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Response to Grand Jury Recommendations – Consideration of Mooring Transferability and the Wait List

City of Newport Beach

City Council Study Session

October 23, 2007



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Issue

The Grand Jury Report states: “The purpose of this report is to research and review the policies and procedures involved in the transfer of the public moorings located in Newport Harbor and to investigate whether private profits are being made from these transactions.”

If the response to the Grand Jury’s recommendation requires further analysis then the California Penal Code 933.05 states: “... an explanation and the scope and parameters of an analysis or study, and a timeframe for the matter to be prepared for discussion by the officer or head of the agency or department being investigated or reviewed, including the governing body of the public agency when applicable. This timeframe shall not exceed six months from the date of publication of the grand jury report.”

Grand Jury Recommendations 1, 2, 4, 7 and 9 required further analysis: The Mooring Master Plan Subcommittee developed a revision to the Municipal Code which addresses the issues presented in these recommendations.



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Related Grand Jury Recommendations

- R-1: Tighten the regulations and procedures involved with Newport Harbor mooring permits and their transfers to ensure that all monies received which rightly belong to the public, stay within the public arena.***
- R-2: Consider public access to available moorings through adopting a more effective waiting list.***
- R-4: Independently analyze and reestablish the City's Municipal Code concerning the Harbor Regulations on moorings; have new procedures match corrected regulations rather than codifying, without review, what has become embedded as established practice.***
- R-7: Review the inclusion of yacht clubs and trust as mooring permittees.***
- R-9: Review and update the mooring waiting list.***



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Fair and Equitable

- Given that the City and County currently has a mooring management system that has evolved over 60 years in Newport Bay, it appeared impossible to the Mooring Master Plan Subcommittee to develop a fair and equitable management system that was drastically different than the existing system.
- Instead, the Subcommittee fine-tuned the existing management system by:
 - Defining how a mooring permit could be transferred in compliance with Municipal Code rather than through existing loopholes.
 - Defining to whom a mooring permit can be issued.
 - Providing for short and long-term mooring rentals that make the 720 mooring more accessible to the public.
 - Phasing out a non-functional wait list and providing a means for mooring access to those that waited so long on that wait list.
 - Providing a financial benefit to the tidelands fund for activities related to the transfer and rental of the moorings.



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Mooring Permits May be Transferred if...

1. The permittee has divested himself of the ownership of the vessel moored thereto, or
2. The permittee has retained ownership of the vessel and has permanently vacated the mooring, and
3. The permittee has not transferred a mooring permit in Newport Harbor more than once during the previous twelve (12) months and/or the mooring in question has not been transferred more than once during the previous twelve (12) months (additional mooring transfers may be allowed at the discretion of the Harbor Resources Manager provided there is no indication of mooring speculation), and
4. The proposed permit recipient is not currently named to more than two (2) other mooring permits (additional mooring transfers may be allowed at the discretion of the Harbor Resources Manager provided there is no indication of mooring speculation). More than two moorings may be permitted for special consideration to providers of harbor infrastructure construction and repair services, and
5. The permittee provides the appropriate transfer fee per Section G of this Chapter to the City of Newport Beach for deposit in the Newport Harbor Maintenance Reserve Fund (NHMRF).



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A mooring permit may be issued to the following...

A mooring permit may be issued to the following provided that there is one person named to the mooring permit who maintains legal responsibility for all activities related to the permit:

1. A natural person.
2. family trust with a natural person named to the trust that is also named to the ownership of the vessel,
3. A documented partnership.
4. A marine contractor that provides harbor infrastructure services (such as dredging),
5. The Balboa Yacht Club and Newport Harbor Yacht Club within their respectively assigned mooring areas,
6. The Lido Isle Community Association (assigned shore moorings on Lido Island),



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Short and long-term rentals make moorings more available to the public:

1. The City of Newport Beach and County of Orange may rent vacant moorings (without the assigned vessel tied up for more than 30 days) at their discretion. However, this section does not apply to yacht clubs or community associations which independently manage their moorings.
2. The mooring permittee may not sub-rent the mooring.
3. Mooring permittees without a vessel on the assigned mooring for more than 30 days must notify the City/County of availability of the mooring for rent.
4. Mooring permittee must notify the City/County 30 days prior to returning from a long (for purposes of this section, “long” shall be defined as greater than 60 days) absence.
5. Upon return of the permittee to the assigned mooring, the City or County will reassign the renter to another mooring.
6. A mooring renter must enter into a rental agreement with the City/County and provide insurance (including evidence of marine pollution coverage), registration or documentation, a non-refundable contribution to an equipment damage repair fund and agree to be responsible for damage to mooring equipment.
7. The long-term mooring renter shall provide mooring lines which shall be removed at the end of the rental period.



Short and long-term rentals make moorings more available to the public (continued):

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8. The sub-rental agreement is renewable based on availability. Having rented a mooring for any length of time does not entitle a renter to a renewal anywhere in Newport Harbor.
9. Long-term rental of moorings will be offered to those persons currently on the wait list, as a priority.
10. Persons not currently on the wait list may rent a mooring on a long-term basis, if available after offering open moorings to the wait list.
11. Persons on the wait list who do not accept a rental offering do not lose their position on the wait list.
12. It shall be the City objective to assign approximately 75% of the moorings available for rent to long-term rental.
13. The remaining 25% of the moorings available for rent will be rented to transient vessels on a short-term basis.
14. The rental fee will be based on a rate established by the Newport Beach City Council and delineated in the Master Fee Resolution.
15. The rental fee will be deposited in the NHMRF.
16. No liveaboards shall be allowed on long-term rental moorings.



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Existing wait list will be phased out...

1. No additional names will be placed on the wait list effective December, 31 2007.
2. All persons on the wait list will be sent two notices (providing 30 day response time for each) requesting updating of current contact information.
3. If there is no response to the 30 day notices, then the person will
dropped from the wait list.
4. Biannual (two years) requests for contact information updates will
be sent to wait list participants. Persons not responding to the two notice process, as noted above, will be dropped from the wait
list.
5. A nominal fee adopted by the City Council in the Master Fee



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Existing wait list will be phased out (continued) ...

6. Revoked, cancelled, returned or abandoned moorings will be offered to persons on the wait list based on a mooring permit reallocation fee established by the Newport Beach City Council and delineated in the Master Fee Resolution.
7. The mooring permit reallocation fee will be deposited in the NHMRF.
8. The mooring permit reallocation fee will be calculated based on 50% of the current market value per linear foot assigned to mooring permits in the most recent harbor fee appraisal survey.
9. If no person on the wait list accepts a mooring permit according to the reallocation process noted above, then the City/County may auction the mooring permit and assign the mooring permit to the highest sealed-bid submitted.



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A Transfer Fee will be Required ...

1. The transfer fee shall be equal to one year's current mooring permit fee (adjusted annually with the City Council's adoption of the Master Fee Schedule) for the mooring being transferred, and
2. Exemption to the transfer fee is allowed for transfers to a surviving spouse.



Future Consideration of this issue ...

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- Staff from the City Attorney's Office, Planning Department, Revenue Department and Harbor Resources Division have been working on rewriting Title 17 of the Municipal Code.
- A primary goal of this effort is to transfer the City Council's Harbor Permit Policy into the Municipal Code, as needed, for more effective enforcement.
- The Mooring Master Plan Subcommittee will continue its effort to evaluate and recommend revisions to all administrative rules and regulations relative to mooring management.
- We will include the proposed revisions to the Code relative to transferability and mooring management in the Title 17 rewrite for your future consideration.