



CITY OF NEWPORT BEACH

ECONOMIC DEVELOPMENT COMMITTEE

AGENDA

MEETING DATE: Wednesday, December 15, 2010
TIME: 8:00-9:00 A.M. *Please arrive 5 min. prior*
PLACE: City of Newport Beach Council Chambers

This committee is subject to the Ralph M. Brown Act. Among other things, the Brown Act requires that the Committee's agenda be posted at least 72 hours in advance of each meeting and that the public be allowed to comment on agenda items before the Committee and items not on the agenda but are within the subject matter jurisdiction of the Committee. The Committee may limit public comments to a reasonable amount of time, generally either three (3) or five (5) minutes per person.

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 Leilani Brown, City Clerk, at least 72 hours prior to the meeting to inform us of your particular needs and to determine if accommodation is feasible (949-644-3005 or lbrown@newportbeachca.gov).

ROLL CALL AND INTRODUCTIONS

To assist with attendance there will be a sign in sheet at the podium, Please check off your name on arrival or before departing.

MEMBER UPDATES AND ANNOUNCEMENTS

PENDING PROJECTS UPDATES

DISCUSSION ITEMS

1. Approval of Minutes of November 17, 2010 (*Attachment*)
2. Follow-up on why SCAG request to adopt a Business Friendly Resolution Didn't Need to Go to City Council (*Attachment*)
3. Report on Council Study Session regarding Lido Village, review of the Two Alternatives Presented at Study Session and Preliminary Discussion on Uses of the City Hall site lead by James Campbell, Acting Planning Director (*Attachments*)
4. Update on City Council Action Regarding Mooring Fees (*Attachments*)
5. Reconsideration of Existence of Executive Committee
6. EQAC Representative's Report

ITEMS FOR A FUTURE AGENDA

January 19, 2011 -

PUBLIC COMMENTS

ADJOURNMENT

**NEXT REGULAR MEETING: Wednesday, January 19, 2011
8:00-9:00 A.M. – CITY COUNCIL CHAMBERS**



CITY OF NEWPORT BEACH ECONOMIC DEVELOPMENT COMMITTEE

DRAFT MINUTES 11-17-10

Minutes of the Economic Development Committee held at the City Council Chambers, City of Newport Beach, on **Wednesday, November 17, 2010.**

Members Present:

X	Mike Henn, Chairman	A	David Hsiang
E	Keith Curry, Mayor	X	John Hyatt
E	Steve Rosansky, Council Member	X	Lloyd Ikerd
X	Robert Hawkins, Planning Commissioner	X	Brion Jeannette
X	Mike McNamara, Vice Chairman	X	Debra Legan
X	Craig Batley	X	Richard Luehrs
X	Seymour Beek	X	Scott Palmer
X	Jeffrey Cole	X	John Robinson
A	Steven Coyne	X	Gregg Schwenk
X	Sheri Drewry	X	Gary Sherwin
X	Jennifer Gonzalez	X	Kim Van Natta
X	Arlene Greer	X	Gay Wassall-Kelly
X	Mark Hoover		

Staff Representatives:

X	Leigh M. De Santis, Economic Development Administrator		
X	Katie Bowden, Economic Development Coordinator		

Guests Present:

Philip Bettencourt	
Bill Kelly	

Roll Call and Introductions:

Chairman Henn called the meeting to order at 8:05 am and began self-introductions of the assembled members, staff and guests.

UPDATES AND ANNOUNCEMENTS

- Chairman Henn announced that the sale of bonds for the Civic Center would close the following day. The City is in the process of finalizing the pricing transaction for financing. The bonds will cover the cost of the Civic Center and other projects that need financing such as city parks and the dredging project. The City's debt payments

will not exceed 5% of the City's general fund expenditures. He stated that the bids for the Civic Center will go out in the next few weeks.

- Chairman Henn stated that the City has a AAA bond rating by all "big 3" bond rating, the only Orange County city to receive this rating.
- Scott Palmer announced the 30th annual Corona del Mar Christmas Walk will take place on December 5th from 11 am to 5 pm.
- Chairman Henn announced that Councilman Webb is finishing his walk of Newport Beach. He will walk his last mile on Saturday from Seashore to the Newport Pier.
- Gary Sherwin announced that the tourism industry had a good year. Average Daily Rates at hotels were flat, but the volume was up by 10%. RevPar was up 15% and TOT was up 15 to 20%. In addition, Pelican Hill's business is picking up.
- Lloyd Ikerd announced that the EDC subcommittee on business licenses had a good meeting with staff. The subcommittee will continue its work before presenting a report to the full committee.
- Phil Bettencourt announced that Banning Ranch tours are currently available.
- Kim Van Natta announced the Fashion Island tree lighting will occur on Friday and Saturday at 5:30 pm.
- Richard Luehrs announced the 102nd Annual Christmas Boat Parade will be held December 15-19, starting at 5:30 pm each night. Fireworks will occur at 9 pm on the 19th.
- Seymour Beek announced the Grand Opening of the Rhine Channel dinghy dock at 5 pm on Tuesday.

PENDING PROJECTS UPDATES

- Staff announced that the Lido Marina Village land use concepts will be presented and discussed at the November 23rd Council Study Session.
- Staff announced that the Civic Center café RFP has been issued. Robert Hawkins asked if Starbucks was solicited. Staff responded that local independent operations were sent the RFPs by mail, but that the RFP was open for all to respond.
- Staff announced that the location and date was changed for the January "Helping 100 Businesses for 100 Days" kick-off event by OPIS Network. The event will now be held on Saturday, January 22, 2011 at OASIS Senior Center, beginning at 8:30 am.

DISCUSSION ITEMS

1. Minutes of October 20, 2010.

Arlene Greer made a motion to approve the minutes, and Jeff Cole seconded the motion. The minutes were approved unanimously.

2. Discussion of SCAG request to adopt a Business Friendly Resolution.

Leigh DeSantis explained the history of the request. Staff and Chairman Henn revised the resolution provided by SCAG somewhat to show what the City has already done to be a "Business Friendly" city. Those efforts include a policy of returning phone calls the same day, offering free all department preliminary code review meetings of the Development Review Committee to assist applicants in preparing complete development applications, a commitment to process all completed planning and

building applications within 30 days, and the creation of a Community Development Department to create a seamless process for applicants. In addition, the 2010 “Cost of Doing Business” Survey by Kosmont Rose listed Newport Beach as being a “very low cost” city in which to do business. Since setting the EDC agenda, staff was informed by the City Manager that the City has already adopted a similar resolution for SCAG. Thus, the adoption of the proposed resolution would be dropped from the Council agenda.

Craig Batley commented that it would be nice to see a comparison study between all Orange County cities regarding City permitting requirements. He stated that though the City’s fees may be low, it was his experience that the City’s requirements made development more costly in the long run. Brion Jeannette shared that the City’s new requirement for MEP drawings for residential projects was an example of increased costs related to the need to secure additional consultants. John Hyatt agreed, commenting that his energy-efficient/ earthquake-ready residential building project required the retainer of additional consultants in order to build to the required standards. Scott Palmer suggested forming a committee of local architects to share their experiences with the City so that this could be discussed and possibly improved. Chairman Henn stated that this was part of the work that the interim Director of the Community Development Department, Joel Fick, was trying to understand. He suspected that Mr. Fick had formed, or would be forming, a similar committee to address these issues.

Robert Hawkins stated that he felt the City should spend the \$600 to purchase the full Kosmont Rose study. He asked staff to research the benefits, if any, of purchasing the study and report to the EDC at their December meeting.

3. Presentation on Research of “Shop Local” Campaigns

Katie Bowden gave a presentation overview of various “shop local” campaigns throughout the country. These campaigns generally fall into one of three types: “think local first” campaigns, local VIP/discount card programs, and “rediscover” your town/city campaigns. Ms. Bowden explained the pros and cons of each type of campaign and gave a report on the successes and “lessons learned” of the Corona del Mar VIP Card program sponsored by the Corona del Mar BID and Chamber of Commerce.

Staff asked the EDC to indicate their interest in pursuing a particular type of “shop local” campaign. Gary Sherwin felt that Newport Beach residents already have a lot of pride in their community and that is reflected by their spending habits. Lloyd Ikerd mentioned a “SHOP” sign program that was successful in another community. Seymour Beek commented on the “green” aspects of a shop local campaign. It was suggested that staff contact some of the cities that have launched these programs to determine whether they’ve been effective or not. Jennifer Gonzales made a motion to oppose directing staff to develop a shop local campaign, as she felt it was not worth City staff time and resources. Robert Hawkins seconded the motion. After discussing, the motion passed with a vote of 8 to 5, with one abstaining. The EDC concluded that if a campaign was warranted it ought to come from the businesses or BIDs rather than the City

Richard Luehrs stated that the Chamber is looking into the benefits of launching a similar program with the Chamber's resources. He will report back to the EDC on the direction the Chamber's Board takes on launching a shop local campaign.

4. EQAC Representative's Report

Arlene Greer reported that EQAC's November meeting was cancelled. Their next meeting will take place on December 20th, when the Committee will hear a presentation on composting.

ITEMS FOR A FUTURE AGENDA

- Reconsideration of the need for an Executive Committee of the EDC
- The Lido Marina Village land use planning alternatives

PUBLIC COMMENT

- Robert Hawkins requested a report at the December meeting to address the basis for a mooring fees increase. Chairman Henn stated that he would give the report at the next meeting and requested that the November 23rd staff report on the subject be distributed to the EDC. Chairman Henn stated that the fees had not been increased since 1996 and that the fees would be tripled from \$800/year to \$2400/year. In addition, the City will consider taking full control of transfers. A 5-year phase-in period has been proposed to allow existing mooring holders to adjust to the new rates.
- Robert Hawkins announced that the EDC's business license subcommittee will be holding a meeting immediately after this meeting.
- Mike McNamara requested an update on the Water Taxi Committee's next steps.

ADJOURNMENT

Chairman Henn called for the meeting to be adjourned at 9:20 am.

15-POINT FISCAL SUSTAINABILITY PLAN for Newport Beach City Government

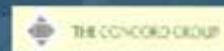
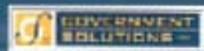
1. The City will proactively seek to protect and expand its tax base by encouraging a healthy underlying local economy.
2. The City will work to enhance and protect the property values of all Newport Beach residents and property owners.
3. The City will encourage shopping, dining, and visiting at Newport Beach stores, restaurants, and hotels.
4. The City will establish and maintain appropriate cash reserves.
5. The City will manage its Facilities Finance Plan to not exceed the 5% of General Fund expenditures threshold.
6. City revenue performance will be reviewed no less than quarterly and appropriate budget adjustments will be made in advance of the end of a budget year if revenue performance is not meeting projections.
7. The City will initiate a "results-based budgeting" approach that allows the public and the City Council to prioritize City expenditures strategically rather than simply adjusting legacy expenditures to reflect inflation.
8. The City will implement a Performance Measurement/Management Strategy as part of an ongoing effort to ensure high-quality and efficient performance.
9. The City will consider competitive contracting of services and equipment when appropriate and where clear, cost-effective alternatives exist.
10. The City will make it a priority to be energy efficient in its provision of public services.
11. The City will establish appropriate cost-recovery targets for its fee structure and will annually adjust its fee structure to ensure that the fees continue to meet cost recovery targets.
12. The City will oppose efforts of the State and County governments to divert revenues from the City or to increase the unfunded service mandate of City taxpayers.
13. The City will work in partnership with its employees to ensure fair compensation and that costs related to pension and other benefits are appropriately allocated between employer and employees.
14. The City will vigorously defend itself and its taxpayers against frivolous lawsuits.
15. The City will seek additional intergovernmental funding and grants, with a priority on funding one-time capital projects. Grant-funded projects that require multi-year support will be reviewed by the Finance Committee.



LIDO VILLAGE

CONCEPT PLAN

CITY COUNCIL STUDY SESSION



11-23-10

Tim Collins
TC Collins & Associates

LIDO VILLAGE



Introduction – Opening Remarks

Objectives of this forum

- *Narrow down to 2 optimal plans*
- *Give input on preferred features*
- *Hear preliminary reactions to market demand and economic feasibility of options*
- *Set deliverables needs for 1-11-11 meeting (more vertical/graphic illustrations)*

Revisit the Project

- *What we have learned – data gathering*
- *Guiding principles – test the vision*
- *Challenges to Integrated, Phased plan*
- *Final inventory of current uses*
- *Response to Public Input/Comments*
- *Major Stakeholders' Vision*

LIDO VILLAGE



Hear about plan refinements

- *Need for Phasing flexibility*
- *New adjacent projects/edge conditions*
- *Identified parking deficit*
- *Owner expectations for plan concession/incentives*
- *“Sense of Place” and “Gateway” features*

Public Use/Benefit Options – City Hall site

- *Life Long Learning Center*
- *Senior Housing*
- *Health Fitness/Wellness Center*

Public Comments/Q&A

- *Speaker self-intro and time limits*



Closing remarks – Major Stakeholders

Look ahead dates - Next Public Outreach Forums

- 1-11-11 4:00 PM – *City Council Study Session – City Hall Reuse Options*
- 1-25-11 7:00 PM – *Final Presentation – Integrated Plans*



**Todd Larner
WHA
Architecture and Planning**

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Understanding the Site

- Physical analysis and understanding the complexities.
- Connections to the beach
- Ownership complexities
- Community give back
- Cohesive vision is needed

Recognizing Opportunities

Lido Triangle & Newport Blvd. Shops

- Expand our study sphere for better continuity.

Consensus Building

- Working with all stakeholders, land owners and community groups.

Phasing and Implementation

- Timing with City Hall, Lido Plaza, Marshall, Olen and Vornado lease agreements.

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WHAT WE HAVE LEARNED



GUIDING PRINCIPLES

Provide thoughtful yet creative design solutions that are appropriate for the City of Newport Beach.

- Retain boutique quality of retail experience.
- Incorporate more verticality into the village encouraging a broader diversity of uses.
- Joint Use Parking Program

Balance local service needs and maximize regional draw opportunities without sacrificing one for the other.

- Tap into the sub-regional draw opportunities for the village. Avoid pitfalls of trying to over-reach our audience.
- Enhance our greatest assets - The Beach and the Bay.
- New opportunities for marina improvements.

Highlight Lido Village as a “Gateway Village” for the City of Newport Beach.

- Incorporate thoughtful branding, signage and monumentation programs for the village.
- Develop a “Smart Streets” program to frame and define the character of the village.
- Altering street patterns to make them more intuitive.

Respect the local desire for strong aesthetic value for each unique city village.

- Create an architectural theme and style that is appropriate and thoughtful for Lido Village. Use historic materials, colors and styles in a crafted application.
- Weave Newport’s great maritime and resort history into an implementable vision.
- Visioning and architectural styling

Insure all land use concepts are thoroughly tested from a market standpoint as well as revenue generation while incorporating stakeholder and public perspective.

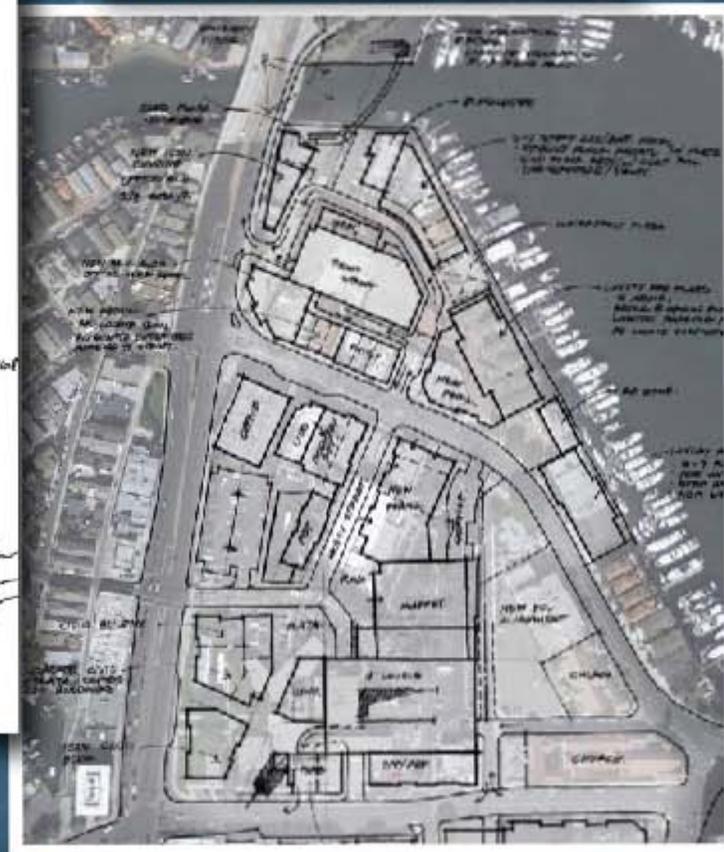
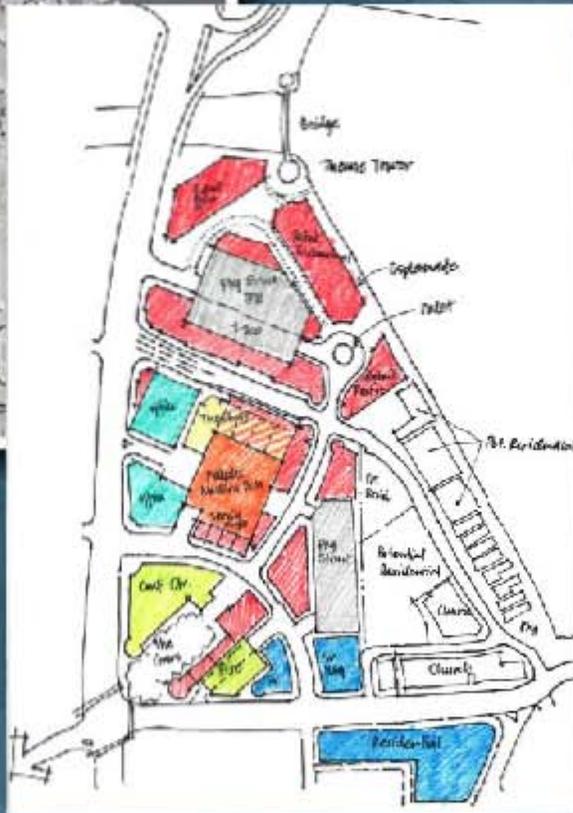
- Ensure that the project is economically, socially and environmentally sustainable.
- Checking the plan during design: CNB, Duda, Marshall Olen.

Develop a dynamic plan that is approvable by Newport Beach public officials & key staff, stakeholders, citizens and the California Coastal Commission.

- Provide a workable mix of uses that will stand the test of time and provide greater public benefit.
- Draw on community outreach to help provide authorship in crafting program, theme and vision for the village.

WHAT WE HAVE LEARNED





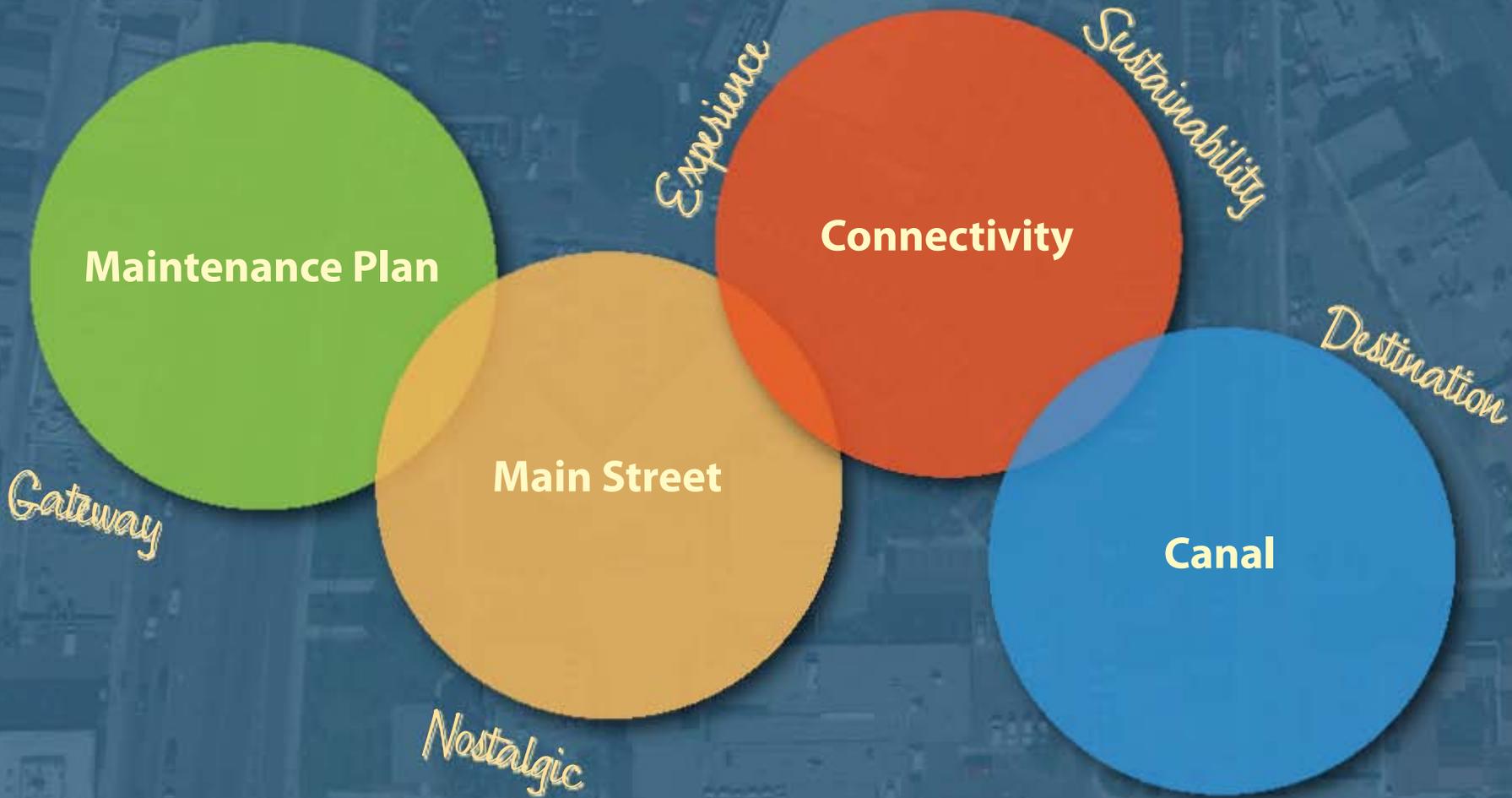
T.A.P.

WHAT WE HAVE LEARNED

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4 "Big Idea" Concepts from T.A.P.



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WHAT WE HAVE LEARNED



Support and Concerns from local residents and business owners.

- Parking – Needs to be improved and joint use programming.
- Anchor with greater benefit (high end tenant) Hospitality.
- Charter Yacht and interaction. Negative. How do we improve?
- Community Center on City Hall.
- City Hall is for the residents' services It's already a civic site, keep it civic in re-use.
- Need for Residential: What Kind? Seniors, affordable, market rate etc.
- Nautical Heritage "Celebrate" our city.
- Create a sense of place "Water-Front. Live, Work, Play – spend time here.
- Gateway – Expand Study Area "Sphere" to include Newport Blvd. Retail.
- Incorporate future flexibility.
- Eminent domain concerns from local businesses and residents.
- Big Vision – Don't stick with status quo.

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Newport Beach is about the Water.

Boating, fishing, sun bathing and surf sports.



Memories are preserved by our senses.
Texture, smell, color, touch and sound.

LIDO VILLAGE



VISIONING



Nostalgia is remembering experiences of place.
Where you were and who you were with.



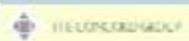
Newport Beach is about Experiences
Enjoying time with people while interacting
with the water.

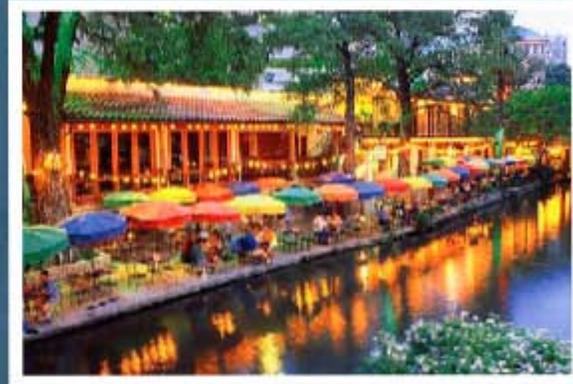


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VISIONING





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CREATING THE LIVING ROOM





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CREATING THE LIVING ROOM

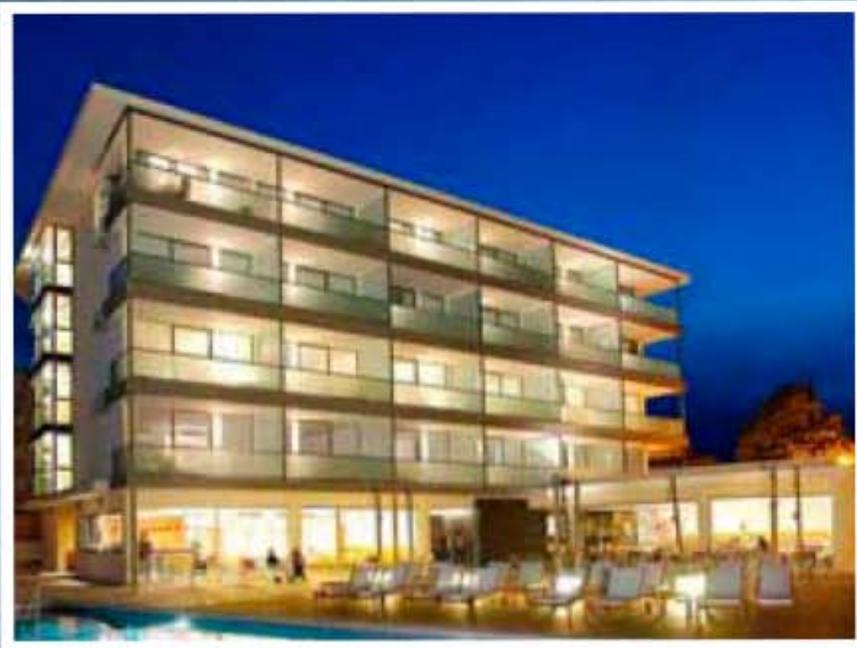




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FIRE STATION



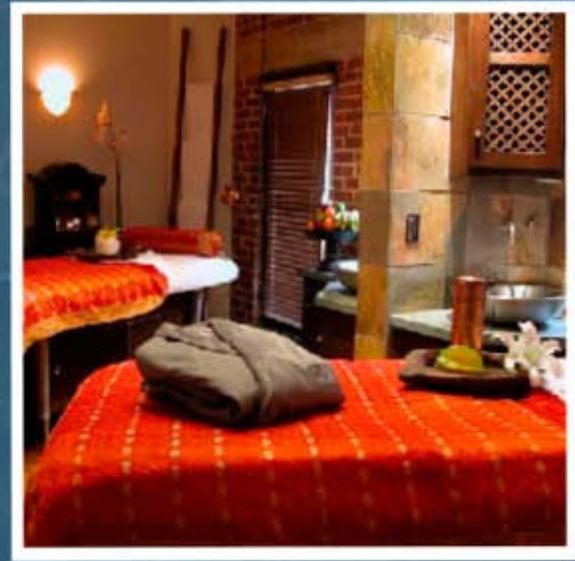
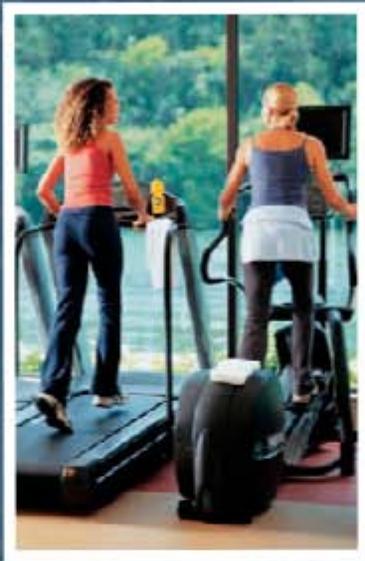
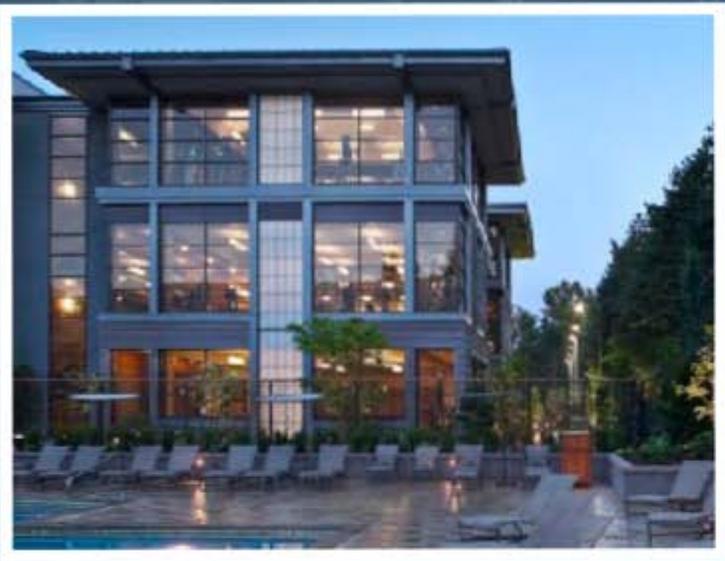


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HOTEL



LIDO VILLAGE



GYM & SPA





Key points

- Re-Design of Lido Plaza with city hall
- New Retail Format
- Provide parking master plan with City Hall and Lido Plaza
- Improve bulkhead boardwalk along Via Lido Village
- Minor lot line adjustments

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MAINTENANCE: ALTERNATIVE 1



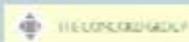


Key points

- Establish a new main street grid pattern
- Re-establish public access to the waterfront with enhanced dock facility.
- More access throughout the village
 - *Multi-Modal*
- Reduce dependence on on-street parking.
- Parking solutions with multiple structures.
- City Hall site as a revenue generator

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MAIN STREET: ALTERNATIVE 2





Key points

- Connectivity of the beach to the bay
- Series of pedestrian plazas
- 100% civic re-use
 - *Wellness campus*

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CONNECTIVITY: ALTERNATIVE 3





Key points

- Canal waterway throughout the site
- Re-Configure all parcels
- Pedestrian promenade along waterfront
- City hall site as an education campus and life long learning
- For profit university venue
- Local university extension facility

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CANAL WATERWAY: ALTERNATIVE 4



Narrowing the Field - From 4 plans down to 2

The following is a list of key elements identified from each of the 4 alternatives that helped shape the program, phasing and physical layout of the site

Opportunities

- Beach to Bay and Toes to Water
- Create a neighborhood destination - "The Living-room"
- Relocation of the party boats and improving the docks/ bulkhead in Lido Village.
- 10' cantilever of the bulkhead.
- Iconic bridge element/ gateway and connectivity to Mariners Mile.
- Improve automobile circulation to benefit retail storefronts.
- Separate residential neighborhood from retail uses. Change street patterning.
- Possible relocation of Elks while retaining their waterfront presence.
- Provide new location for iconic fire station. Sense of civic pride.
- City Hall site flexibility for seniors, high end residential, wellness program or life long learning village.
- Bring benefit to neighboring retail/ commercial uses.
- Revenue generating parking structure and management program.

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Constraints

- Existing parking deficits with current densities with retail and residential.
- Existing long term ground leases.
- Improvement opportunities vs. building replacement costs. All sites.
- General Plan - Need modification to improve future opportunities. Density / intensity, height and parking.
- Phasing commitments. Parking, Building, Street Improvements, Docks and Bulkheads, Fire Department,
- Thinking our of the box and unifying a visionary plan.
- Limited capabilities of incorporating people places.
- Signalization and traffic patterns.
- Creating a performance based plan based upon today's market conditions not future opportunities.
- Thoughtfully separating the pedestrian and bike from the cars. "Safety"
- Promoting 4 sided buildings and architecture.
- Coastal commission to support marina improvement to Lido Village. "Public Access"

LIDO VILLAGE

LIDO VILLAGE

LIDO VILLAGE - INLINE SHOPS
est. 27,250 TOTAL S.F.
PARKING @ 1/1500 SF = 123 SP

DUDA - LIDO PLAZA
100,000 TOTAL S.F.
13 DU - LIVE WORK
PARKING @ 4.5/ 1000 SF = 450 SP
PARKING - LV = 20 SPACES
(481 PROVIDED & 1 SHOPS)

NEWPORT BLDV.
SHOPS
30,740 TOTAL S.F.

CITY HALL RE-USE
34,500 TOTAL S.F.
SENIORS - 80 DU
PARKING @ 4.5/ 1000 SF = 55 SP
PARKING - SENIORS = 120
DAG PROVIDED 6287 LOT(S)

VORNADO LIDO VILLAGE
± 121,880 TOTAL S.F.
PARKING @ 1/1500 SF = 548 SP
(414 PROVIDED & 134 SHOPS - 2,47 10000)

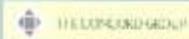
MARSHALL DEVELOPMENT
MIXED-USE OFFICE/
RESIDENTIAL

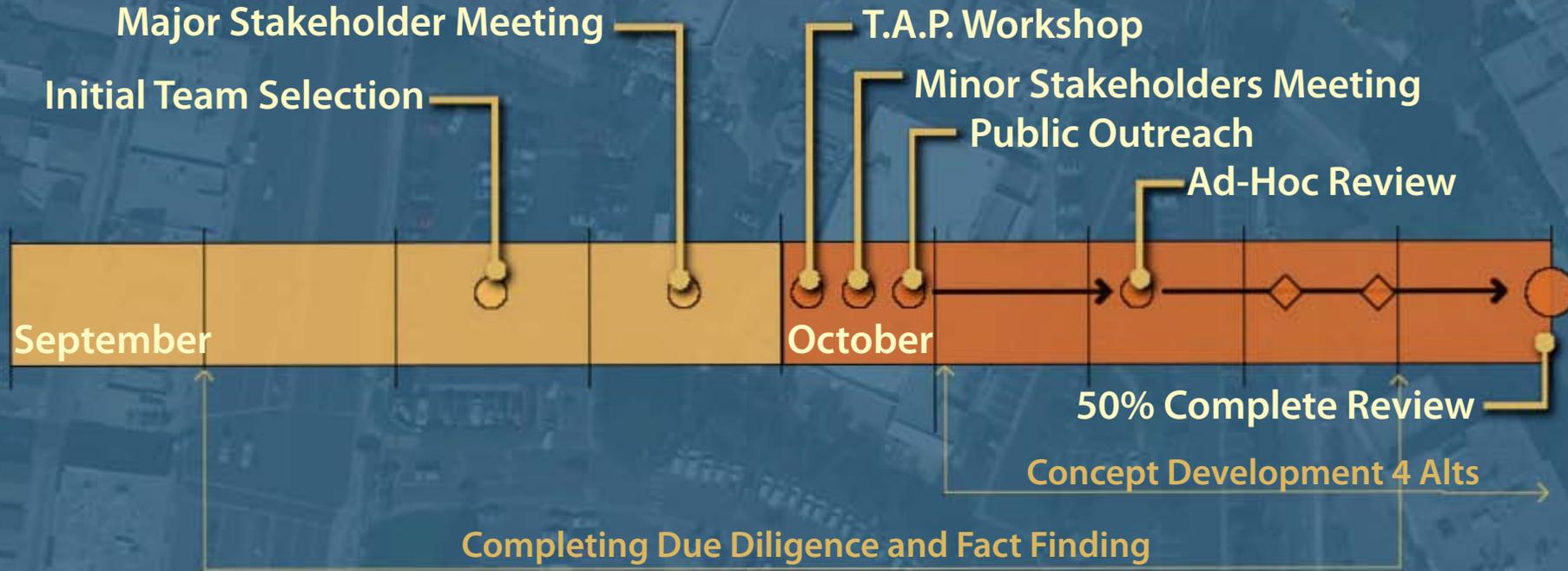
OLEN CORP.
MID-RISE
RESIDENTIAL
± 20 LUXURY FLATS

MARSHALL DEVELOPMENT
± 17 DU - ROW
TOWNS

OLEN CORP.
ROW TOWNS
45 UNITS

ALTERNATIVE 2B





PROJECT TIME LINE





Next Steps

- Rank City Hall Re-Use site and program.
- Run Financial Models to determine “highest and best use”.
- Special city hall study session January 11th, 2011
- Comprehensive presentation: January 25th, 2011



LIDO VILLAGE - INLINE SHOPS
 est. 27,250 TOTAL S.F.
 PARKING@ 1/ 4500 SF = 123 SP

DUDA - LIDO PLAZA
 105,000 TOTAL S.F.
 PARKING@ 4.5/ 1000 SF = 472 SP
 (487 PROVIDED Δ15 LONG)

NEWPORT BLDV. SHOPS
 30,740 TOTAL S.F.

CITY HALL RE-USE
 72,600 TOTAL S.F.
 PARKING@ 4.5/ 1000 SF = 326 SP
 (665 PROVIDED Δ339 LONG)

VORNADO LIDO VILLAGE
 est. 107,860 TOTAL S.F.
 PARKING@ 1/ 4500 SF = 485 SP

MARSHALL DEVELOPMENT
 MIXED-USE OFFICE/
 RESIDENTIAL

OLEN CORP.
 MID-RISE
 RESIDENTIAL
 ±20 LUXURY FLATS

MARSHALL DEVELOPMENT
 ± 17 DU - ROW
 TOWNS

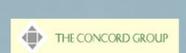
OLEN CORP.
 ROW TOWNS
 ±6 UNITS



Alternative 2A



LIDO VILLAGE



10-23-10

LIDO VILLAGE - INLINE SHOPS
 est. 27,250 TOTAL S.F.
 PARKING@ 1/ 4500 SF = 123 SP

DUDA - LIDO PLAZA
 100,000 TOTAL S.F.
 13 DU - LIVE WORK
 PARKING@ 4.5/ 1000 SF = 450 SP
 PARKING - LW = 32 SPACES
 (481 PROVIDED Δ 1 SHORT)

NEWPORT BLDV. SHOPS
 30,740 TOTAL S.F.

CITY HALL RE-USE
 34,500 TOTAL S.F.
 SENIORS - 80 DU
 PARKING@ 4.5/ 1000 SF = 155 SP
 PARKING SENIORS = 120
 (562 PROVIDED Δ 287 LONG)

VORNADO LIDO VILLAGE
 ± 121,880 TOTAL S.F.
 PARKING@ 1/ 4500 SF = 548 SP
 (414 PROVIDED Δ 134 SHORT. 3.4/ 1000)

MARSHALL DEVELOPMENT
 MIXED-USE OFFICE/
 RESIDENTIAL

OLEN CORP.
 MID-RISE
 RESIDENTIAL
 ±20 LUXURY FLATS

MARSHALL DEVELOPMENT
 ± 17 DU - ROW
 TOWNS

OLEN CORP.
 ROW TOWNS
 ±6 UNITS



Alternative 2B



LIDO VILLAGE



CITY OF NEWPORT BEACH
CITY COUNCIL STAFF REPORT

Agenda Item No. 19
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

Office of the City Attorney
David Hunt, City Attorney
949/644-3131 or 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

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 2nd 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:

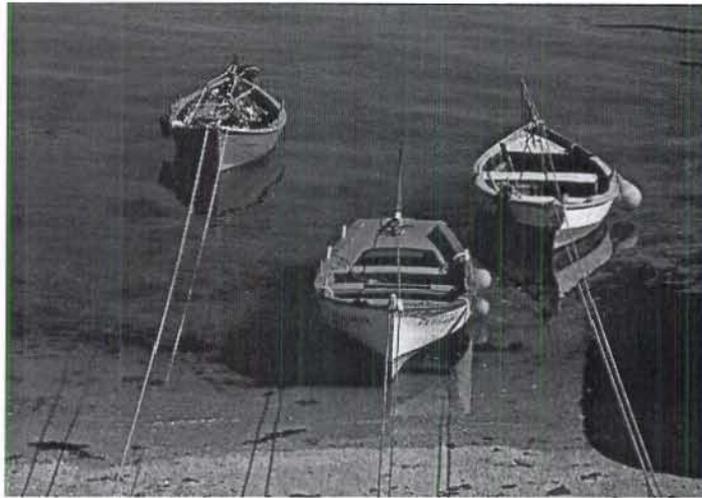
Type of Mooring	# in Harbor	Rate Charged Per Year	When was Rate Last Adjusted?
Onshore	439 moorings plus: • 46 assigned to the Lido Isle Community Assn (LICA) (792 LF)	\$10/LF/Year (LF of the boat)	1996
Offshore	539 moorings plus: • 72 assigned to the Balboa Yacht Club • 70 assigned to the Newport Harbor Yacht Club	\$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

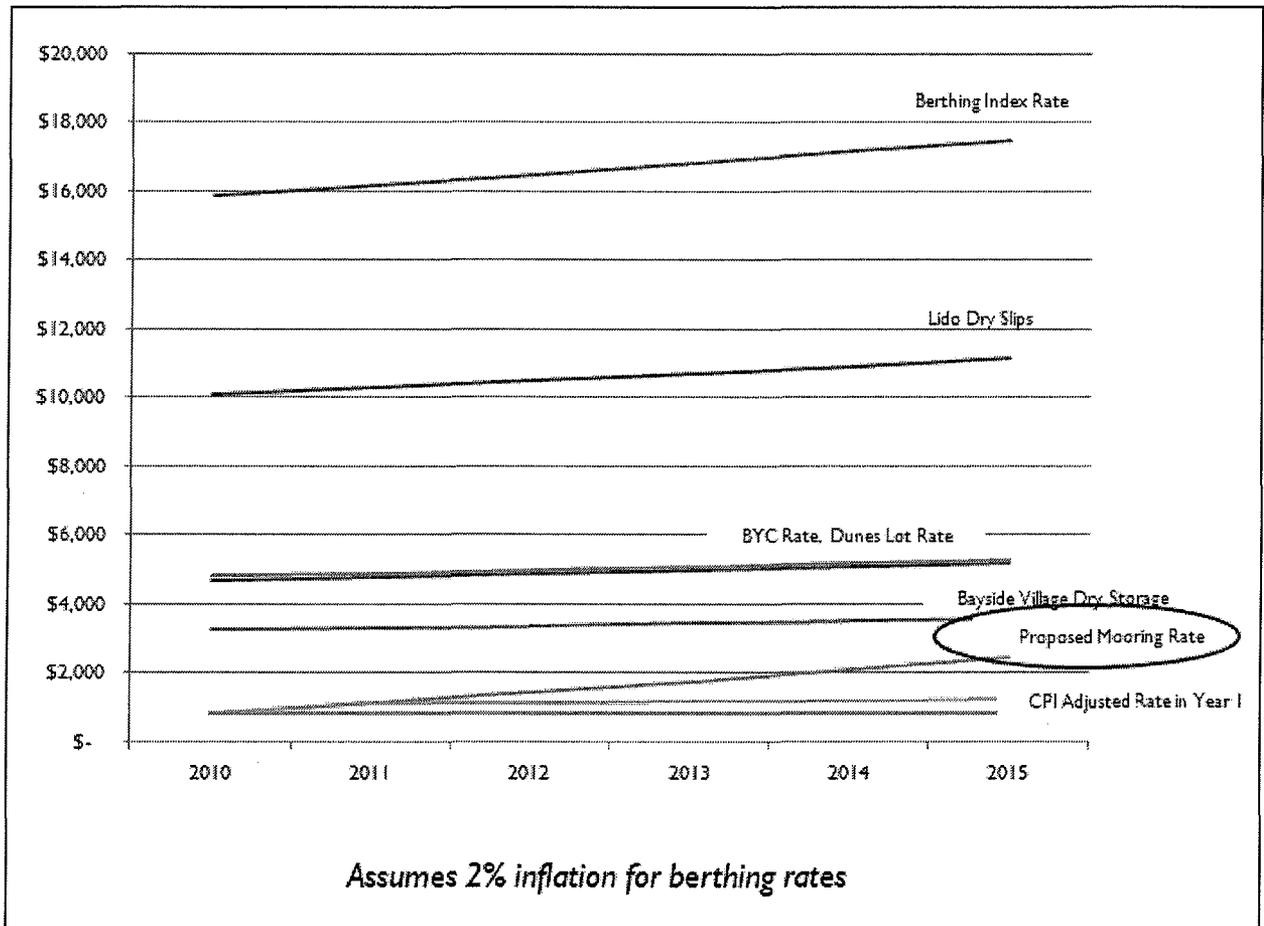
To address mooring charges (and transfers as a related item), the Ad Hoc Committee held a series of meetings with stakeholder groups. After listening to the stakeholders and others, they have made a recommendation to the City Council to:

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:

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

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.

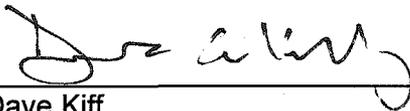
Those statements aside, City staff asserts that the Committee's proposed rate for moorings is appropriate and should, by 2015, reflect fair market value. Addressing residential piers, commercial piers, and rentals of residential piers is not a part of the Committee's recommended action at this time.

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:



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-____

Attachment A

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 in 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 6.9% 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 8.7% 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 be it further

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:

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

...and be it further

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.

ADOPTED this 23rd day of November, 2010.

KEITH CURRY
Mayor of Newport Beach

ATTEST:

LEILANI BROWN
City Clerk

Attachment B

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 will 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(A) (4) of Chapter 17.01 of the Newport Beach Municipal Code is hereby added to read 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.

(Renumber subsequent subsections to maintain correct order.)

SECTION 2: Section 17.01.030(J) (15) of Chapter 17.01 of the Newport Beach Municipal Code is hereby added to read 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.

(Renumber subsequent subsections to maintain correct order.)

SECTION 3: Section 17.01.030(O) (11) of Chapter 17.01 of the Newport Beach Municipal Code is hereby added to read 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.

(Renumber subsequent subsections to maintain correct order.)

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).

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

(Renumber subsequent subsections to maintain correct order.)

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. Other organizations also have mooring permits in the harbor as well. 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 shall 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 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. The Balboa Yacht Club, Newport Harbor Yacht Club and LICA - 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. The boundaries of these designated mooring areas may not be expanded. The boundaries of these mooring areas are graphically depicted and defined in Exhibit "A" hereto and

are hereby incorporated by reference.

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 permittee shall transfer a permit for a mooring or buoy granted under the provisions of this chapter, except, a permit may be transferred prior to January 1, 2021 up to two times if the 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 Permittee. Permits shall not be transferred without the prior written approval of the Harbor Resources Manager. Prior to January 1, 2021, the Harbor Resources Manager shall approve the transfer of a mooring permit under the procedures set forth 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 rented 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.
- F. The following shall apply on and after January 1, 2021. Mooring transfers shall be prohibited, except:
- a. 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 heirs at law to the second degree of consanguinity; or
 - b. When a natural person has taken title to an Assigned Vessel already on a mooring, that natural person has up to six (6) months

from the date of taking title to remain on the mooring. 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.

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 a 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.
 6. If no person on the Interest List accepts a mooring permit according to 17.60.040(I) the Harbor Resources Department may auction the mooring and issue a permit for the mooring to the highest qualifying sealed bid.
- 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.7-8.
- 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 or Surrender 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 recovery 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 form 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

Exhibit A



NHYC

F

US 565

US 165

US 514

US 564

US 414

US 515

US 516

US 115

US 116

BUENA VISTA BLVD

EDGEWATER AVE W

LINDO AVE

ISLAND AVE

BAY AVE W

BAY ISLAND

1986



GRAND CANAL

GRAND CANAL

ABALONE AVE

BAY FRONT ALLEY S

BAY FRONT S

JADE AVE

BAY FRONTE

BAYSIDE DR

NEWPORT CHANNEL

B

BYC

HP

0 265ft

Attachment D

Mooring Practices Today & Proposed

Issue	Current Practice	Harbor Commission's "Transferability Document"	Ad Hoc Committee Proposal
Number of times a person can transfer a mooring permit	Unlimited	<ul style="list-style-type: none"> • 1x/year. • Person receiving mooring permit cannot hold more than 2 other mooring permits. • Additional transfers allowed at Harbor Resources Manager's discretion. 	<ul style="list-style-type: none"> • One permit location can be transferred 2x/10 years (between now and December 31, 2020). • Starting January 1, 2021, transfers prohibited.
Family Transfers	Allowed	Allowed	Allowed within Immediate Family.
One-for-One Exchanges	Allowed	Allowed with permission of Harbor Resources Manager.	Allowed with permission of Harbor Resources Manager.
New boat owners on an existing mooring	May maintain the mooring permit indefinitely.	May maintain the mooring permit indefinitely.	May remain on the mooring for up to 6 months.
Transfer Fee	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.
Ownership of Mooring Tackle (can, chains) <ul style="list-style-type: none"> • Value is about \$4K new. • Annual maintenance = about \$250-\$300/year 	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.
Sub-Permitting of Moorings	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.

Rental Rates	Daily = \$5. Proposed @ \$15-\$25/day.	To be determined by Council.	To be determined by Council.
Wait List	A wait list exists, but rarely if ever moves.	Creates "Mooring Interest List" like a wait list.	Same as Transferability Document.
Can a person who received a mooring permit off the wait list transfer that mooring permit?	Yes.	Yes, 1x/year.	No. Prohibited.
Multiple Vessel Mooring System	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.
Liveboards	Permittee may live-aboard his or her permitted mooring with a Liveboard Permit	May be temporarily permitted on Short-Term Rentals, too.	Same as Transferability Document.
Yacht Clubs and LICA <ul style="list-style-type: none"> • Balboa Yacht Club holds permits for ~72 offshore moorings. • Newport Harbor Yacht Club holds permits for ~70 offshore moorings. • LICA has 46 onshore mooring permits (~792 LF). 	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.