

**Newport Mooring Association
Mooring Study and Position Report
November 19, 1998**

Prepared by

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Revised 11/14/2003

Newport Mooring Association
P.O. Box 1118
Newport Beach, CA 92659

Acknowledgments

Past Presidents:

1995 Founded by Monty Snyder

1996 Jonathan Woolf-Willis

1997 John Bowman

1998 Sarajane Towndrow

1999-2003 Clive Towndrow

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Executive Summary

The Newport Mooring Association has shown in this report that the Mooring Permittee holders are charged ten times more than other Newport Beach tide and submerged land users. Also, Newport Beach charges more than any other City for Mooring Permits. Comparing mooring fees for a 40 foot boat on the Pacific coast indicated Newport Beach is charging 79% above the average fee. Further, Newport Beach does not provide any services for the fees charged.

Introduction

This report provides City Officials and others who might be interested in mooring matters insight into the mooring environment, its usage, problems, and concern of mooring users.

Newport Mooring Association (NMA)

The Newport Mooring Association By-Laws stated purpose is as follows:

Newport Mooring Association is responsible for promoting the business and personal interest of mooring Permittee and persons holding property, real or personal, adjacent or attached to, residing on, or anchored to tidelands or public property in, upon, or adjacent to Newport Harbor, as those interest relate to the use of the bay area.

Membership

All persons holding mooring permits for use of public lands or who have property, real, or personal situated on tidelands or over public lands adjacent to the waters know as Newport Harbor are eligible for membership.

Our Tidelands Committee's objective is as follows:

Promote a fair and equitable fee rate assessment that is commensurate with the enjoyment and benefit derived from leases and permits issued for tide and submerged lands usage. Fair and Equitable use and permit rates shall be interpreted as that which justly reflects the inherent relative, ability, accessibility and convenience of enjoyment or benefit derived from each particular usage category adjusted to reflect the impact of limitations imposed on that enjoyment from location, legal and or contractual restrictions and whether permit is for commercial or noncommercial use, and whether rights or privileges are transferable or non-transferable.

NMA History

The new Newport Mooring Association was initially formed on December 1995 by Monty Snyder and his "Grab an Oar Committee" at the organization meeting with members. First election of Officers and official start of business was on January 1996 with the election of Jonathan Woolf-Willis by the member appointed NMA Board of Directors. The City's raising of the fees charged to Mooring permittee holders and the need for an effective common voice to the City Council were the driving forces behind the formation of the NMA.

The previous Mooring Owners Association was formed by Captain Younger who died on December 23,1971.

As a side note, the Mooring Maintenance Service founded by Captain Younger later became Anchor Marine Repair.

Newport Mooring Association Issues

Mooring Fees

The fee structure is excessive compared to rates for other City Moorings and tide and submerged lands fees within Newport Harbor. We do think the moorings should be charged based on the length of the mooring or the total square footage of tide and submerged land that the mooring covers.

Equity in Fee Structure

The Commercial and Non-Commercial Pier Permits are currently only \$70 to \$80 per year. They have not been raised for quite some time. In fact, it might be these fees that the States Lands Division's "Audit of the tidelands grant to the City of Newport Beach", noted in violation of State Statute.

Public Docks (for Dinghy storage)

The City should consider extending the current 20 minute limit to 4 hours. This would be more convenient for running errands and returning without the accompanying problem of restoring the dinghy to the water on the return trip.

The City could also consider allowing Live Aboard's to leave the dinghy for extended periods. This might require a sticker to attach to the dinghy, it could be issued with the Live Aboard Permit.

Derelict Boats

The NMA has supported and helped the City of Newport Beach draft an ordinance to deal with un-seaworthy boats.

Use of Tidelands Funds

The City of Newport Beach continues to use the excuse that the Tide and submerged lands are operated at a loss, thereby justifying increases to the Mooring Permittee. If there are no services provided for the Fees, the fees should more than cover the operating expenses.

Increased revenue could be generated from the Commercial and Non-Commercial Pier Permits.

Automobile Parking

Parking permits could be issued with the years paid Mooring Fees which could alleviate the parking problems and provide a valid service for the Mooring Fees charged by the City.

Moorings Activity

The Mooring owner uses the mooring to provide a low cost storage area for their boats. Moorings permit boat owners to enjoy boating at a reasonable cost. However, the low cost has its inconveniences as this section will demonstrate.

Unloading the Dinghy

The Mooring holder must find a loading/unloading place near the boat. This can be a problem in Newport Beach because of the limited public access to piers, especially during peak use periods. Once a place to unload has been found, the dinghy is unloaded and tied up at the pier. If an inflatable is used, the inflatable is generally inflated and then tied up to the pier dock.

Parking

At this point, the dinghy is left unattended until a parking place has been found and a walk back to the dock. This can be a lengthy walk. In fact the 20 minute limit at the dock needs to be extended because of this problem. Long term parking can also be a problem. The street cleaners clean on some days such as Mondays and Tuesdays.

Getting to/from the Boat

This means rowing to the mooring for short trips or motoring if the distance is too far for rowing.

Boat Cleaning

Washing down the boat is accomplished with the use of biodegradable soap and salt water. An on board raw water pump or the old tried and proven bucket is used for washing the boat. Generally, the boat needs washing with each visit. The combination of the overhead airplanes and the birds necessitates frequent wash downs.

Pump Out Station

Pump out generally will be visited monthly if not more frequently. Holding Tanks pumped out, some cleaning of difficult to get at spots, fill up the water tanks (add chlorine to water tank(s)), and leave, usually consumes about 30 minutes. As a general note, the pump out stations are not functioning in about 1 out of 4 visits and an alternative site needs to be visited.

Fresh Water

Water for showers, cleaning, and like can be obtained at the Pump out station or for these rich folks, an on board water maker. The water at the pump out station is non potable so bottled drinking water is brought aboard the boat.

Electric Power

Electric power is generated by the boats main auxiliary engine, solar panels, wind generator, motor generator set, or a battery driven inverter. Not as convenient as the slips with commercial power.

Live Aboard

Live Aboard permits are available and are required by Newport Beach for extended stay aboard a boat on a mooring. The City's definition of a Live Aboard needs updating, but in general, if you stay aboard your boat for more than three (3) consecutive days you need a Live Aboard permit. This is the stated Newport Harbor Policy. The Live Aboard permit resolution stated anyone spending more than two vacation weeks and weekends is a Live Aboard. In any event, these conflicting definitions need to be revised to be consistent with the intent.

Tidelands

Existing law grants in trust to the City of Newport Beach all tide and submerged lands, whether filled or unfilled, bordering upon and under the Pacific Ocean or Newport Bay, as described, subject to specified conditions." SB 573, Johnson. City of Newport Beach: tide and submerged lands.

Chapter 74 of the State of California Statutes of 1978 states the Grant, states that the States Land Commission will oversee the City of Newport Beach, and states how things will be done.

Chapter 74, Section 1, (d) "In the management, conduct, operation, and control of the lands or any improvements, betterments, or structures thereon, the city or its successors shall make no discrimination in rates, tolls, or charges for any use or service in connection therewith."

Chapter 74, Section 1, (i) "The city shall establish a separate tidelands trust fund or funds in such a manner as may be approved by the States Lands Commission, and the city shall deposit in the fund or funds all money received directly from, or indirectly attributable to, the granted tidelands in the city."

Chapter 74, Section 1, (p) "The States Land Commission shall, from time to time, institute a formal inquiry to determine that the terms and condition of this act, and amendments thereto, have been complied with in good faith."

Comparisons of Tideland Use Fees within Newport Harbor

The off shore mooring Permittee are charged ten (10) times the rate of the other two tide and submerged lands use categories.

Moorings *

$\$20/\text{footyear} - 40 \text{ feet} \times \$20/\text{foot} = \$800/\text{year} (\$2.00/\text{square foot/year})$

Commercial Piers over Tidelands **

Annual Rent \$ 0.28/square foot/year

300 square feet x \$.28/square foot=\$84/year

Non-Commercial Piers (Homeowners) **

\$70/year

* Annual City Resolutions

**Source - Harbor Permit Policy <http://www.City.Newport-Beach.ca.us/ICouncilIPoliciesIH-1.htm>

Mooring Fees Comparison by City

For a 40 foot boat (the average length on Newport Beach Offshore Moorings), Newport Beach is higher by the following percentage:

Newport Beach	\$800	
Monterey	\$300	166%
Morro Bay	\$636	25%
San Diego	\$520*	53%
Port SL	\$300	166%
Avalon	\$254	215%
<u>Pillar</u>	<u>\$660</u>	<u>21%</u>
Average	$\$2,670/6 = \445	79%

Both Morro Bay and San Diego do not have length limits, therefore the percentage would increase for larger boats

* San Diego maintains the moorings, figure reduced \$200 for comparison

Harbors with Flat Rate:

City of Monterey (200 moorings) \$25/mo for resident

$\$25/\text{mo} \times 12\text{mo}/\text{yr} = \$300/\text{yr}$

\$30/mo for non-resident $\$30/\text{mo} \times 12\text{mo}/\text{yr} = \$360/\text{yr}$

Morro Bay (120 moorings) \$53/mo

$\$53/\text{mo} \times 12\text{mo}/\text{yr} = \$636/\text{yr}$

San Diego (437 moorings)

\$60/mo

$\$60/\text{mo} \times 12\text{mo}/\text{yr} = \$720/\text{yr}$

Mooring maintenance provided at no charge

Harbors with adjusted Rate:

Port San Luis (300 moorings) 00-35 foot \$21/mo

$\$21/\text{mo} \times 12\text{mo}/\text{yr} = \$252/\text{yr}$

6-55 foot \$25/mo

$\$25/\text{mo} \times 12\text{mo}/\text{yr} = \$300/\text{yr}$

56 + foot $\$29/\text{mo}$

$\$29/\text{mo} \times 12\text{mo}/\text{yr} = \$348/\text{yr}$

Avalon (300 moorings)

Fee based on boat length

00-35 foot

$\$0.53/\text{ft} \times 12\text{mo}/\text{yr} \times 35 \text{ feet} = \$223/\text{yr}$

36-55 foot

$\$0.53/\text{ft} \times 12\text{mo}/\text{yr} \times 55 \text{ feet} = \$350/\text{yr}$

56-75 foot

$\$0.53/\text{ft} \times 12\text{mo}/\text{yr} \times 75 \text{ feet} = \$477/\text{yr}$

Pillar Point Harbor (Half moon Bay) (200 moorings)

00-35 feet

$\$1.00/\text{ft} \times 12\text{mo}/\text{yr} \times 35\text{ft} = \$420/\text{yr}$

35-55 feet

$\$1.00/\text{ft} \times 12\text{mo}/\text{yr} \times 55\text{ft} = \$660/\text{yr}$

56-75 feet

$\$1.00/\text{ft} \times 12\text{mo}/\text{yr} \times 75\text{ft} = \$900/\text{yr}$

Newport Harbor (714 mooring off-shore)

$\$20/\text{foot}$ of mooring length

(Lengths for comparison purposes)

35 foot

$\$20/\text{ft} \times 35 \text{ foot} = \$700/\text{yr}$

55 foot

$\$20/\text{ft} \times 55 \text{ foot} = \$1100/\text{yr}$

75 foot

$\$20/\text{ft} \times 75 \text{ foot} = \$1500/\text{yr}$

Questions and Comments

1. Is the city charging a fair and equitable fee for the moorings compared to other tide and submerged land users within the city?
2. Why are the Mooring Fees reviewed annually when the other tide and submerged lands users are not?
3. What is the precedent for fee increases in the city for other fees?
4. Have these other fees been raised with the Consumer Price Index?
5. Have the mooring operating expenses been tabulated against revenue?
6. In a letter to James L. Postma dated July 10, 1975, D. Harshbarger, Assistant Director, Tidelands Operation Division, Marine Department, responded "In July of 1974, the State Lands Division submitted an "audit of the tidelands grant to the City of Newport Beach. The audit referenced Article XIII, Section 25 of the State Constitution implied the City was in violation of the gift clause of the State Constitution in offering what was considered a preferential rate to both offshore and on-shore mooring owners."
 - a) The NMA would like a copy of this Audit.
 - b) There are no provisions in Article XIII, Section 25 that refer to grants, it is a taxation section.
 - c) The NMA questions whether the other tide and submerged land fees should or could have been the reason for the violation.
7. In the June 9, 1995 Memo to the Mayor and City Council from the Marine Department recommendation for a rate increase. The following justifications were presented:
 - a) Misquoted the State Constitution as above (Article XIII, Section 25)
 - b) Raise the Revenue to offset the \$1.5 million loss. The moorings do not account for the loss in fact administration of the mooring is probably less than \$250,000 per year.
8. The People on the Mooring Waiting List complain to the States Lands Commission. The complaints are basically that the waiting list is too long. The fact of the matter is these people want a free mooring. It is interesting that the States Lands Commission responds to this kind of pressure. Maybe they feel this warrants a higher fee. Incidentally, the States Lands Commission is required to make sure that all provisions of the California State Statutes regarding tide and submerged lands are adhered to. And specifically Chapter 74 section 1, d, which states there will be no discrimination in rates, tolls, or other charges. They seem to turn away from applying this to all tide and submerged land uses. So it would seem, the State Lands Commission and the City of Newport Beach are in violation of the State Statute Chapter 74 section 1, d.
9. The Commercial users of the tide and submerged lands argue that they can not afford to pay anything above the \$0.26 per square foot and make a reasonable profit. They seem to be winning that argument.
10. The Non-Commercial users of tide and submerged lands are what is know as "Littoral Landowners", which means as I understand it the place on the beach that gets covered with water when the tide comes in. But they still have to pay for the pier out over the tide and submerged lands.
11. We could argue that because of State Statute Chapter 74 section 1, d, the City should charge us the same as the other tideland uses. This action would probably trigger a change in methods to the square foot fee, which I believe would be better for the Mooring Permittee. However, how much area do the moorings take up? It could be argued that the entire mooring section could be charged at the square foot basis and then each individual mooring could be charged a rate commensurate to the length of mooring.

Definitions

Littoral *n* : a coastal region; the shore zone between high and low watermarks.

Tideland 1 : land overflowed during flood tide 2 : land underlying the ocean and lying beyond the low water limit of the tide but being within the territorial waters of a nation.

Recommendations

1. Reduce the Mooring fees by 28%.
2. Charge a 10% fee for mooring transfers.
3. The people who obtain a mooring from the “Mooring Waiting List” should be charged by the City an initial fee for the mooring permit of ten (10) times the annual permit rate.
4. Within three (3) years, the fees charged for tide and submerged lands use should be brought in compliance with the requirement of the State Statute.
5. Update the City Harbor Policy regarding the definition of a Liveaboard.
6. Create a separate Tidelands Fund as required by State Statute.

Appendix A Related Reference Documents

City of Newport Beach

Harbor Permit Policy, H.1

<http://www.city.newport-beach.ca.us/CouncilPolicies/H-1.htm>

Consumer Price Index

<http://www.city.newport-beach.ca.us/CouncilPolicies/F-6.htm>

Harbor regulations:

<http://ordlink.com/codes/newportb/index.htm>

Chapter 17.22 Anchorage and moorings

Chapter 17.33 Pier Fees,

Resolution No. -89-11 A resolution of the city Council of the City of Newport Beach establishing a fee for processing Live-aboard permits.

Resolution No. - 95-77 A resolution of the City Council of the City of Newport Beach establishing Mooring Fees and a late payment penalty pursuant to Section 17.22.050 of the Newport Beach Municipal Code and rescinding Resolution no 94-53.

Proposed Derelict Boat Ordinance

City/County Newport Harbor Joint Powers Mooring Agreement No. D89-035 and Amendment No.1

County of Orange County

Codified Ordinances County of Orange Division 2 Title 2 Article 6, 7

State of California

State Constitution:

<http://www.leginfo.ca.gov/const.html>

California State Constitution Article XIII, Section 25

Statutes:

<http://leginfo.public.ca.gov/statute.html>

Chapter 74 of 1978

Bills:

SB 573 Chaptered 08/18/1997

AB 3139 Chaptered 09/22/1994

Appendix B Contacts

California State Lands Commission (CSLC)
1807 13th Street
Sacramento, CA 95814
916-445-7134
<http://bear.slc.ca.gov/>

City Contacts
Fire and Marine Department
70 Newport Pier
Newport Beach, CA 92658
949-644-3047 or 949-644-3044
FAX: 949-673-3056

Newport Beach City Hall 949-644-3004
San Diego - <http://www.sdhcp.com/mooring.htm>
Santa Monica - <http://pen2.clsanta-monica.ca.uslcity/municodelart10/10.08/10.08.110.htm>

Appendix C Mooring Demographics

Offshore Moorings

Section	Location	Number
A		132
M	Newport Yacht Club	
B		77
	Balboa Yacht Club	
C		50
D		56
F		21
G		18
H		91
J	West of 15th Street	128
K		21
	Sub Total excluding NYC & BYC	594
	Estimate of NYC & BYC	120
	Total Offshore Moorings	714

Source: City Mooring Mailing Information

Onshore Moorings

Section	Location	Number
E		33
LI	Lido Isle	
LN		15
LS		7
N		142
P		54
S		151
W		42
	Sub Total less Lido Isle	444
	Total On Shore Moorings	484

Source: City Mooring Mailing Information

Other Demographics:

43% (524) Mooring Permits are held by Newport Beach residence.

Total Number of Boats in Newport Harbor 9,000

County Moorings(G-1 through 18):	18
Commercial slips and Side Ties:	2,119
Bay Moorings:	1,221
Residential Piers:	1,230

Source: BPAC Report

Appendix D Chapter 74 of the State of California Statute of 1978

BILL NUMBER: SB 573 CHAPTERED 08/18/97

CHAPTER 317

FILED WITH SECRETARY OF STATE AUGUST 18, 1997

APPROVED BY GOVERNOR AUGUST 18, 1997

PASSED THE SENATE AUGUST 4, 1997

PASSED THE ASSEMBLY JULY 21, 1997

AMENDED IN ASSEMBLY JUNE 25, 1997

AMENDED IN SENATE MAY 5, 1997

INTRODUCED BY Senator Johnson

FEBRUARY 24, 1997

An act to amend Sections 1 and 2 of Chapter 74 of, and to add Section 2.5 to, the Statutes of 1978, relating to tide and submerged lands in the City of **Newport Beach**.

LEGISLATIVE COUNSEL'S DIGEST

SB 573, Johnson. City of **Newport Beach**: tide and submerged lands.

Existing law grants in trust to the City of **Newport Beach** all tide and submerged lands, whether filled or unfilled, bordering upon and under the Pacific Ocean or **Newport Bay**, as described, subject to specified conditions.

The legislative grant requires the city to establish a separate **tidelands** trust fund or separate **tidelands** trust funds as may be approved by the State Lands Commission and requires the city to deposit in the fund or funds all money received directly from, or indirectly attributable to, the granted tide and submerged lands, including a city tideland capital fund, into which revenues from Parcels A, B, and C, as described, are required to be deposited, to be available only for the acquisition of real property that will further the purposes of the trust.

Existing law creates the Land Bank Fund in the State Treasury, which is appropriated to the commission for the management and improvement of public trust lands. The legislative grant requires a specified percentage of lease revenue from Parcel D, as described, to be deposited in that fund.

This bill would revise the legislative grant to require the city to establish a Tideland Capital Fund, a Tideland Operation and Maintenance Fund, and an Upper **Newport Bay** Restoration Fund. The bill would require that 80% of the revenues from Parcels A, B, and C be deposited in the Tideland Capital Fund and in the Tideland Operation and Maintenance Fund, allocated as determined by the city, and would require 10% of those revenues to be deposited in the Upper **Newport Bay** Restoration Fund and 10% in the Land Bank Fund. The bill would prescribe the uses for which the money in the funds could be expended.

The bill would authorize the city to transfer, subject to commission approval, city-owned real property not subject to the public trust to the trust created pursuant to the legislative grant, and to compensate its general fund for any such transfer, as specified.

The bill would require the city, by December 31, 1998, to dedicate as public trust lands to be held subject to the public trust and the provisions of the legislative grant, any lands that the commission has determined have equal or greater value and utility to the public trust than Parcels A, B, and C and that would provide a satisfactory substitution. The bill would make related changes in the legislative grant.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 1 of Chapter 74 of the Statutes of 1978 is amended to read:

Section 1. There is hereby granted to the City of **Newport Beach** and its successors all of the right, title, and interest of the State of California held by the state by virtue of its sovereignty in and to all that portion of the **tidelands** and submerged lands, whether filled or unfilled, bordering upon and under the Pacific Ocean or **Newport** Bay in the County of Orange, which were within the corporate limits of the City of **Newport Beach**, a municipal corporation, on July 25, 1919; the same to be forever held by the city and its successors in trust for the uses and purposes and upon the following express conditions:

(a) The lands shall be used by the city and its successors for purposes in which there is a general statewide interest, 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.

(b) Except as otherwise provided in this section, the city or its successors shall not, at any time, grant, convey, give, or alienate the lands, or any part thereof, to any individual, firm, public or private entity, or corporation for any purposes whatever; except that the city or its successors may grant franchises thereon for a period not exceeding 50 years for wharves and other public uses and purposes and may lease the lands, or any part thereof, for terms not exceeding 50 years for purposes consistent with the trust upon which the lands are held by the state and with the uses specified in this section.

(c) The lands shall be improved without expense to the state; provided, however, that nothing contained in this act shall preclude expenditures for the development of the lands for the purposes authorized by this act, by the state, or any board, agency, or commission thereof, or expenditures by the city of any funds received for such purpose from the state or any board, agency, or commission thereof.

(d) In the management, conduct, operation, and control of the lands or

any improvements, betterments, or structures thereon, the city or its successors shall make no discrimination in rates, tolls, or charges for any use or service in connection therewith.

(e) The state shall have the right to use without charge any transportation, landing, or storage improvements, betterments, or structures constructed upon the lands for any vessel or other watercraft or railroad owned or operated by the state.

(f) There is hereby reserved to the people of the state the right to fish in the waters on the lands with the right of convenient access to the waters over the lands for such purpose, which rights shall be subject, however, to such rules and regulations as are necessary for the accomplishment of the purposes specified in subdivision (a).

(g) Notwithstanding any provision of this section to the contrary, the city may lease the lots located within Parcels A, B, and C described in Section 6 of this act for the purposes set forth in this act and for terms not to exceed 50 years. The consideration to be received by the city for such leases shall be the fair market rental value of such lots as finished subdivided lots with streets constructed and all utilities installed. The form of such leases and the range of consideration to be received by the city shall be approved by the State Lands Commission prior to the issuance of any such lease. All money received by the city from existing and future leases of those lots shall be deposited in the city tideland trust funds as provided in Section 2.

(h) With the approval of the State Lands Commission, the city may transfer portions of the lands granted by this act, or held pursuant to this act, to the state acting by and through the State Lands Commission, for lease to the Department of Fish and Game for an ecological reserve or wildlife refuge, or both, and other compatible uses to be undertaken by the department; provided, however, that, if at any time the Department of Fish and Game no longer uses those portions of the lands so transferred by the city to the state for those purposes, the lands so transferred shall revert to the city to be held pursuant to the provisions of this act. Upon approving such a transfer from the city to the state, the State Lands Commission shall lease the lands so transferred to the Department of Fish and Game. The public benefits shall be the sole consideration to be received by the State Lands Commission from the Department of Fish and Game for that lease. Any and all income received by the Department of Fish and Game from the lands so leased shall be used only in connection with the department's improvement and administration of the leased lands.

(i) The city shall establish a separate **tidelands** trust fund or funds in such a manner as may be approved by the State Lands Commission, and the city shall deposit in the fund or funds all money received directly from, or indirectly attributable to, the granted **tidelands** in the city.

(j) In accordance with this act, the city, acting either alone or jointly with another local or state agency, may use revenues accruing from or out of the use of the granted **tidelands** or from any additional trust assets, for any or all of the purposes set forth in this act on public trust lands within the City of **Newport Beach**. Those revenues may be deposited in one or more reserve funds for use in accordance with the terms and conditions set forth in this act.

(k) As to the accumulation and expenditure of revenues for any single capital improvement on the public trust lands within the city involving an amount in excess of two hundred fifty thousand dollars

(\$250,000) in the aggregate, the city shall file with the State Lands Commission a detailed description of such capital improvement not less than

30 days prior to the time of any disbursement therefor or in connection therewith. The executive officer of the commission shall notify the city within 30 days from the date of the filing, if the proposed expenditure raises significant issues. Upon receipt of the notification, the city shall not make any disbursement in connection with the proposed expenditure for 60 days or until the commission has acted on the proposed expenditure, whichever is the shorter period. Within 60 days of the notification by the executive officer, the State Lands Commission may determine and notify the city that the capital improvement is not in the statewide interest and benefit or is not authorized by the provisions of subdivision (j). The State Lands Commission may request the opinion of the Attorney General on the matter; and, if it does so, a copy of the opinion shall be delivered to the city with the notice of its determination. If the State Lands Commission notifies the city that the capital improvement is not authorized, the city shall not disburse any revenue for or in connection with the capital improvement unless and until it is determined to be authorized by a final order or judgment of a court of competent jurisdiction. The city is authorized to bring suit against the state for the purpose of securing such an order or adjudication, which suit shall have priority over all other civil matters. Service of process shall be made upon the Executive Officer of the State Lands Commission and the Attorney General, and the Attorney General shall defend the state in such suit. If judgment be given against the state in the suit, no costs shall be recovered against it.

(1) On June 30, 1978, and on June 30 of every third fiscal year thereafter, that portion of the city tideland trust revenues in excess of two hundred fifty thousand dollars (\$250,000) remaining after deducting current and accrued operating costs and expenditures directly related to the operation or maintenance of tideland trust activities shall be deemed excess revenues. However, any funds deposited in a reserve fund for future capital expenditures or any funds used to retire bond issues for the improvement or operation of the granted lands shall not be deemed excess revenue. Capital improvements of the granted lands for purposes authorized by this act, including improvements on lands transferred to the state pursuant to subdivision (h) and paid for by the city, may be considered as expenditures for the purpose of determining excess revenues; provided, however, that if made after the effective date of this act they may be so considered only if made in accordance with subdivision (k). The excess revenue, as determined pursuant to this subdivision, shall be allocated as follows: 85 percent shall be transmitted to the Treasurer for deposit in the General Fund in the State Treasury, and 15 percent shall be retained by the city for deposit in the trust fund for use in any purpose authorized by subdivision (j) of this section.

(m) At the request of the city, the State Lands Commission shall grant an extension of time, not to exceed 90 calendar days, for filing any report or statement required by this act, that was not filed due to mistake or inadvertence.

(n) If the city fails or refuse to file with the State Lands Commission any report, statement, or document required by any provision of this act, or any extension period granted pursuant to this act, or fails or refuses to carry out the terms of this act, the Attorney General shall, upon the request of the State Lands Commission, bring such judicial proceedings for correction and enforcement as are appropriate and shall act to protect any improvements to, or assets situated upon, the granted lands or diverted therefrom. The State Lands Commission shall notify the Chief Clerk of the Assembly and the Secretary of the Senate within 30 days from the date of the occurrence of the failure or refusal and

of actions taken as a result thereof.

(o) The State Lands Commission shall, from time to time, recommend to the Legislature such amendments as it may determine to be necessary in the terms and conditions of this act.

(p) The State Lands Commission shall, from time to time, institute a formal inquiry to determine that the terms and conditions of this act, and amendments thereto, have been complied with in good faith.

(q) On or before December 31 of each year, the State Lands Commission shall report to the Chief Clerk of the Assembly and to the Secretary of the Senate the full details of any transaction or condition reported to the commission pursuant to this act which it determines to be in probable conflict with this act or with any other provision of law. Upon request by resolution of either house of the Legislature, or upon formal request of the State Lands Commission made only after a noticed public hearing at which the city has been given an opportunity to express fully any disagreement with the commission's findings or to describe any extenuating circumstances causing the violation, the Attorney General shall bring an action in the Superior Court in the County of Orange to declare that the grant under which the city holds the **tidelands** and submerged lands is revoked for gross and willful violation of this act or any other provision of law or to compel compliance with the requirements of this act and any other provision of law.

(r) The city shall cause to be made and filed annually with the State Lands Commission a detailed statement of receipts and expenditures by it of all rents, revenues, issues, and profits in any manner arising after the effective date of this act from the granted lands or any improvements, betterments, or structures thereon.

(s) The Department of Fish and Game shall establish the funds and make the deposits required by subdivision (i) of this section and shall prepare and file statements required by subdivision (r) as to any lands transferred to the state pursuant to subdivision (h).

(t) The provisions of Chapter 2 (commencing with Section 6701) of Part 2 of Division 6 of the Public Resources Code shall be applicable to this section. The provisions of Section 6359 of the Public Resources Code shall not be applicable to this section.

(u) Notwithstanding any other provision of this act, the city shall pay to the state all revenues received from the production of oil, gas, and other minerals derived from or attributable to the real property described in Section 6 of this act and the real property acquired by the city pursuant to subdivision (a) of Section 2 of this act. Whenever practicable, the city shall obtain the mineral rights in real property acquired pursuant to subdivision (a) of Section 2

of this act.

SEC. 2. Section 2 of Chapter 74 of the Statutes of 1978 is amended to read:

Sec. 2. (a) The City of **Newport Beach** shall establish a Tideland Capital Fund as one of the funds required by subdivision (i) of Section 1 of this act. The money in the Tideland Capital Fund shall be used by the city in conformity with the following terms and conditions:

(1) Expenditures from the fund may be made for the acquisition of real property that will further the purposes of the trust created by this act or for capital improvements for those purposes.

(2) The city may make acquisitions of real property by purchase, gift, or other conveyance, including, but not limited to, the transfer of city-owned property held in a municipal capacity to the trust created by this act. All such real property shall be held by the city in trust pursuant to this act.

(3) For purposes of this subdivision, acquisition or improvement of real property by the city for purposes of enhancing the public trust lands administered by the Department of Fish and Game pursuant to Chapter 415 of the Statutes of 1975 shall be deemed to be authorized by, and to be in furtherance of, the trust created by this act.

(4) The city may expend municipal funds to acquire real property for purposes specified *in* this subdivision. The city may transfer amounts from the Tideland Capital Fund to reimburse municipal funds for any such expenditures, together with an appropriate amount of interest on the municipal funds advanced, if the State Lands Commission gives advance approval of the transaction.

(b) The city shall establish a Tideland Operation and Maintenance Fund as one of the funds required by subdivision (i) of Section 1 of this act. The money *in* the Tideland Operation and Maintenance Fund shall be used by the city for the operation and maintenance of the tide and submerged lands granted by this act and any additional lands and assets that are made subject to the public trust pursuant to this act *in* furtherance of the purposes of the trust created by this act.

(c) The city shall establish an Upper **Newport** Bay Restoration Fund as One of the funds required by subdivision (i) of Section 1 of this act. The money *in* the Upper **Newport** Bay Restoration Fund shall be used by the city for Upper **Newport** Bay environmental restoration and improvement on tide and submerged lands described *in* paragraph (3) of subdivision (a) or otherwise made subject to the public trust pursuant to this act and located in Upper **Newport** Bay, to do both of the following:

(1) Construct improvements to, or otherwise physically alter, those public trust lands *if* the construction or alteration directly benefits those lands.

(2) Fund environmental documents, planning studies, or scientific analyses, or experiments directly related to the improvement or enhancement of the habitat values of those lands and the water quality of the overlying waters.

(d) (1) Eighty percent of the money received by the city pursuant to subdivision (g) of Section 1 of this act shall be deposited in the Tideland Capital Fund described in subdivision (a) and *in* the Tideland Operation and Maintenance Fund described *in* subdivision (b), the allocation between those funds to be determined by the city.

(2) Ten percent of the money received by the city pursuant to subdivision (g) of Section 1 of this act shall be deposited *in* the Upper **Newport** Bay Restoration Fund described *in* subdivision (c).

(3) Ten percent of the money received by the city pursuant to subdivision (g) of Section 1 of this act shall be deposited in the Land Bank Fund created in the State Treasury pursuant to Section 8610 of the Public Resources Code, available for expenditure by the State Lands Commission as described in subparagraph (B) of paragraph (1) of subdivision (f) of Section 4.5 of this act.

(4) The city may deposit in the city funds established pursuant to subdivisions (a), (b), and (c) any other income from the tide and submerged lands granted to the city pursuant to this act or from lands otherwise held in the public trust pursuant to this act that the city determines to be appropriate and consistent with this act and the public trust.

SEC. 3. Section 2.5 is added to Chapter 74 of the Statutes of 1978, to read:

Sec. 2.5. (a) The city may transfer to the trust created by this act, any city-owned real property not subject to the public trust for the purposes specified in Section 1 of this act. The city may compensate the city general fund for the fair market value of the transferred real property

if the transfer and that expenditure of trust funds occur after January 1, 1998, and the State Lands Commission has given advance approval of the transaction.

(b) On or before December 31, 1998, the city shall dedicate as public trust lands, to be held subject to the public trust and the provisions of this act, any lands that the State Lands Commission has determined (1) have equal or greater value and utility to the public trust than the lands described as Parcels A, B, and C in Section 6 of this act and (2) that the dedication of lands as trust lands will provide satisfactory substitution for the requirements prescribed in subdivision (a) of Section 2 of this act as enacted by Chapter 74 of the Statutes of 1978. Upon a demonstration of necessity, the Executive Officer of the State Lands Commission may extend that deadline to not later than December 31, 1999.