



== CITY OF ==
NEWPORT BEACH

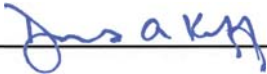
City Council Staff Report

Agenda Item No. 3
November 26, 2013

TO: HONORABLE MAYOR AND MEMBERS OF THE CITY COUNCIL

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

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

APPROVED: 

TITLE: AMENDMENT TO NEWPORT BEACH MUNICIPAL CODE AND
ADOPTION OF RESOLUTION RELATED TO RESIDENTIAL AND
COMMERCIAL PIERS

ABSTRACT:

Following an action to revise rents in Newport Harbor towards fair market value, the City Council made a commitment to "look back" in 2013 to review the process, including the rent implementation procedure for residential and commercial piers and moorings. Staff hosted two public workshops in August 2013, and presented the feedback and recommendations to the City Council at its November 12, 2013 City Council Study Session. At this Study Session, the City Council reviewed the feedback from the public workshops and staff recommendations, and directed staff to return with revisions to the implementation process for residential and commercial piers.

RECOMMENDATION:

- a) Introduce Ordinance No. 2013-27 amending Chapter 17.60 and subsection 17.35.020(B)(2) of the NBMC regarding residential and commercial piers located upon tidelands, and if so desired pass to a second reading on December 10, 2013;
- b) Adopt Resolution No. 2013-88 adjusting the residential pier rental calculation and approving a revised model permit template for residential piers located upon tidelands, and amending Resolution 2012-98 to reclassify certain homeowner's association (HOA) slips from commercial to residential;
- c) Approve the reclassification of HOA slips to be retroactively applied beginning March 1, 2013, and approve refunds or credits for those affected HOAs; and
- d) Direct staff to develop an administrative policy to use Harbor Patrol generated rental revenue collected from transient moorings for amenities in Newport Harbor

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RESOLUTION RELATED TO RESIDENTIAL AND COMMERCIAL PIERS

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that generally benefits all mooring permittees, to the extent that desirable projects are identified each year.

DISCUSSION:

To fulfill the City Council's commitment to "look back" at the Newport Harbor fair market value rent implementation process, staff conducted two public workshops for the residential, commercial and mooring permittees. During these public workshops staff listened to the public's feedback and assembled comments, along with staff recommendations, for City Council review. At the November 12, 2013 Study Session, the City Council considered all of the comments received from the public workshops and staff's recommendations, and directed staff to return to a regular City Council meeting with the following changes:

1. **Tidelands Charges for Residential Piers.** Rent shall be charged for the footprint of the pier, gangway and float including the interior of the U-shaped float if applicable, for all residential piers over City tidelands at the previously approved rate adopted by the City Council. No perimeter buffer area will be calculated into the fee (see Attachment A). This change is on a prospective rather than retroactive basis; refunds will not be issued. Attachment B compares the current rate charged (with buffer) against the proposed rate (without buffer) along with comparisons of other rents charged by the State Lands Commission in California.
2. **Simplified Permit for Residential Piers.** Streamline and simplify the residential pier permit language by removing some provisions and adding other language regarding the City's intent to renew the permit upon expiration. Also offer an optional term up to ten years, with rent for each year calculated in accordance with the annual residential pier rent calculation (see Attachments C, D and E).
3. **Homeowner's Associations ("HOA's") Re-Classified as Residential.** HOA marinas currently classified as commercial shall be reclassified as residential provided that the use of the slips is solely for the residents of the HOA. If the HOA decides to rent slips to the public, then the small or large commercial rate will apply based upon the size of the marina. The rates for this HOA reclassification will be retroactive to March 1, 2013, and refunds or credits will be applied to those affected HOAs.
4. **Step Down to 2018 Rent for Very Small Piers.** Because of an anomaly in calculating residential pier rent for very small piers (190' square feet or less), the rent for these piers actually *declines* each year until 2018. Therefore, step down to the 2018 rent immediately. This change is on a prospective rather than retroactive basis; refunds will not be issued.

AMENDMENT TO NEWPORT BEACH MUNICIPAL CODE AND ADOPTION OF
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5. **Apply Harbor Patrol Generated Rental Revenue from Transient Moorings for Mooring Amenities or Other Beneficial Harbor Programs.** Through a cooperative agreement with the City, the Harbor Patrol collects *rental* fees from boaters who are visiting Newport Harbor on a short or long term basis. These boaters rent the moorings that are currently vacant (e.g., the permittee on file does not currently have a boat on the mooring). The Harbor Patrol collects these daily rental fees and sends 100% of the rents back to the City every quarter (approximately \$80,000 per year). Staff will develop an administrative policy to use these rent funds for specific amenities in Newport Harbor that generally benefits all mooring permit holders, to the extent that desirable projects are identified each year.

The attached ordinance and resolution also include clean up language designed to clarify and provide consistency regarding commercial piers that encroach in front of adjacent properties, and expand the persons authorized to use noncommercial (residential) piers to include guests and lessees of the abutting residential property (this change is reflective of the recent allowance of renting residential piers to third parties). Under NBMC Section 17.05.110, the Harbor Resources Manager is empowered to determine the intent of a provision within Title 17 and issue a written administrative interpretation. The proposed revision to NBMC Subsection 17.60.060(E) is intended to codify the Harbor Resources Manager's interpretation of the subsection, as reflective of the current state of the law. Specifically, the inclusion of the additional language regarding the meaning of NBMC Subsection 17.60.060(E) codifies the existing exemption from compliance with sections such as 17.50.070 and 17.35.020(A)(1), which require permits to be held by the owner or long-term lessee of the abutting upland property. NBMC Subsection 17.60.060(E) does not, and was not intended to, exempt a person from compliance with NBMC Subsection 17.35.020(F), which requires a new permit for piers that encroach in front of abutting upland property upon a change in certain conditions (e.g., any change of existing ownership of the abutting upland property owned by the permittee or upon the death of the permittee). Because this clarification of the existing subsection is confirmation of its existing meaning, this interpretation is retroactive to the original adoption of NBMC Subsection 17.60.060(E).

ENVIRONMENTAL REVIEW:

The City Council finds the introduction and adoption of the attached ordinance and approval of the attached resolution is not subject to the California Environmental Quality Act ("CEQA") pursuant to Sections 15060(c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment) and 15060(c)(3) (the activity is not a project as defined in Section 15378) of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, because it has no potential for resulting in physical change to the environment, directly or indirectly. Alternatively, the City Council finds the introduction and adoption of the attached ordinance and approval of the attached resolution is entitled to a Class 1 Categorical Exemption pursuant to CEQA Regulation Section 15301 because the ordinance and resolution contemplate the

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RESOLUTION RELATED TO RESIDENTIAL AND COMMERCIAL PIERS

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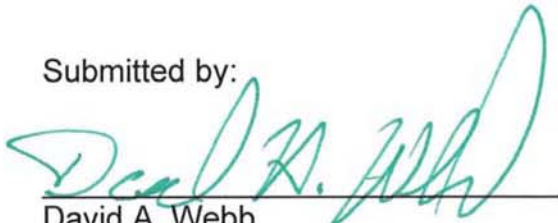
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continued use of existing facilities, with no expansion of the proposed use. Further, the City Council finds the adjustment of residential pier and HOA rent for piers located upon tidelands is entitled to a Statutory Exemption pursuant to CEQA Regulation Section 15273(a)(1) because the fair market value rent established by the City Council will be used to meet operating expenses within the tidelands. Lastly, the City Council finds the introduction and adoption of the attached ordinance and approval of the attached resolution is not a project under CEQA Regulation Section 15061(b)(3) because it has no potential for causing a significant effect on the environment.

NOTICING:

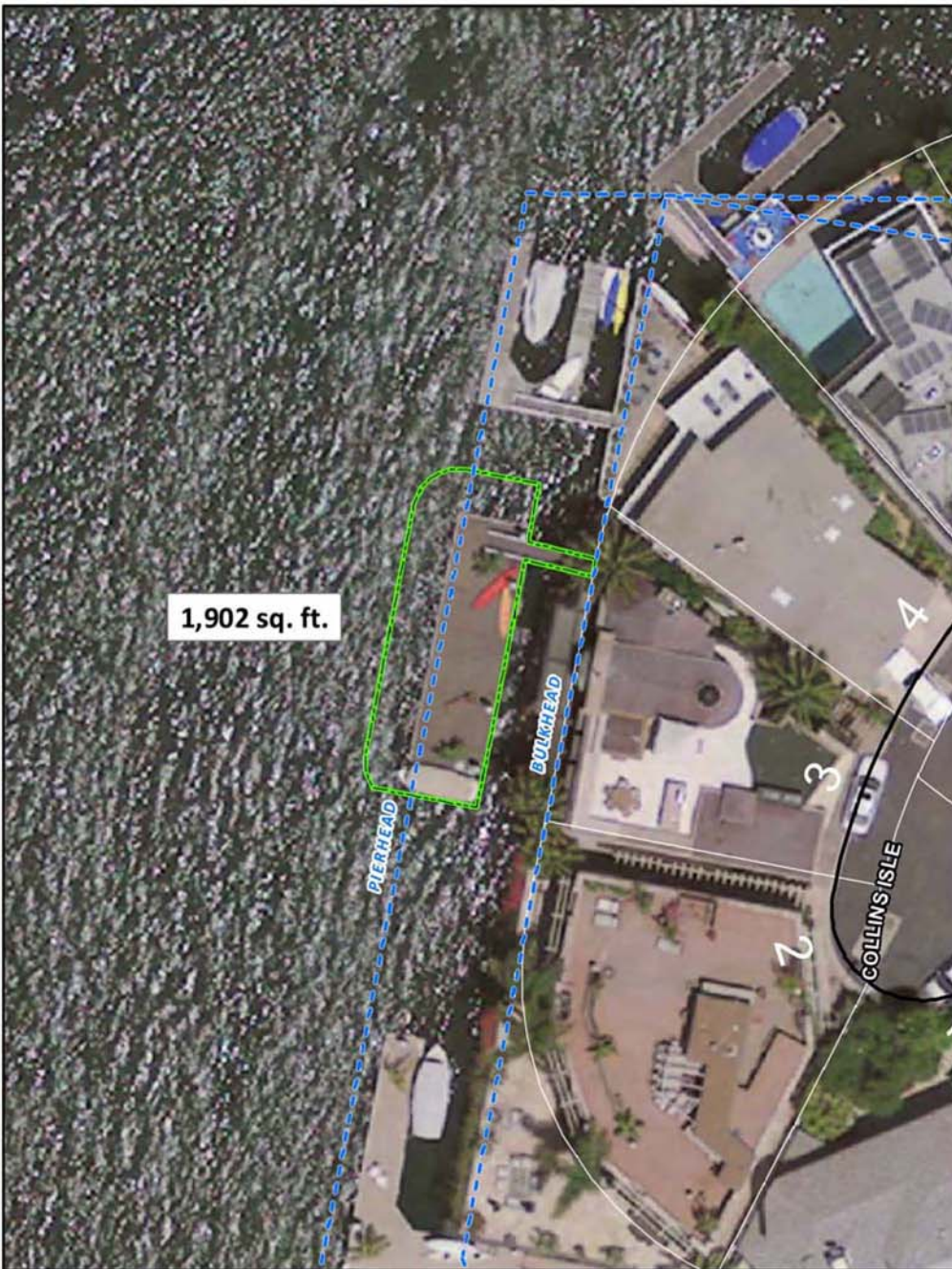
This agenda item has been noticed according to the Brown Act (72 hours in advance of the meeting at which the City Council considers this item).

Submitted by:



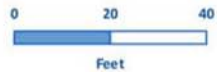
David A. Webb
Public Works Director

- Attachments:
- A. Examples of Piers With Buffer (existing) and Without Buffer (Proposed)
 - B. Rate Comparisons of Piers With/Without Buffer Against Other California Piers
 - C. Resolution No. 2013-88
 - D. Ordinance No. 2013-27
 - E. Redline of Amended Code Sections
 - F. Public Input Received



1,902 sq. ft.

936 sq. ft.



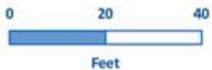
-  Bulkhead & Pierhead Lines
-  Single Pier
-  Shared Pier
-  Rental Pier

3 COLLINS ISLE

- * Aerial Imagery taken May 27-30, 2011
- * Pier Exhibit created 10/23/2013
- * Shared Piers split area cost by 25%, 33.3%, or 50%
- * Rental Piers charged by area (sq. ft.)



Harbor Resources
City of Newport Beach



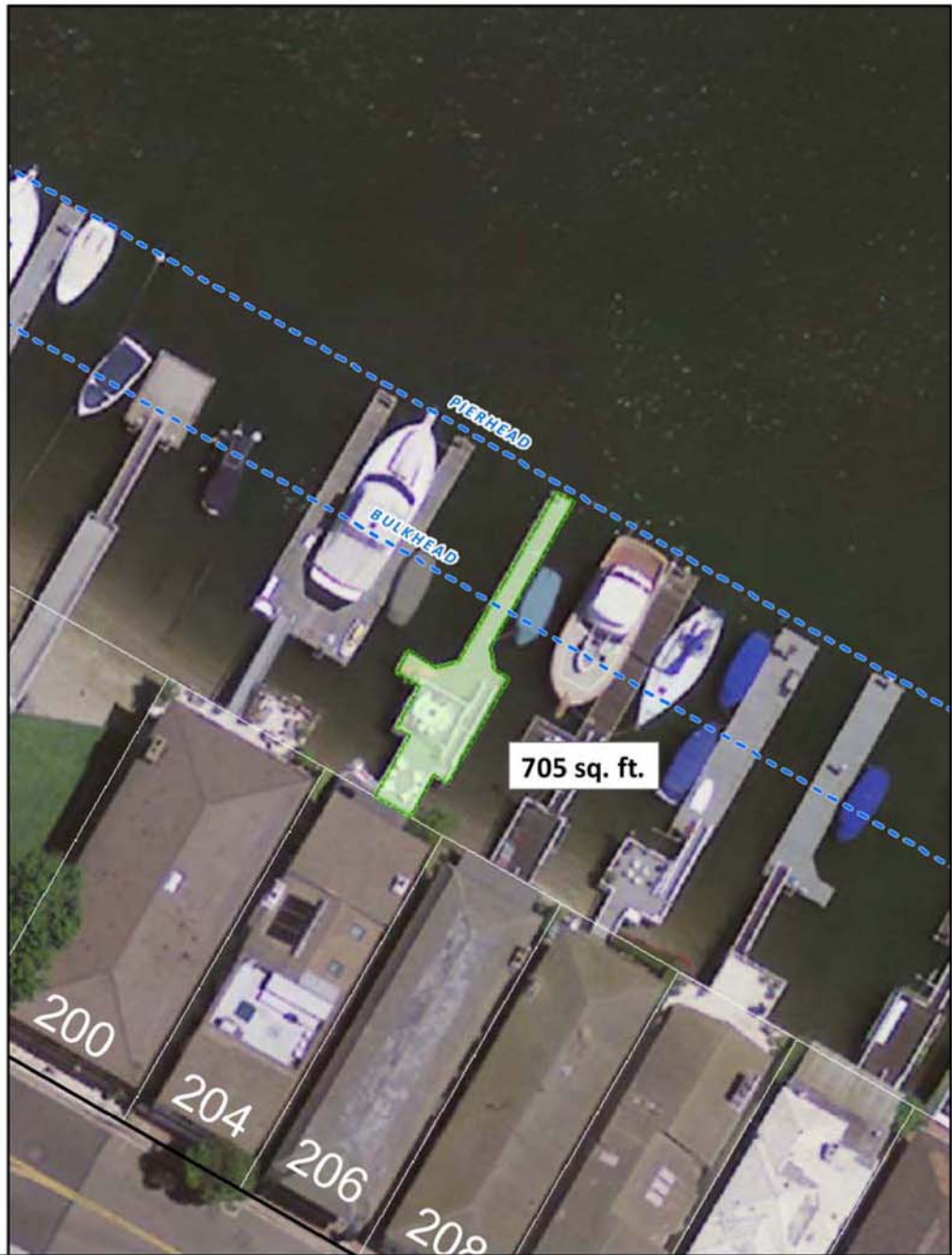
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2254 CHANNEL RD

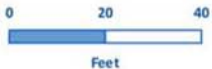
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204 VIA LIDO NORD

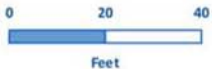


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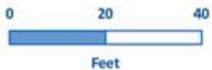
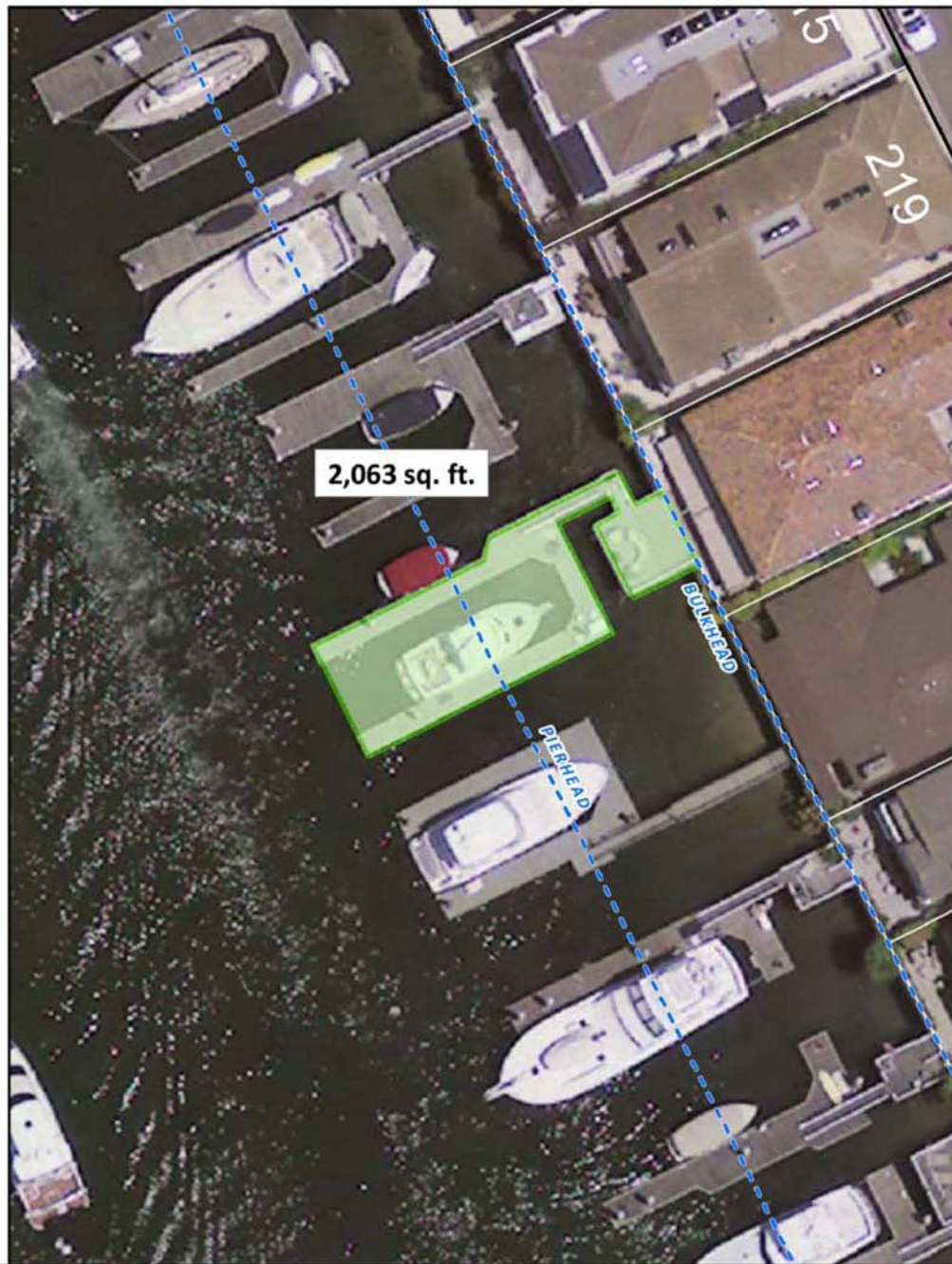
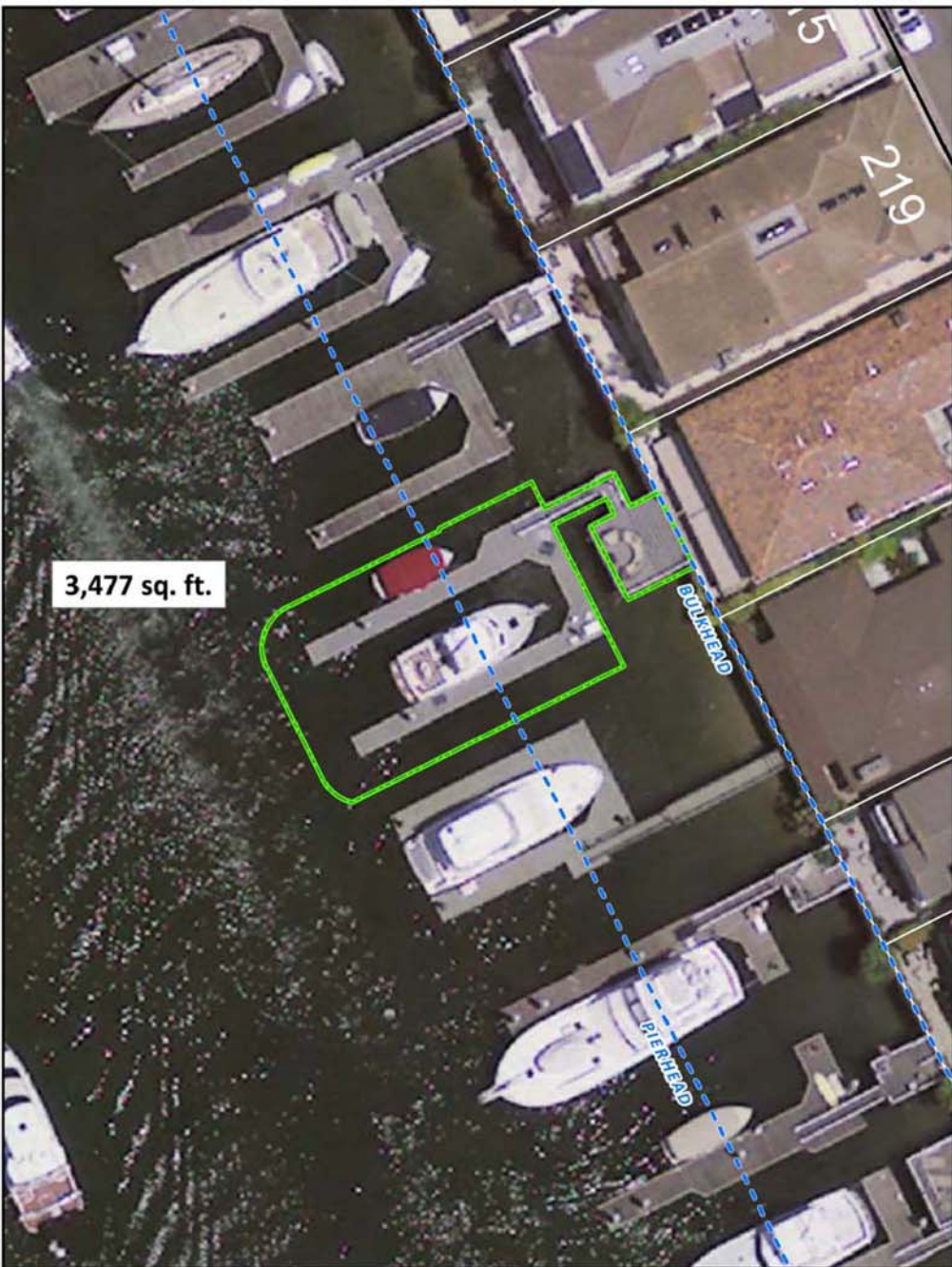
-  Bulkhead & Pierhead Lines
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-  Rental Pier

908 BALBOA BLVD E

- * Aerial Imagery taken May 27-30, 2011
- * Pier Exhibit created 10/23/2013
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-  Bulkhead & Pierhead Lines
-  Single Pier
-  Shared Pier
-  Rental Pier

221 VIA LIDO SOUD

- * Aerial Imagery taken May 27-30, 2011
- * Pier Exhibit created 10/23/2013
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- * Rental Piers charged by area (sq. ft.)



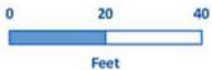
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3,136 sq. ft.



1,900 sq. ft.



-  Bulkhead & Pierhead Lines
-  Single Pier
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-  Rental Pier

119 BAY FRONT E

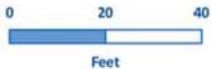
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3344 VIA LIDO

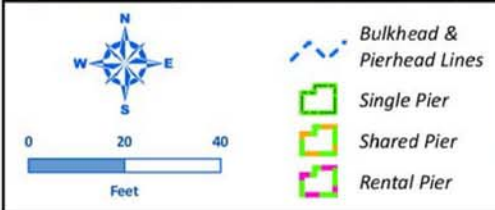
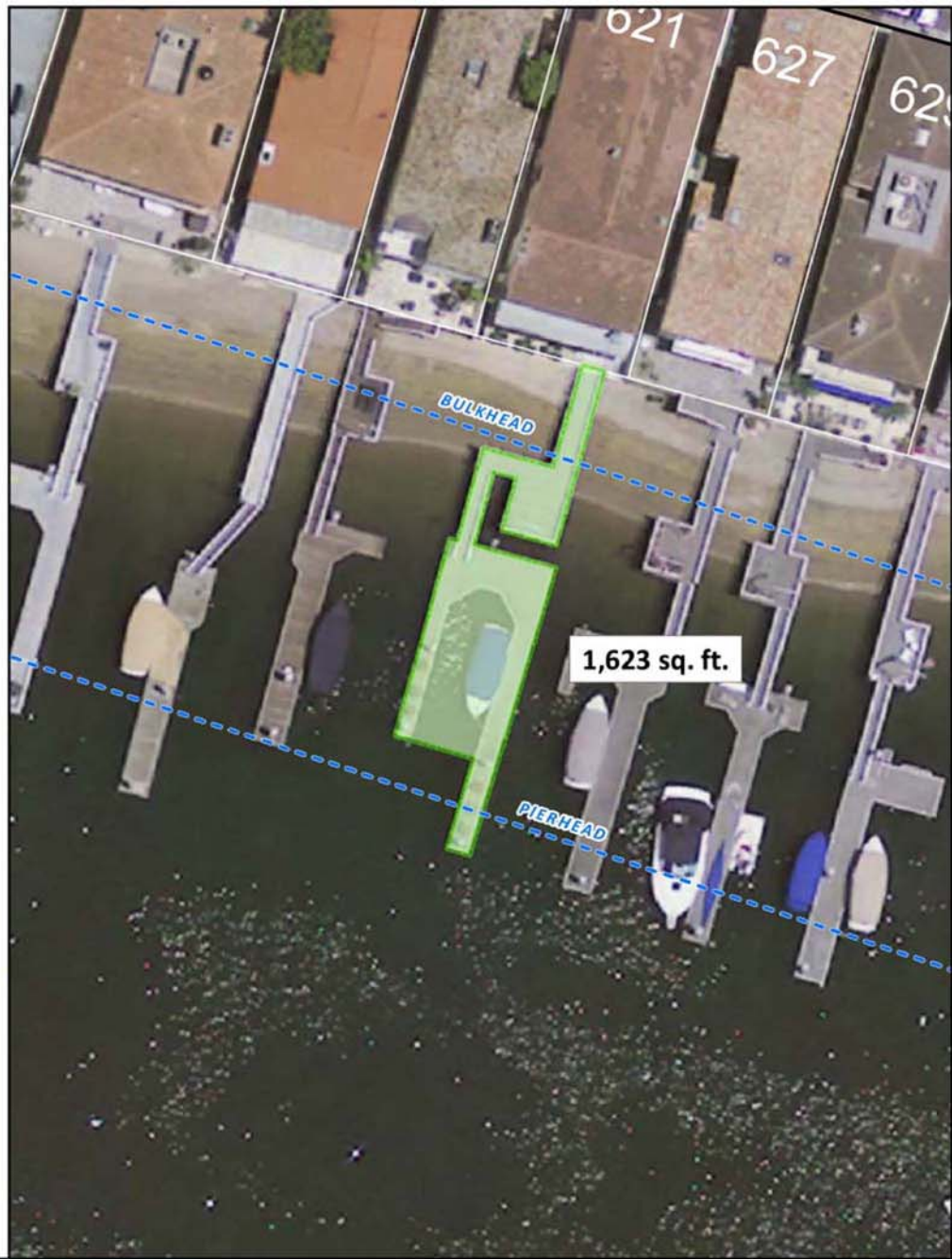
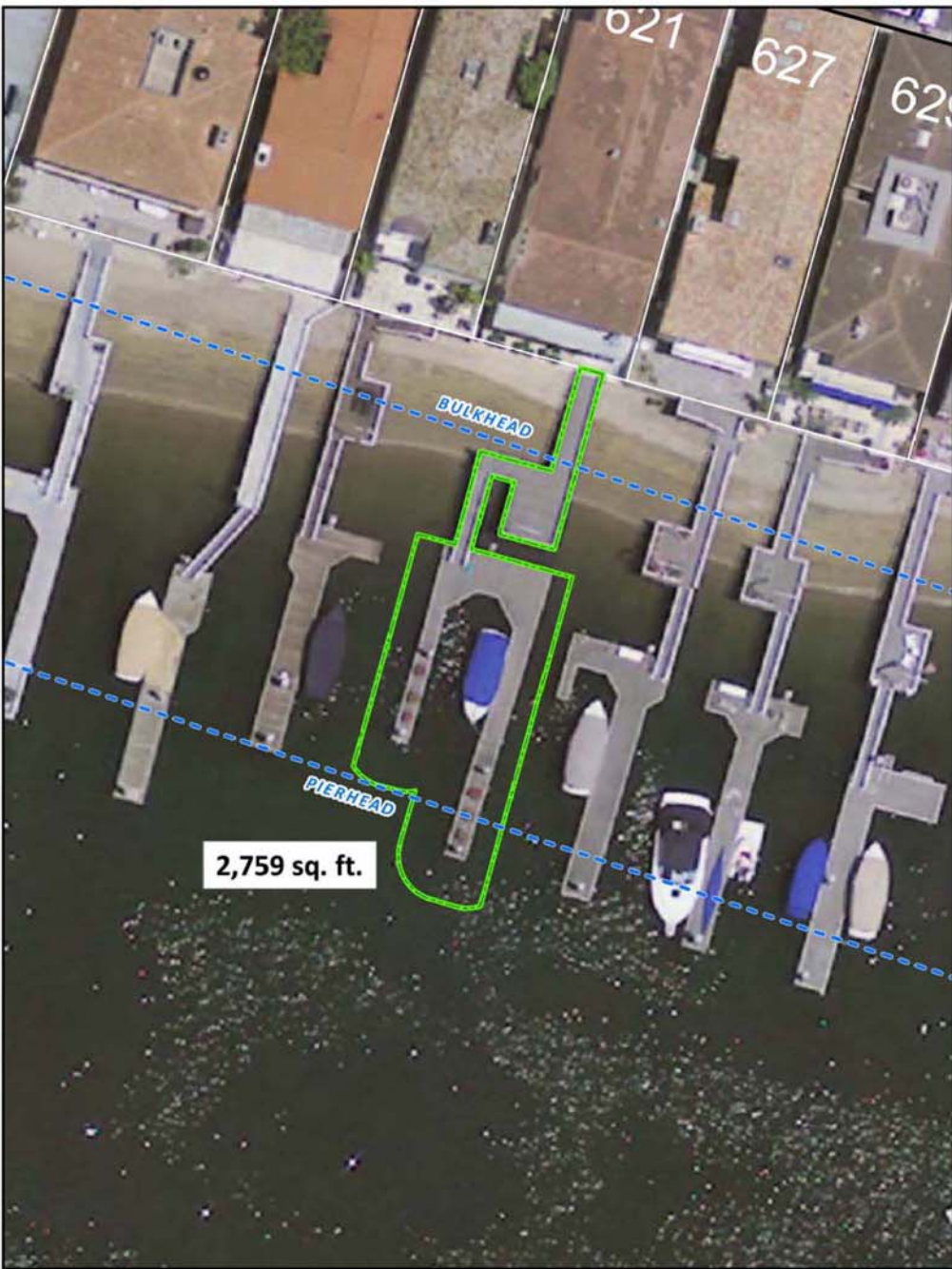


-  Bulkhead & Pierhead Lines
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- * Aerial Imagery taken May 27-30, 2011
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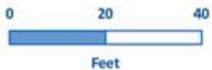
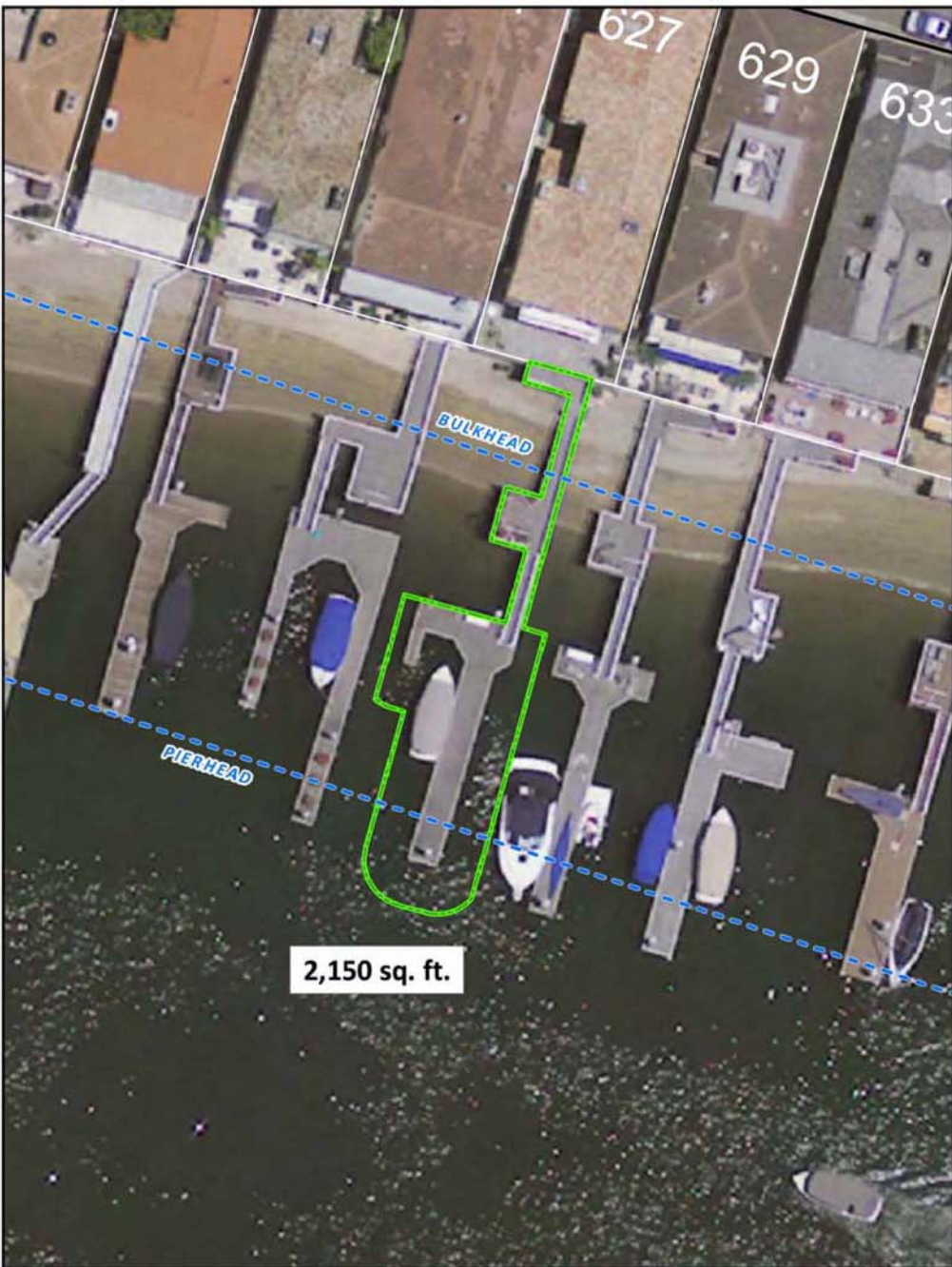


621 VIA LIDO SOUD

- * Aerial Imagery taken May 27-30, 2011
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City of Newport Beach



-  Bulkhead & Pierhead Lines
-  Single Pier
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-  Rental Pier

627 VIA LIDO SOUD

- * Aerial Imagery taken May 27-30, 2011
- * Pier Exhibit created 10/23/2013
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City of Newport Beach

Rate Comparisons for Piers in California

Newport Harbor			Lake Tahoe	Huntington Harbor	Sacramento River	San Joaquin River Delta
Dock Footprint with 10' Buffer (includes interior U) @ \$0.525 sf Existing	Dock Footprint without 10' buffer (includes interior U) @ \$0.525 sf Proposed	Percent Reduction from 10' Buffer (Existing) to No Buffer (Proposed)	\$0.79 sf of Pier, Gangway and Float + 50% of \$0.79	\$0.33 sf for entire water area	\$0.19 for dock + 10' buffer for "river side" (assumed 50% of buffer in Newport)	\$0.15 for dock + 10' buffer for "river side" (assumed 50% of buffer in Newport)

3 Collins Isle (1,902 sf with buffer, 936 sf without)	\$998.55	\$491.40	50.8%	\$1,109.16	\$741.84	\$269.61	\$212.85
2254 Channel Rd (1,286 sf with buffer, 681 sf without)	\$675.15	\$357.53	47.0%	\$938.52	\$937.53	\$197.41	\$155.85
204 Via Lido Nord (1,889 sf with buffer, 705 sf without)	\$991.73	\$370.13	62.7%	\$835.43	\$701.91	\$246.43	\$194.55
908 Balboa Blvd E (1,328 sf with buffer, 446 sf without)	\$697.20	\$234.15	66.4%	\$528.51	\$729.96	\$168.53	\$133.05
221 Via Lido Soud (3,477 ft with buffer, 2,063 sf without)	\$1,825.43	\$1,083.08	40.7%	\$1,292.84	\$1,195.59	\$433.96	\$342.60
119 Bay Front E (3,136 sf with buffer, 1,900 sf without)	\$1,646.40	\$997.50	39.4%	\$1,231.22	\$2,004.09	\$396.63	\$313.13
3344 Via Lido (10,384 sf with buffer, 7,178 sf without)	\$5,451.60	\$3,768.45	30.9%	\$3,017.01	\$4,047.45	\$1,228.35	\$969.75

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

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

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

RESOLUTION NO. 2013- 88

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ADOPTED this 26 day of November, 2013.

Keith D. Curry,
Mayor

ATTEST:

Leilani I. Brown,
City Clerk

Attachments: (1) Adjusted Residential Pier Tidelands Rent Calculations
(2) Revised Model Permit Template for Residential Piers

Adjusted Residential Pier Tidelands Rent Calculations

Residential Pier Rent

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



- (2) Permittees that desire to rent/lease their Residential Pier shall notify the City in writing. Permittees that rent/lease their Residential Pier, either in whole or in part, shall pay the Rent applicable to Small Commercial Marinas as established in Resolution No. 2012-98, or any successor resolution, for the Premises.
- (3) To the extent a Residential Pier is shared by two (2) or more Permittees, the Rent shall be apportioned equally among the Permittees (*i.e.*, if a Residential Pier is shared by two (2) Permittees, half (1/2) of the Rent shall be billed to one (1) Permittee and the other half (1/2) of the Rent shall be billed to the other Permittee). The Permittees shall be jointly and severally liable for the Rent. Each Permittee shall receive a permit from the City indicating the percentage of the Premises apportioned to the Permittee.

Periodic Adjustments of Rent And Phase In

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

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

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

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

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

Definitions

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

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

Revised Residential Tidelands Pier Permit

- (1) Permittee: This Permit is issued on _____ to _____ ("Permittee") to construct/maintain a residential pier located upon City of Newport Beach ("City") tidelands, as more particularly described and depicted in Attachment 1 ("Premises"), which is attached hereto and incorporated by reference. By acceptance of this Permit, the Permittee agrees to be bound by the terms contained in this Permit.
- (2) Term: This Permit shall be valid for a period of ___ year(s) beginning on March 1, 20___ and expiring on February __, 20___, unless terminated earlier as provided herein. A new permit may be automatically issued upon expiration, provided rent is paid and the pier is maintained. The City's longstanding policy is to re-issue residential permits to the upland property owner, who also owns the physical dock associated with the Premises.
- (3) Rent: Rent shall be calculated pursuant to Resolution No. 2013-___, or any successor/amended resolution. Resolution No. 2013-___ and any successor/amended resolution are automatically incorporated by reference into this Permit, without any further action by the parties, when adopted by the Newport Beach City Council.
- (A) Periodic Payment of Rent: One-sixth (1/6) of annual rent for a particular year shall be received by the City within nineteen (19) days after the mailing of the Municipal Services Statement to Permittee. Bi-monthly rent will be billed with the Permittee's Municipal Services Statement.
- (B) Place for Payment of Rent: All payments of rent shall be made in lawful money of the United States of America and shall be paid to City online at www.newportbeachca.gov, in person or by United States' mail, or overnight mail service, at the Cashier's Office located at 100 Civic Center Drive, Newport Beach, CA 92660, or at such other address as City may from time to time designate in writing to the Permittee. The Permittee assumes all risk of loss and responsibility for late charges and delinquency rates if payments are not timely received by the City, regardless of the method of transmittal.
- (C) Late Charges: A ten percent (10%) late charge, or the maximum rate allowable under State law, shall be added to all payments due but not received by City by the due date.
- (D) Third-Party Use: This Permit allows / does not allow (check one) the Permittee to rent/lease the Premises to a third-party.
- (4) Utilities and Taxes: The Permittee is solely responsible for obtaining all utilities and paying all taxes (including possessory interest tax, if applicable), fees and assessments for the Premises or improvements located thereon.
- (5) Maintenance: The Permittee assumes full responsibility for operation and maintenance and repair of the Premises and associated improvements throughout the term of this Permit at its sole cost, and without expense to the City.
- (6) Transfer/Assignment: This Permit may be transferred or assigned by the Permittee as provided in the Newport Beach Municipal Code.

ORDINANCE NO. 2013-___

**AN ORDINANCE OF THE CITY COUNCIL OF
THE CITY OF NEWPORT BEACH,
CALIFORNIA, AMENDING CHAPTER 17.60
AND SUBSECTION 17.35.020(B)(2) OF THE
NEWPORT BEACH MUNICIPAL CODE
REGARDING RESIDENTIAL AND
COMMERCIAL PIERS LOCATED UPON
TIDELANDS**

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

WHEREAS, Section 1(b) of the Beacon Bay Bill and Title 17 of the Newport Beach Municipal Code (“NBMC”) allow the City to authorize third parties to use tidelands for commercial and noncommercial purposes for a term not to exceed fifty (50) years;

WHEREAS, the City allows persons to operate and maintain commercial and noncommercial piers upon the tidelands under City issued permits or leases;

WHEREAS, the City recently completed a comprehensive review of the fair market value rents charged for private commercial and noncommercial uses of the tidelands;

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

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

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

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

WHEREAS, the City desires to extend the length of a residential pier permit from one (1) year to a maximum of ten (10) years to provide greater assurances to the tidelands users and to clarify the persons authorized to use residential piers; and

WHEREAS, the City desires to clarify existing code language regarding commercial piers authorized to encroach in front of adjacent property by codifying the Harbor Resources Manager's interpretation of Subsection 17.60.060(E), which allows commercial piers to encroach in front of adjacent property but does not relieve a person from compliance with Subsection 17.35.020(F), this interpretation and codification is consistent with the City Council's original intent in enacting Subsection 17.60.060(E) and this interpretation shall be applied retroactively.

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

Section 1: Subsection "(M)(5)(b)" of Section 17.01.030 of the Newport Beach Municipal Code is amended to read as follows:

Noncommercial Pier. The term "noncommercial pier" shall mean a pier used for private recreational purposes by the owner(s), occupant(s), guest(s) or lessee(s) of the abutting residentially zoned upland property.

Section 2: Subsection "(B)(2)" of Section 17.35.020 of the Newport Beach Municipal Code is amended to read as follows:

With the prior approval of City, piers and slips for commercial properties may extend past the prolongation of the property line.

Section 3: Section 17.60.030 of the Newport Beach Municipal Code is amended to read as follows:

17.60.030 Pier Permits for Noncommercial Piers.

A. Pier Permits. Permits for piers and other structures used for noncommercial purposes in Newport Harbor located upon public tidelands shall be renewed upon expiration.

B. Rental Fees.

1. Rental Fee Required. Every owner or permit holder who maintains a pier used for noncommercial purposes, any part of which extends into public tidelands, shall pay to the City the applicable pier permit rental fee for such portions of the pier that extend into public tidelands, as established by City Council resolution.

C. Transfer of Noncommercial Pier Permits.

1. Permits for harbor structures are issued subject to the condition that any improvements constructed shall not be sold in whole or part, leased, or transferred, without the written consent of the City.

2. Whenever a permittee sells the abutting residential upland property, a request shall be made to the City to transfer the permit. Forms for this purpose may be obtained from the Harbor Resources Division. Failure to apply for a transfer within thirty (30) days from the date that the abutting upland residential property changed ownership will result in an additional fee as established by resolution of the City Council.

3. Along with the City Manager, the Harbor Resources Division is authorized to approve transfers to the new owners or long-term lessee of the abutting upland residential property.

4. Prior to the transfer of a pier permit, all harbor structures shall be inspected for compliance with the City's minimum plumbing, electrical and structural requirements, and the conditions of the existing permit. All structural deficiencies must be corrected prior to the transfer of the permit.

5. Noncommercial piers may be rented/leased by the owner(s) or occupant(s) of the abutting property to a third party. Such rental/lease shall not be deemed a transfer under this section.

Section 4: Subsection “A” of Section 17.60.060 of the Newport Beach Municipal Code is amended to read as follows:

A. Leases/Permits. In the event public trust lands are used by an entity other than the City, then that entity shall enter into a lease or permit with the City.

1. Leases shall provide lessees with a leasehold interest in the property for a period of at least five (5) years, not to exceed a period of time as limited by the City Charter or applicable State law.

2. Permits shall provide permittees with an interest in the property for a period of ten (10) years or less, to be determined in the sole and absolute discretion of the City.

Section 5: Subsection “E” of Section 17.60.060 of the Newport Beach Municipal Code is amended to read as follows:

Commercial uses provided under this Title 17 are exempt from any provision requiring involvement of the owner or long-term lessee of an abutting upland property. This Subsection’s sole purpose is to allow a person to apply for a commercial pier permit or lease in front of or encroaching upon abutting upland property not owned or leased by the person applying for the permit.

Section 6: The recitals provided in this ordinance are true and correct and are incorporated into the substantive portion of this ordinance. Except as expressly modified herein, all other provisions, terms, and covenants set forth in the Newport Beach Municipal Code shall remain unchanged and shall be in full force and effect.

Section 7: 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 invalid or unconstitutional.

Section 8: The City Council finds the introduction and adoption of this ordinance is not subject to the California Environmental Quality Act (“CEQA”) pursuant to Sections

15060(c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment) and 15060(c)(3) (the activity is not a project as defined in Section 15378) of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, because it has no potential for resulting in physical change to the environment, directly or indirectly. Alternatively, the City Council finds the introduction and adoption of this ordinance is not a project under CEQA Regulation Section 15061(b)(3) because it has no potential for causing a significant effect on the environment.

Section 9: The Mayor shall sign and the City Clerk shall attest to the passage of this ordinance. The City Clerk shall cause this ordinance, or a summary thereof, to be published pursuant to Charter Section 414.

This ordinance was introduced at a regular meeting of the City Council of the City of Newport Beach, held on the 26th day of November, 2013, and adopted on the 10th day of December, 2013, by the following vote, to wit:

AYES, COUNCILMEMBERS _____

NOES, COUNCILMEMBERS _____

ABSENT COUNCILMEMBERS _____

KEITH D. CURRY, MAYOR

APPROVED AS TO FORM:

THE CITY ATTORNEY'S OFFICE

 (for)

AARON C. HARP, CITY ATTORNEY

ATTEST:

LEILANI I. BROWN, CITY CLERK

Look Back Municipal Code Amendments

17.60.030 ~~Annual~~ Pier Permits for Noncommercial Piers.

A. Pier Permits. Permits for piers and other structures used for noncommercial purposes in Newport Harbor located upon public tidelands shall be renewed upon expiration. ~~annually.~~

B. Rental Fees.

1. Rental Fee Required. Every owner or permit holder who maintains a pier used for noncommercial purposes, any part of which extends into public tidelands, shall pay to the City ~~the applicable~~ an annual pier permit rental fee for such portions of the pier ~~that~~ as extend into public tidelands, as established by City Council resolution.

C. Transfer of Noncommercial ~~Annual~~ Pier Permits.

1. Permits for harbor structures are issued subject to the condition that any improvements constructed shall not be sold in whole or part, leased, or transferred, without the written consent of the City.

2. Whenever a permittee sells the abutting residential upland property, a request shall be made to the City to transfer the permit. Forms for this purpose may be obtained from the Harbor Resources Division. Failure to apply for a transfer within thirty (30) days from the date that the abutting upland residential property changed ownership will result in an additional fee as established by resolution of the City Council.

3. Along with the City Manager, the Harbor Resources Division is authorized to approve transfers to the new owners or long-term lessee of the abutting upland residential property.

4. Prior to the transfer of ~~an annual~~ pier permit, all harbor structures shall be inspected for compliance with the City's minimum plumbing, electrical and structural requirements, and the conditions of the existing permit. All structural deficiencies must be corrected prior to the transfer of the permit.

5. Noncommercial piers may be rented/leased by the owner(s) or occupant(s) of the abutting property to a third party. Such rental/lease shall not be deemed a transfer under this section.

NBMC Section 17.60.060(A)

A. Leases/Permits. In the event public trust lands are used by an entity other than the City, then that entity shall enter into a lease or permit with the City.

1. ~~Such L~~leases shall provide lessees with a leasehold interest in the property for a period of at least five (5) years, not to exceed a period of time as limited by the City Charter or applicable State law.

2. ~~Such p~~Permits shall provide permittees with an interest in the property for a period of ~~ten (10) yearstwelve (12) months~~ or less, to be determined in the sole and absolute discretion of the City.

GENERAL CLEAN UP PROVISIONS RE: COMMERCIAL & NON-COMMERCIAL PIERS

NBMC Section 17.01.030(M)(5)(b)

b. Noncommercial Pier. The term “noncommercial pier” shall mean a pier used for private recreational purposes by the owner(s), ~~or~~ occupant(s), guest(s) or lessee(s) of the abutting residentially zoned upland property.

NBMC Section 17.60.060(E)

Commercial uses provided under this Title 17 are exempt from any provision requiring involvement of the owner or long-term lessee of an abutting upland property. This Subsection’s sole purpose is to allow a person to apply for a commercial pier permit or lease in front of or encroaching upon abutting upland property not owned or leased by the person applying for the permit.

NBMC Section 17.35.020(B)(2)

With the prior approval of City, All-piers and slips for commercial properties may extend ~~to, but not~~ past, the prolongation of the property line.

Brian H. Ouzounian
1222 East Balboa Blvd.
Newport Beach, CA 92661
Email: brian.oci@sbcglobal.net

November 19, 2013

Harbor Resources
Attn: Mr. Chris Miller
City of Newport Beach

Re: Mooring Revenue for Guest Boaters

Dear Mr. Miller:

This is to follow up on my testimony at the Study Session (11-12-13) concerning the staff report item that described the approximately \$80,000 in annual revenue for guest boater mooring fees placed upon vacant moorings.

I made the oral request at the study session, and now by this memo a request, to split the daily fees that the City collects from guest boaters on a 50/50 basis with the mooring permittee. In the normal course of business, the permittee is billed on a bi-monthly basis a rental fee and every two years is obligated to pay for haul out, inspection, repair, and painting of the mooring assembly from top of can to bottom of anchor. This two year expense traditionally runs between \$1,100 and \$2,500 dollars.

This request also extends to Lifeguard and Harbor Patrol vessels that are routinely moored that they (City or County) pay the permittee one half of the going rate for that season in which vessels are moored. As of this writing, three yellow Lifeguard boats are moored on my mooring and two adjacent ones.

Considering that staff made the statement at the study session that they are looking for a destination of this revenue, the 50/50 split with the permittee is a reasonable approach and one that I would hope the City Council will act upon.

May I ask that you attach this memo and request direction in your next report to the City Council in hopes that we can achieve this goal?

If you have any questions, please contact me.

Best Regards,
Brian Ouzounian