Ad Hoc Committee held a series of meetings with stakeholder groups. After listening to the stakeholders and others, they have made a recommendation to the City Council to:

1. Increase mooring rates over a five period duration (starting with an increase in 2011 and ending in advance of the 2015 billing) to roughly **14%** of an average of low- to moderately-priced marinas’ berthing rates in Newport Harbor. To arrive at this number, the Committee reviewed:
  - ✓ The 2007 Orange County Grand Jury’s report;
  - ✓ Mooring to berthing rates in a number of harbors up and down the California coast, including San Diego, Mission Bay, Morro Bay, Monterey, and Pillar Point;
  - ✓ Mooring practices at other locations, including Catalina Island;
  - ✓ Rate proposals or concepts offered by other groups, including NMA; and
  - ✓ Testimony offered in the public record at meetings associated with mooring charge increases.

The below chart shows how the rates would increase over time from 5% of a Newport Harbor Marina Index average to 14%. The diagram that follows shows comparable storage opportunities in and around Newport Harbor:

	Current Rate	Proposed Rates				
		2011 Rate	2012 Rate	2013 Rate	2014 Rate	2015 Rate
	\$ 800	\$ 1,109	\$ 1,427	\$ 1,759	\$ 2,103	\$ 2,449
<i>Mooring:Slip Ratio</i>	5.06%	6.86%	8.66%	10.46%	12.26%	14.00%
<i>Difference/Mo</i>	N/A	\$ 25.58	\$ 26.57	\$ 27.60	\$ 28.66	\$ 28.88
<i>Difference/Year</i>	N/A	\$ 306.94	\$ 318.90	\$ 331.21	\$ 343.89	\$ 346.61



2. Reduce and eventually eliminate the practice of transferring moorings from person to person without these moorings going to the Harbor’s waiting list. The Committee’s proposal would:

- ✓ Adopt an amended variation of the Harbor Commission’s Transferability Document;
- ✓ Allow persons holding mooring permits to transfer each individual permit two (2) times between now and 2020.
- ✓ Allow an indefinite number of transfers within an immediate family.
- ✓ Allow a boater who has purchased a boat on a mooring to remain there up to six (6) months to find a new location for his or her boat.
- ✓ Prohibit all mooring transfers (except familial ones and one-for-one exchanges) after December 31, 2020.

**Marina Index:** The Committee suggested that the Newport Harbor Marina Index include the following marinas in 2010 and 2011, but that the City’s Harbor Resources Manager or his or her designee may adjust or substitute the marinas within the Index in 2012 and beyond via posting the indexed marinas on the City’s website, provided that the substitute marinas are considered low- or moderately-priced marinas in Newport Harbor:

- |  |  |
|--|--|
| <ul style="list-style-type: none"> <li>• Newport Dunes Marina</li> <li>• Harbor Marina</li> <li>• Lido Village Marina</li> </ul> | <ul style="list-style-type: none"> <li>• Lido Yacht Anchorage</li> <li>• Swales Marina; and</li> <li>• Bayside Village Marina</li> </ul> |
|--|--|

To ensure that the proposed pricing is appropriate, the Committee suggested that the City monitor the Newport Harbor mooring market to ensure that the proposed fee increases appropriately reflect market conditions. If in the opinion of the Harbor Resources Manager, the mooring increases within the Resolution are, over time, not reflective of mooring market conditions, the Committee recommended that the Harbor Resources Manager bring this to the attention of the City Manager and City Council for potential rate adjustment.

City staff made a presentation to the City Council in a Study Session held Tuesday, November 9, 2010. The presentation to that Session is attached (**Attachment C**) for readers' review.

#### **Q & A FROM THE NOVEMBER 9, 2010 STUDY SESSION**

A number of questions came up at the Study Session from public comment worthy of answering here within the staff report:

1. *Does the mooring to berthing ratio (14%) take into effect Newport Harbor's private ownership of tackle?* Yes. A previous proposal used 17% to match the ratio in San Diego, and even the 17% was adjusted from about 18.5% given that mooring permittees in San Diego do not own their tackle.
2. *Aren't moorings supposed to be an affordable alternative to berthing?* Yes. The City's proposal is to go from 5% of berthing rates to 14%, which is still a significantly lower cost alternative to berthing in a marina. Moorings today are not affordable given the high cost of acquiring one – they become affordable only once you have written a large check to acquire a mooring permit.
3. *Has the City itself "sold" moorings?* The City's records show that in 2002, the City chose to auction about three moorings rather than assign them to persons on the Wait List, in part because City staff at the time asserted that the wait list recipients would re-sell them immediately. This may not have been an appropriate practice.
4. *Is an appraisal needed to set mooring rates?* The City Attorney has said that an appraisal is not required. The Tidelands Trust does not require an appraisal.
5. The City presented a series of charts that outlined the Bay's financial needs in the coming years. Presenters criticized those charts because the City "left things off" among other concerns.
  - a. *Unsecured Property Tax.* Recall that, of every \$1 paid in property taxes, the City's share is about 15-17 cents. The County allocates unsecured property taxes based on where people live, not where their unsecured property is stored. The State Lands Commission, which oversees the City's tidelands grant, has never directed that the City include property tax (secured or unsecured) as revenue to its Tidelands Fund.
  - b. *Tidelands Fund.* The City is often criticized by some in the mooring community about how it attributes non-Harbor expenses to the Tidelands Fund as Tidelands expenses. People forget that the tidelands include much more than just the Harbor – they include all of the community's ocean beaches, which have significant costs associated with law enforcement, fire/EMS response, and lifeguarding.
  - c. *Federal Contributions towards Lower Newport Bay Dredging.* The City's charts already deducted about \$2M of the \$25M total estimated cost of the LNB Dredging. Given the November 2, 2010 elections and the resulting political climate in Washington DC, it is unlikely that the City will receive much more money to dredge LNB.
  - d. *Sales Taxes.* Recall that, of every \$1 spent on a consumer product subject to California's Sales and Use Tax, the City gets one cent. For the tidelands to accrue \$100 from sales tax, a person would have to spend \$10,000.00 at a Tidelands point-of-sale location. The State Lands Commission, which oversees the City's tidelands grant, has never directed that the City include sales tax as revenue to its Tidelands Fund. As the City is criticized for revenues it may not have included, it also did not include significant expenses (city overhead) in an attempt to better balance the discussion).
  - e. *Did the City Council receive and review the Transferability Document?* Yes.

f. *Why are mooring charges proposed to be increased, but not other properties?* The Committee's workplan includes updating mooring charges plus:

- Balboa Yacht Basin slips, apartments, and garages.
- Cost of service-based fees.
- Commercial docks and commercial permits.

The Committee has asked the City Attorney to review the legal aspects of adjusting charges to residential piers as well as the rentals of residential piers in a commercial way. Residential piers will be addressed after this specific Committee finishes its specific work program.

#### **ABOUT THE NMA'S LETTER OF 11-15-2010 TO THE CITY COUNCIL**

The NMA sent a letter to the City Council on November 15, 2010, asking that the Council consider an alternative rate proposal as follows:

- Offshore moorings would go from \$20/LF/year to \$30/LF/year
- Onshore moorings would go from \$10/LF/year to \$15/LF/year
- A new charge would be created – a charge on “boats tied to private piers” - \$30/LF/year.
- Commercial Marinas – “included in slip fees and marina rent”

NMA estimates that such an action would generate \$3.591M in the coming year. A major assumption that NMA makes is whether the City can charge a private pier permit holder any amount (in this case, \$30/LF/year) to dock the permittee's own vessel on the pier. A full \$2.583M is assigned to this assumption, which includes persons storing/renting other individuals' boats on their residential pier.

Those statements aside, City staff asserts that the Committee's proposed rate for moorings is appropriate and should, by 2015, reflect fair market value. Addressing residential piers, commercial piers, and rentals of residential piers is not a part of the Committee's recommended action at this time.

Fiscal Impact: If the rate proposals are adopted, by the end of five periods, revenue from moorings will increase to roughly \$2.074M from approximately \$700,000 today.

Environmental Review: This is not a project under CEQA.

Public Notice: This agenda item has been noticed according to the Ralph M. Brown Act (72 hours in advance of the public meeting at which the City Council considers the item).

Submitted by:

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Dave Kiff  
City Manager

Attachments: A - Resolution 2010-\_\_\_\_  
B - Ordinance 2010-\_\_\_\_  
C - Study Session presentation (11-9-2010)  
D – Summary of Mooring Practices and Transfer Alternatives  
E – Redline of the April 2009 Version of the Transferability Document  
F – Memorandum from the City Attorney with redline of Proposed Ordinance 2010-\_\_\_\_

## RESOLUTION 2010-\_\_\_\_

### A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF NEWPORT BEACH RELATING TO HARBOR CHARGES, SPECIFICALLY ONSHORE AND OFFSHORE MOORINGS

**WHEREAS**, the City's tidelands trust, also known as the Beacon Bay Bill (Chapter 74 of the Statutes of 1978), dedicates certain tide and submerged lands ("Tidelands") to be held in trust by the City on behalf of the people of California; and

**WHEREAS**, the Beacon Bay Bill directs that the City manage these lands as follows:

- (1) For the establishment, improvement, and conduct of a public harbor; and for the construction, maintenance, and operation thereon of wharves, docks, piers, slips, quays, ways, and streets, and other utilities, structures, and appliances necessary or convenient for the promotion or accommodation of commerce and navigation.
- (2) For the establishment, improvement, and conduct of public bathing beaches, public marinas, public aquatic playgrounds, and similar recreational facilities open to the general public; and for the construction, reconstruction, repair, maintenance, and operation of all works, buildings, facilities, utilities, structures, and appliances incidental, necessary, or convenient for the promotion and accommodation of any such uses.
- (3) For the preservation, maintenance, and enhancement of the lands in their natural state and the reestablishment of the natural state of the lands so that they may serve as ecological units for scientific study, as open space, and as environments which provide food and habitat for birds and marine life, and which favorably affect the scenery and climate of the area; and

**WHEREAS**, the City believes that effective management and conduct of a public harbor obligates it to charge appropriate and non-discriminatory rates for the use of tidelands, without conferring a benefit to private individuals for the use of public property in violation of the California Constitution's prohibition on gifts of public funds; and

**WHEREAS**, the City believes that there are at least two types of fees or charges in the Harbor – fees based on the cost of providing a service (such as processing a regional general permit) and charges based on the fair market value use of a public asset (such as some commercial pier charges, mooring charges and more); and

**WHEREAS**, the City believes that various harbor activities should be set at or near fair market value to avoid granting or conveying Tidelands to any private party; and

**WHEREAS**, the City Council formed the Ad Hoc Committee on Harbor Charges ("Committee") on July 27, 2010 with the intent to have the Committee review harbor charges, including, but not limited to:

- Fees based on the cost of providing a service;
- Mooring rates – onshore and offshore;
- Balboa Yacht Basin charges – slips, garages, and apartments; and

- Commercial piers not already on leases.

**WHEREAS**, the Committee believes that onshore and offshore moorings should remain a more affordable method of bringing boating to the general public (more affordable than berthing), consistent with the City's General Plan (Harbor and Bay Element, 5.2 – *Provide a variety of berthing and mooring opportunities throughout Newport Harbor, reflecting state and regional demand for slip size and affordability*); and

**WHEREAS**, the Committee has held public meetings with stakeholder groups and has made a proposal to the City Council to update fees that are based on the cost of providing a specific service, and these charges were updated by the full City Council on November 9, 2010; and

**WHEREAS**, the Committee has held public meetings with stakeholder groups and has made a proposal to the City Council to increase mooring rates over a five period duration (starting with an increase in 2011 and ending in advance of the 2015 billing) to roughly 14% of an average of low- to moderately-priced berthing rates in Newport Harbor. To arrive at this number, the Committee reviewed:

- The 2007 Orange County Grand Jury's report entitled, *Newport Harbor Moorings: Are They Held in the Public Trust or for Private Profit?* Which recommended, among other things, that mooring rates be based on a percentage of slip or berthing rates (*Recommendation R-6*); and
- Mooring to berthing rates in a number of harbors up and down the California coast, including San Diego, Mission Bay, Morro Bay, Monterey, and Pillar Point; and
- Rate proposals or concepts offered by other groups, including the Newport Mooring Association; and
- Testimony offered in the public record at meetings associated with mooring charge increases.

Now, therefore be it:

**RESOLVED** by the City Council of the City of Newport Beach that the above recitals are true and correct and constitute findings that support the action taken herein; and be it also

**RESOLVED** that the City Council of the City of Newport Beach finds that the fair market value of offshore moorings within Newport Harbor is 14% of a Newport Harbor Marina Index Rate and that the fair market value of onshore moorings is half of that resulting dollar amount; and be it also

**RESOLVED** that City Council of the City of Newport Beach hereby amends the City's Master Fee Resolution to set the following charges for offshore and onshore moorings:

- 1) Starting with the 2011 billings (sent out in mid-January 2011), a one year permit for an offshore mooring shall be set at 7.1% of the Newport Harbor Marina Index while a one-year permit for an onshore mooring shall be set at half of that resulting dollar amount; and
- 2) 2012 billings shall be set at 8.8% of the Newport Harbor Marina Index while a one-year permit for an onshore mooring shall be set at half of that resulting dollar amount;
- 3) 2013 billings shall be set at 10.5% of the Newport Harbor Marina Index while a one-year permit for an onshore mooring shall be set at half of that resulting dollar amount;



- 4) 2014 billings shall be set at 12.3% of the Newport Harbor Marina Index while a one-year permit for an onshore mooring shall be set at half of that resulting dollar amount; and
- 5) 2015 billings shall be set at 14.0% of the Newport Harbor Marina Index while a one-year permit for an onshore mooring shall be set at half of that resulting dollar amount; and
- 6) That successive years' rates be set at 14.0% of the Newport Harbor Marina Index while a one-year permit for an onshore mooring shall be set at half of that resulting dollar amount and both offshore and onshore moorings shall be adjusted annually within the Master Fee Resolution based on the Newport Harbor Marina Index; and
- 7) Starting in 2011, in the event that a person is assigned an offshore mooring permit off of the mooring waiting list or interest list, that mooring permit's rate shall be set at 14.0% of the Newport Harbor Marina Index rate; if the mooring permit is for an onshore mooring, that mooring permit's rate shall be set at half of that resulting dollar amount; and be it also

**RESOLVED** by the City Council of the City of Newport Beach that it hereby directs that the Newport Harbor Marina Index include the following marinas in 2010 and 2011, but that the City's Harbor Resources Manager or his or her designee may adjust or substitute the marinas within the Index in 2012 and beyond via posting the indexed marinas on the City's website, provided that the substitute marinas are considered low- or moderately-priced marinas in Newport Harbor:

- Ardell Marina
- Newport Dunes Marina
- Harbor Marina
- Lido Yacht Anchorage
- Port Calypso
- Swales Marina; and
- Bayside Village Marina

....and be it also

**RESOLVED** by the City Council of the City of Newport Beach that Harbor Resources staff is directed to monitor the Newport Harbor mooring market to ensure that this Resolution's fee increases appropriately reflect market conditions. If in the opinion of the Harbor Resources Manager, the mooring increases within this Resolution are, over time, not reflective of mooring market conditions, the Manager shall bring this to the attention of the City Manager and City Council; and be it also

**RESOLVED** by the City Council of the City of Newport Beach that the price adjustments for moorings set forth in this Resolution for 2013 and successive years shall take place only if the City Council has completed its open and public review, analysis, and where applicable, price adjustments of Other Harbor Charges on or before September 30, 2012. The Other Harbor Charges to be reviewed and analyzed are slips, garages, and apartments at the Balboa Yacht Basin, commercial piers not already on leases, and residential piers, including rentals of residential piers.

**ADOPTED** this 23<sup>rd</sup> day of November, 2010.

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KEITH CURRY  
Mayor of Newport Beach

ATTEST:

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LEILANI BROWN  
City Clerk

ORDINANCE NO. 2010-\_\_\_

**AN ORDINANCE OF THE CITY COUNCIL OF THE  
CITY OF NEWPORT BEACH, CALIFORNIA,  
AMENDING SECTION 17.01.030 OF CHAPTER  
17.01, SECTION 17.40.020 OF CHAPTER 17.40 AND  
SECTION 17.60.040 OF CHAPTER 17.60 OF TITLE  
17 OF THE NEWPORT BEACH MUNICIPAL CODE  
PERTAINING TO MOORING PERMITS**

The City Council of the City of Newport Beach finds that:

1. The Management and Stewardship of Newport Harbor has been granted under Tidelands Trust Legislation by the State of California. Vessel moorings on the City Tidelands are intended to provide a lower-cost alternative to boat slips in Newport Harbor and to provide boating accessibility to a larger segment of the population. Historically, starting from the 1930's, mooring transferability was limited under the Municipal Code to allow an individual mooring permit holder to convey the existing mooring hardware, and to transfer the mooring permit to another individual only in conjunction with the sale of the vessel assigned to the mooring.
2. When this system was developed, demand for moorings was minimal. Initially, an individual could request permission to install privately owned mooring equipment and would be assigned a location and a mooring number. Over the next thirty years when the designated mooring areas were filled, an informal wait list was established. However, as the demand increased over several decades, a significant value was associated with possession of a mooring permit that was far in excess of the value of the mooring hardware. As the value of the permit increased, the ability to acquire a permit from the wait list decreased significantly.
3. When there is great demand for moorings, a value is associated with a mooring permit well in excess of the annual permit fees. This value may be inappropriate in light of the California Constitution's prohibition against the gifting of public funds or assets as set forth in Article XVI, Section 6 of the state Constitution. This amendment to the mooring permit and transferability provisions of Title 17 provides for a revised and short-term process begins to bring the City's administration of moorings into compliance with Article XVI, Section 6. It also identifies fees, rents and charges that provide revenue which can assist in funding Harbor maintenance and dredging projects and Harbor amenities.

***NOW THEREFORE***, the City Council of the City of Newport Beach, California, **HEREBY ORDAINS** as follows:

**SECTION 1:** Section 17.01.030 of Chapter 17.01 of the Newport Beach Municipal Code is hereby amended to add Section 17.01.030(A) (4) as follows:

**17.01.030 Definition of Terms.**

A. Definitions: A.

4. Assigned Vessel. The term “Assigned Vessel” shall mean a vessel lawfully registered, owned or documented to a Permittee to occupy a designated mooring or berthing location in Newport Harbor.

**SECTION 2:** Section 17.01.030 of Chapter 17.01 of the Newport Beach Municipal Code is hereby amended to add Section 17.01.030(J) (15) as follows:

J. Definitions: M.

15. Multiple Vessel Mooring System. The term “Multiple Vessel Mooring System” shall mean a floating platform secured to a single point mooring only which allows multiple vessels to be secured that are shorter in overall length than the side of the platform to which the vessels are to be moored.

**SECTION 3:** Section 17.01.030 of Chapter 17.01 of the Newport Beach Municipal Code is hereby amended to add Section 17.01.030(O) (11) as follows:

O. Definitions: S.

4. Sub-Permits.
  - a. Sub-Permits - Long Term. The term “Long Term Sub-Permit” shall be defined as those mooring sub-permits issued by the City for the temporary use of a Deemed Vacant or a Noticed Vacant mooring for a period of between one (1) month-to-twelve (12) months.
  - b. Sub-Permit - Short Term. The term “Short Term Sub-Permit” shall be defined as those mooring sub-permits issued by the City for a temporary use of a Deemed Vacant or Noticed Vacant mooring for any period of time less than thirty (30) days as determined by the Harbor Resources Manager.

**SECTION 4:** Section 17.40.020 of Chapter 17.40 of Newport Beach Municipal Code is hereby amended in its entirety to read as follows:

**17.40.020 Live-Aboards Prohibited.**

A. Live-aboards shall not be permitted at piers that are bay ward of residentially zoned areas. No person shall live-aboard any vessel on an onshore mooring. (Ord. 2008-2 § 1 (part), 2008)

B. Live-aboards are prohibited on moorings subject to long-term mooring sub-permits as noted in Section 17.60.040(G).

C. Live-aboards may be permitted on short term on moorings subject to short term sub-permits according to Section 17.60.040(G).

**SECTION 5:** Section 17.60.040 of Chapter 17.60 of Newport Beach Municipal Code is hereby amended in its entirety to read as follows:

**17.60.040 Mooring Permits.**

A. Permit Required. No person shall place, erect, construct, maintain, use or tie to a mooring in the waters of Newport Harbor over City-owned or controlled tidelands without first having obtained a mooring permit from the Harbor Resources Manager or having otherwise complied with this section. A mooring permit is in the nature of license for the temporary use of a specific location within the Newport Harbor. Any work described and authorized in the permit must be completed within the time designated in the permit.

B. Issuance of Permit—Conditions. The Harbor Resources Manager, in furtherance of the tideland grants to the City, may issue a mooring permit or mooring sub-permit to allow the Mooring Permittee or Mooring Sub-Permittee to temporarily use a portion of the waters of Newport Harbor for the mooring of a vessel.

1. Exceptions:

- a. The Balboa Yacht Club and the Newport Harbor Yacht Club (collectively, “Yacht Clubs”) currently hold permits for single point moorings placed within certain mooring area boundaries established by the City, except as noted in Section 3-f below. In addition, the Lido Isle Community Association (“LICA”) has permits for on-shore moorings on Lido Isle. These organizations shall hold their respective permits under the Yacht Club, or respective organization name, for the moorings identified by Harbor Resources as under their respective control at the time of enactment of this ordinance. The Yacht Clubs and LICA shall be solely responsible for managing moorings under their control and shall be permitted to assign moorings under their control to Yacht Club members and members of LICA, respectively. The Yacht Clubs and LICA shall keep accurate records of

the name and address of the club members and community association members to which each mooring has been assigned. Mooring records shall be made available for audit by the Harbor Resources Manager during regular business hours upon request.

- b. Mooring of a Tender. A vessel no longer than fourteen (14') feet in overall length to serve as access to and from the Assigned Vessel, may be secured to the Assigned Vessel or may be secured to the offshore mooring in the absence of the Assigned Vessel.
  - c. Multiple Vessel Mooring System Program. The Harbor Resources Manager may approve multiple vessel mooring system in the mooring areas of Newport Harbor Yacht Club and the Balboa Yacht Club. An application for a multiple vessel mooring system shall be submitted in writing to the Harbor Resources Manager, who shall evaluate the application based upon standards he shall have established.
2. Permit Requirements. Each mooring permit shall be issued to one natural person ("Mooring Permittee") who shall be responsible for all activities related to the mooring permit. To the satisfaction of the Harbor Resources Manager, the Mooring Permittee shall:
- a. Identify on the permit the full legal name, current address, current telephone number and current e-mail address, if one exists, of the Mooring Permittee;
  - b. Agree to be responsible for permit fees, maintenance and repair of mooring equipment;
  - c. Grant permission to the City of Newport Beach to temporarily assign the mooring to another vessel when it is unoccupied through the issuance of a mooring sub-permit;
  - d. Agree to defend and indemnify the City of Newport Beach and any other government entity with jurisdiction against any claims or losses arising out of, or related to the use of the mooring permit except where the claim or loss arises out of the sole negligence and/or sole misconduct of a person assigned the mooring as a mooring sub-permittee under subsections G and/or H below;
  - e. Provide proof of liability insurance on vessel as determined by the City's Risk Manager, and;

- f. Provide registration or other proof of controlling possessory right in the Assigned Vessel, all to the satisfaction of the Harbor Resources Manager.
3. Permittee/Transferee Qualifications. A mooring permit may be held by, or transferred to, only the following persons:
  - a. A natural person holding title to an Assigned Vessel;
  - b. An executor or administrator carrying out the terms of a will or administering a probated estate that holds title to an Assigned Vessel, but only for the period of time prior to distribution of the estate;
  - c. An *inter vivos* trust, family trust, or other similar type of trust estate holding title to an Assigned Vessel so long as all trustors are natural persons and the primary Mooring Permittee shall be the trustee of the trust;
  - d. An approved transferee whose vessel and/or mooring permit are subject to any of the terms and conditions stated in 17.60.040(E);
  - e. A marine contractor or marine support service provider, holding title to an Assigned Vessel used to provide current or ongoing harbor infrastructure and marine or fishing services (such as maintenance and dredging) as authorized under the provisions of a Marine Activities Permit;
  - f. Balboa Island Yacht Club for the purposes of youth education in boating and marine activities; Kerckoff Marine Laboratories for the purpose of marine and oceanographic research; and American Legion Post 291 for the purpose of serving veterans and their families and supplying them with affordable access to boating and harbor activities.
  - g. The Balboa Yacht Club, Newport Harbor Yacht Club and LICA (collectively "Yacht Clubs") - only for those moorings assigned by the City of Newport Beach within certain established mooring areas or locations, prior to the enactment of this amended ordinance. These designated mooring areas may not be expanded. The boundaries of these mooring areas are graphically depicted by National Oceanographic and Atmospheric Administration ("NOAA")

Chart Number 18754. Yacht Clubs shall be entitled to a maximum number of moorings as can be accommodated in the mooring fields designated in NOAA Chart Number 18754 and at a minimum the current number of moorings assigned to them as of the effective date of this ordinance.

C. Plans and Specifications Required. No permit shall be issued for placing, erecting, constructing or maintaining a mooring or buoy unless such mooring or buoy is constructed:

1. In accordance with standard plans and specifications approved by the Harbor Resources Manager and at a location approved by the Harbor Resources Manager; or
2. In accordance with other plans and specifications for such mooring or buoy which have been submitted by the applicant, showing the construction of such proposed mooring or buoy together with the location thereof, and which meet the requirements established in this chapter and which have been approved by the Harbor Resources Manager.

D. Unpaid Fees. When the permittee is in arrears for a period of ninety (90) days or more, the Harbor Resources Manager may, at his discretion, revoke the permit upon five (5) days written notice to the permittee by first class mail to the address shown on the permit. If the mooring is not removed by the permittee within thirty (30) days after cancellation of the permit, then it shall be deemed abandoned and the title thereto shall vest in the City. Mooring Permittee may apply for reimbursement for the value of the mooring equipment pursuant to subsection M below.

E. Transfer of Permit. No Mooring Permittee shall transfer a permit for a mooring or buoy granted under the provisions of this chapter, except,

1. When transferred from a natural person to another member of his or her immediate family along with the Assigned Vessel, which shall be defined for the purposes of this section as the Mooring Permittee's spouse and heirs at law to the second degree of consanguinity; or
2. When a natural person has taken title to an Assigned Vessel already on a mooring, the mooring will be surrendered to the City for assignment pursuant to the Interest List under subsection M below, or that transferee may, upon request and payment of relevant fees, have up to six (6) months from the date of taking title to remain on the mooring while searching for other accommodations for the vessel. The Harbor Resources Department may accommodate the vessel on another mooring subject to availability for up to the six (6) months. After six (6) months, the Harbor Resources Manager or his or her designee shall



direct that the vessel be moved off the mooring and that the mooring be assigned through on the Mooring Interest List; or

3. In cases not reflected in 1 and 2 above, a Mooring Permit may be transferred prior to January 1, 2021 up to two times if the Mooring Permittee intends to sell or otherwise transfer, or has sold or transferred, ownership of the Assigned Vessel and does not intend to replace the Assigned Vessel with another vessel owned by Mooring Permittee.

F. Procedures for Transfers: Permits shall not be transferred without the prior written approval of the Harbor Resources Manager. The Harbor Resources Manager shall approve the transfer of a mooring permit under the procedures set out below:

1. The Mooring Permittee (or, if the Permittee is deceased or incapacitated, the transferee) shall submit to the Harbor Resources Manager:
  - a. A completed mooring transfer form (on the form provided by the Harbor Resources Manager); and
  - b. Documentation that the proposed new Mooring Permittee (Transferee) qualifies as a Mooring Permittee under section B (3) above.
2. If transferee intends to purchase an Assigned Vessel but does not have title on the Assigned Vessel owned by the Mooring Permittee and transferor at the time of transfer, then:
  - a. Within sixty (60) days of a transfer, transferee shall submit to Harbor Resources Manager a copy of a California Department of Motor Vehicles registration or other current registration (or in lieu thereof, U.S. Coast Guard documentation of ownership) documenting transferee's ownership of the Assigned Vessel, or in the case of a shore mooring, a photograph of the Assigned Vessel if it is not subject to vessel registration laws; or
  - b. If such documentation is not received by the Harbor Resources Manager within the sixty (60) day period, then the mooring may be deemed vacant and may be assigned pursuant to sub-sections G and H below. If the documentation is not received within an additional sixty (60) days, the mooring shall revert back to the City for assignment through the Interest List as set out in subsection M below.

3. If Transferee intends to moor a vessel other than the Assigned Vessel and does not have title to the vessel that will be moored at the time of transfer, then:
  - a. Within sixty (60) days of an approved transfer the transferee shall notify Harbor Resources Manager that the Assigned Vessel has been removed from the mooring and before a new vessel may be placed on the mooring shall submit to Harbor Resources Manager a copy of a California Department of Motor Vehicles registration or other current registration (or in lieu thereof, U.S. Coast Guard documentation of ownership) documenting transferee's ownership of the new Assigned Vessel, or in the case of a shore mooring, a photograph of the new Assigned Vessel if it is not subject to vessel registration laws; or
  - b. If the documentation is not received within 60 days of a transfer, the mooring may be deemed vacant and may be assigned pursuant to subsection G and H below. If the documentation is not received within an additional sixty (60) days, the mooring shall revert back to the City for assignment through the Interest List as set out in subsection M below.
4. The transfer request shall be denied unless Mooring Permit fees are paid current; required mooring inspections are current; required maintenance and repairs are complete and there are no derelict or unauthorized vessel(s) on the mooring.
5. The Mooring Permittee and transferee shall provide a written agreement to defend and indemnify the City of Newport Beach in any dispute with a third party over transferee's right to be the Mooring Permittee or in any dispute with a third party over the Mooring Permittee's right to transfer the permit.
6. Transfer Approval. Upon confirmation of compliance with this subsection, the Harbor Resources Manager must find all of the following conditions to approve the transfer of a mooring permit:
  - a. The Mooring Permittee no longer owns the Assigned Vessel or has retained ownership of the Assigned Vessel and has permanently vacated the mooring;
  - b. The specific mooring location has not been previously transferred more than one (1) time between the effective

date of this ordinance and December 31, 2020;

- c. The transferee has met all the qualifications and conditions for issuance of a permit in subsection B above.
  7. The Harbor Resources Manager may approve a one for one exchange of moorings between two Mooring Permittees, subject to compliance with this subsection without any transfer fee imposed by the City.
  8. The Harbor Resources Manager may approve the changing of an Assigned Vessel on the permit, subject to the requirements of Section B above, without any transfer fee imposed by the City.
- G. City's Authority to Assign Moorings through Use of Sub-Permits. With the exception of the Balboa Yacht Club, the Newport Harbor Yacht Club, and the Lido Isle Community Association's designated moorings, Mooring Permittee may not rent, assign, or transfer the use of the mooring to any other person. With the exception of moorings issued to Mooring Permittees described in Section B (3) (e), City shall have the authority to assign vacant moorings to sub-permittees pursuant to the following provisions:
1. Deemed Vacant Moorings. City may assign Deemed Vacant Moorings through the issuance of long term sub-permits at its own discretion for any period of time up to one (1) year. Long term sub-permits may be renewed upon availability. The Mooring Permittee may reclaim its mooring upon thirty (30) days prior written notice to City of its intent to return the Assigned Vessel to the mooring.  
  
A "Deemed Vacant Mooring" shall be defined as a mooring upon which:
    - a. An Assigned Vessel has not been attached for thirty (30) consecutive days or more; or
    - b. A vessel, other than an Assigned Vessel, has been attached for thirty (30) days or more; or
    - c. Required documentation for an Assigned Vessel has not been provided for a transfer request pursuant to Section E above.
  2. Noticed Vacant Moorings: City may assign Noticed Vacant Moorings at its own discretion through the issuance of a mooring sub-permit for any period of time, either long or short term, up to

the reoccupation date on Mooring Permittee's written notice, or the twenty-four (24) hour written notice per subsection (b) below. If the mooring continues to be vacant for thirty (30) days past the reoccupation date indicated on Mooring Permittee's notice, and there is no further written notice from Mooring Permittee, the mooring shall become a Deemed Vacant Mooring.

- a. Mooring Permittee may provide written notice to City of its intent to vacate its mooring for fifteen (15) days or more. These moorings shall be "Noticed Vacant Moorings." Written notice shall include the date the Mooring Permittee intends to vacate his/her mooring, and the date he/she intends to reoccupy the mooring with the Assigned Vessel.
- b. If Mooring Permittee provides notice, the Mooring Permittee may reclaim the assigned mooring on the reoccupation date indicated in his/her written notice, or, if the Mooring Permittee returns prior to or after the reoccupation date, upon twenty-four (24) hours written notice to the City.

H. Procedures for Mooring Sub-Permit Issuance. Any natural person wishing to use a mooring pursuant to the issuance of a sub-permit must enter into a written mooring sub-permit agreement with the Harbor Resources Department that includes the following:

1. A written representation of the current gross vessel weight which shall be satisfactory to the Harbor Resources Manager.
2. An agreement to be responsible for any damage to mooring equipment, to defend and indemnify the City of Newport Beach and the Mooring Permittee against any claims or losses arising out of, or related to the mooring rental, and that requires the mooring sub-permittee to provide proof of liability and marine pollution insurance, registration or other proof of ownership, and an equipment damage deposit, all to the satisfaction of the Harbor Resources Manager.
3. The repair of any damage to the mooring equipment shall be paid by the mooring sub-permittee.
4. Mooring sub-permittees shall provide approved mooring lines which shall be removed at the end of the rental period.
5. A mooring sub-permit agreement is renewable based on availability. Upon return of the Assigned Vessel to the mooring, the Harbor Resources Department will attempt to reassign the sub-permittee to another mooring. Mooring sub-permittees have no right

of renewal or substitute moorings upon return of the Assigned Vessel, or upon termination of a mooring sub-permit agreement for any reason. Mooring sub-permittees accept an indefinite term at their own risk.

6. The sub-permit fee will be based on a rate established by the Newport Beach City Council and delineated in the Master Fee Schedule Resolution.
7. Live-aboards are not permitted on moorings subject to long term mooring sub-permits. Live-aboards may be temporarily permitted on moorings subject to short-term sub-permits pending vessel inspection and subsequent re-inspection per each short-term sub-permit renewal.
8. Short term sub-permit renewals are not guaranteed and are subject to availability.
9. Mooring sub-permits that are available for thirty (30) days or more shall be first offered to persons on the Interest List, as defined below, as a priority. Non-acceptance of such mooring assignments shall not cause such persons to lose their position on the Interest List.
10. Mooring sub-permits that are available for less than a thirty (30) day period shall be offered to the public on a first-come, first-serve basis.
11. A mooring may be loaned free of charge by the Mooring Permittee to a vessel other than the Assigned Vessel for no more than thirty (30) consecutive days provided that: 1) The Mooring Permittee provides the Harbor Resources Manager with written notice identifying the vessel that will use the mooring; 2) The Mooring Permittee has not loaned the mooring for more than sixty (60) days in the twelve (12) month period that immediately precedes the commencement of the current mooring loan; and 3) The vessel owner requesting a loan has not previously been the recipient of loans for more than ninety (90) days in the previous twelve (12) months.

#### I. Mooring Interest List

1. The Mooring Interest List ("Interest List") is the list or lists of natural persons as of the date of the adoption of this ordinance, who wish to obtain a mooring permit as permits revert to the City or who wish to be assigned a mooring on a long term basis from the City

through the issuance of a mooring permit or mooring sub-permit. On and after the effective date of this ordinance, the Interest List(s) shall be maintained for natural persons interested in securing a mooring permit, or being temporarily assigned the use of a Deemed Vacant or a Noticed Vacant Mooring.

2. Any person wishing to be added to the Interest List must do so by completing a written application and paying a fee to be established by resolution of the City Council. Any person may be removed from the Interest List by producing a written signed notice to the Harbor Resources Manager at any time, requesting to be removed from the Interest List.
  3. Each even numbered calendar year, the City shall send one notice to all persons on the Interest List requesting confirmation of continued interest and/or updating of contact information. If there is no response to the thirty (30) day notice along with payment of the administrative fee referenced in I (4) below, then the person shall be removed from the Interest List.
  4. Each person on the Interest List is responsible to keep the City informed of any changes to his or her mailing address or other contact information and must pay a fee for the administrative costs to maintain the Interest List to be established by resolution of the City Council. Nonpayment of such fee shall cause the person to be removed from the Interest List.
  5. Persons on the Interest List will be notified of revoked mooring permit or mooring sub-permit or, surrendered or abandoned moorings and given the opportunity to receive a mooring permit or sub-permit.
- J. Mooring Permit Transfer Charge. The City shall charge the Mooring Permittee for the right to transfer a mooring permit under section E above in an amount equal to fifty percent (50%) of the annual permit fee as determined by the Master Fee Schedule. A mooring permit transfer charge shall not be required if:
1. The transfer is from the Mooring Permittee to the same Mooring Permittee as trustor of an *inter vivos* trust, living trust or other similar estate planning tool; or
  2. The transfer is made under Section 17.60.040(E) (7) and (8).
- K. Surrendered Mooring Equipment. If the Mooring Permittee sells transfers

or otherwise no longer owns the Assigned Vessel and does not intend to apply for, or does not receive approval to transfer the Permit to another, the Permittee may provide written notice to the Harbor Resources Department of his or her intent to surrender the mooring permit, otherwise the provisions of Section F regarding a vacant mooring shall apply.

Once a mooring permit is surrendered, the Mooring permittee shall remove the Assigned Vessel and/or the mooring equipment thirty (30) days after written notice of surrender of the Permit, or, upon failure to remove the mooring equipment, title shall vest in the City and the City shall compensate Mooring Permittee the fair value for the mooring equipment, less fees owed, as provided in subsection M below.

L. Revocation of Permit.

1. Grounds for Revocation. A Mooring Permit or sub-permit may be revoked upon any of the following grounds set forth in Section 17.70.020 or for any of the following:
  - a. The moored vessel, or the mooring equipment has been determined to violate the applicable Mooring Regulations in Section 17.25.020, and the Mooring Permittee or Sub-permittee has not made the necessary corrections or repairs within the time required;
  - c. The mooring Permittee has failed or refused to allow an inspection of the vessel to determine if it is seaworthy and operable, a public nuisance or in compliance with applicable marine sanitation device requirements;
  - d. Living aboard a vessel assigned to a mooring without a live-aboard permit unless otherwise noted in Section 17.60.040(G).
2. Notice and Hearing. In the event the Harbor Resources Manager determines there are grounds to revoke a permit issued pursuant to this chapter, the Harbor Resources Manager shall proceed in the manner described by Section 17.70.020.
3. Upon revocation, it shall be the duty of the Mooring Permittee to immediately remove the mooring equipment and any moored vessel. If not removed within thirty (30) days of revocation of the Permit, the mooring equipment shall vest in the City and may be auctioned by the City to another person or may be removed by the Harbor Resources Manager and the cost of mooring equipment removal shall be paid by the Mooring Permittee. Any moored

vessel or equipment not removed within thirty (30) days may be impounded by the City and disposed of in the manner provided by law. City incurred costs of removal of mooring equipment or any vessel moored thereto may be charged against the Permittee and collected in any court of competent jurisdiction or recovered by the City from the proceeds of sale of the vessel or mooring equipment.

4. During any revocation proceeding under this Section L, if the mooring is unoccupied, it may be temporarily assigned as a mooring for guest vessels by the Harbor Resources Manager.

M. Moorings Reverting Back To City: Should a mooring revert back to the City for any reason, whether through abandonment, surrender, failure to provide documents pursuant to subsection E. above, or for any other reason, the following shall apply:

1. The Mooring Permittee shall be entitled to recover all of Mooring Permittee's mooring equipment within thirty (30) days of reversion.
2. If Mooring Permittee does not recover his or her mooring equipment, Mooring Permittee shall be entitled to payment from the City of the fair value of the mooring equipment as depreciated by use in an amount to be determined by the Harbor Resources Manager and as set in the City's Master Fee Resolution.
3. The mooring shall be assigned to an individual from the Interest list pursuant to subsection I above.
4. No mooring that reverts to the City for assignment off of the Interest List, or by any other appropriate procedure, shall have any right to a later assignment by a Mooring Permittee whatsoever.

**SECTION 5:** If any section, subsection, sentence, clause or phrase of this ordinance 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 ordinance. The City Council hereby declares that it would have passed this ordinance, 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 unconstitutional.

**SECTION 6:** The Mayor shall sign and the City Clerk shall attest to the passage of this ordinance. The City Clerk shall cause the same to be published once in the official newspaper of the City, and it shall be effective thirty (30) days after its adoption.

**SECTION 7:** This ordinance was introduced at a regular meeting of the City



Council of the City of Newport Beach, held on the \_\_\_\_ day of \_\_\_\_\_, 2010,  
and adopted on the \_\_\_\_ day of \_\_\_\_\_, 2010, by the following vote, to wit:

AYES, COUNCILMEMBERS \_\_\_\_\_

\_\_\_\_\_

NOES, COUNCILMEMBERS \_\_\_\_\_

\_\_\_\_\_

ABSENT COUNCILMEMBERS \_\_\_\_\_

\_\_\_\_\_

MAYOR \_\_\_\_\_

APPROVED AS TO FORM:  
OFFICE OF THE CITY ATTORNEY

By \_\_\_\_\_  
David R. Hunt, City Attorney

ATTEST:

\_\_\_\_\_

CITY CLERK

## Attachment D

**Mooring Practices Today & Proposed**

Issue	Current Practice	Harbor Commission's "Transferability Document"	Ad Hoc Committee Proposal
<b>Number of times a person can transfer a mooring permit</b>	Unlimited	<ul style="list-style-type: none"> <li>• 1x/year.</li> <li>• Person receiving mooring permit cannot hold more than 2 other mooring permits.</li> <li>• Additional transfers allowed at Harbor Resources Manager's discretion.</li> </ul>	<ul style="list-style-type: none"> <li>• One permit location can be transferred 2x/10 years (between now and December 31, 2020).</li> <li>• Starting January 1, 2021, transfers prohibited.</li> </ul>
<b>Family Transfers</b>	Allowed	Allowed	Allowed within Immediate Family.
<b>One-for-One Exchanges</b>	Allowed	Allowed with permission of Harbor Resources Manager.	Allowed with permission of Harbor Resources Manager.
<b>New boat owners on an existing mooring</b>	May maintain the mooring permit indefinitely.	May maintain the mooring permit indefinitely.	May remain on the mooring for up to 6 months.
<b>Transfer Fee</b>	Nominal fee (under \$50).	City receives ___% of the annual mooring permit charge.	Between now and 2020, City receives 50% of the annual mooring permit charge.
<b>Ownership of Mooring Tackle (can, chains)</b> <ul style="list-style-type: none"> <li>• Value is about \$4K new.</li> <li>• Annual maintenance = about \$250-\$300/year</li> </ul>	Mooring permittees own and maintain tackle.	Same as current. If surrendered, must remove tackle within 30 days or tackle becomes City's tackle.	Retain private ownership of tackle, but City would purchase used tackle for ~\$2K if a person returned a mooring to the wait list. Then City would sell tackle to the next person at the mooring, also for ~\$2K.
<b>Sub-Permitting of Moorings</b>	Harbor Patrol may put a visiting vessel temporarily on a can.	Defines & allows Long Term (1 month to 12 months) and Short Term (up to 30 days) rentals. City to charge a fee for doing so.	Same as Transferability Document, but referred to as sub-permitting.

<b>Rental Rates</b>	Daily = \$5. Proposed @ \$15-\$25/day.	To be determined by Council.	To be determined by Council.
<b>Wait List</b>	A wait list exists, but rarely if ever moves.	Creates "Mooring Interest List" like a wait list.	Same as Transferability Document.
<b>Can a person who received a mooring permit off the wait list transfer that mooring permit?</b>	Yes.	Yes, 1x/year.	No. Prohibited.
<b>Multiple Vessel Mooring System</b>	Not expressly allowed, but City had a pilot program with the NHYC which worked well.	Authorizes this system for the BYC and NHYC.	Same as Transferability Document.
<b>Liveaboards</b>	Permittee may live-aboard his or her permitted mooring with a Liveaboard Permit	May be temporarily permitted on Short-Term Rentals, too.	Same as Transferability Document.
<b>Yacht Clubs and LICA</b> <ul style="list-style-type: none"> <li>• Balboa Yacht Club holds permits for ~72 offshore moorings.</li> <li>• Newport Harbor Yacht Club holds permits for ~70 offshore moorings.</li> <li>• LICA has 46 onshore mooring permits ( ~792 LF).</li> </ul>	Clubs and LICA charge various individuals a monthly or yearly rate to access the moorings assigned to the Clubs and LICA. Permits held by LICA, BYC, and NHYC.	Same as current practice.	Same as current practice.

# CITY OF NEWPORT BEACH

## HARBOR COMMISSION STAFF REPORT

Agenda Item No. 3  
December 8, 2010

**TO:** HARBOR COMMISSION

**FROM:** Public Works Department  
Chris Miller, Harbor Resources Manager  
(949) 644-3043, [cmiller@newportbeachca.gov](mailto:cmiller@newportbeachca.gov)

**SUBJECT:** Mooring Support Service Center – Subcommittee Formation

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### **ISSUE:**

City Council Member Ed Selich has requested the Harbor Commission study the feasibility of creating a Mooring Support Service Center at the Balboa Yacht Basin, then return to Council in February 2011 with a recommendation for implementation.

### **RECOMMENDATION:**

1. Form a subcommittee to study the concept of a Mooring Support Service Center at the Balboa Yacht Basin, then submit a recommendation to Council in February.

### **DISCUSSION:**

Council Member Selich has suggested that the harbor could use two Mooring Support Service Centers (MSSC) at either ends of the harbor: the City's Balboa Yacht Basin and at the future Marina Park site. Of immediate concern is evaluating the feasibility of a MSSC at the Balboa Yacht Basin. Some features for the MSSC might include:

1. Dedicated slip for washing, minor service, provisioning etc...
2. Dinghy rack rental
3. Access to restrooms
4. Pump out (already available)
5. Electricity for charging batteries (coin operated / cell phone / credit card etc...)
6. Parking (already available)
7. Improved vehicular access
8. Other...

### **ENVIRONMENTAL REVIEW:**

Staff recommends the Harbor Commission find this action 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.

**PUBLIC NOTICE:**

This agenda item has been noticed according to the Brown Act (72 hours in advance of the public meetings at which the Harbor Commission considers the item).

Submitted by:

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Chris Miller  
Harbor Resources Manager

Attachments: A – Vicinity Map

