

Attachment A

RESOLUTION 2010-___

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

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

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

(1) For the establishment, improvement, and conduct of a public harbor; and for the construction, maintenance, and operation thereon of wharves, docks, piers, slips, quays, ways, and streets, and other utilities, structures, and appliances necessary or convenient for the promotion or accommodation of commerce and navigation.

(2) For the establishment, improvement, and conduct of public bathing beaches, public marinas, public aquatic playgrounds, and similar recreational facilities open to the general public; and for the construction, reconstruction, repair, maintenance, and operation of all works, buildings, facilities, utilities, structures, and appliances incidental, necessary, or convenient for the promotion and accommodation of any such uses.

(3) For the preservation, maintenance, and enhancement of the lands in their natural state and the reestablishment of the natural state of the lands so that they may serve as ecological units for scientific study, as open space, and as environments which provide food and habitat for birds and marine life, and which favorably affect the scenery and climate of the area; and

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

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

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

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

- Fees based on the cost of providing a service;
- Mooring rates – onshore and offshore;

- Balboa Yacht Basin charges – slips, garages, and apartments; and
- Commercial piers not already on leases.

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

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

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

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

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

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

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

1. Starting with the 2011 billings (sent out in mid-January 2011), a one year permit for an offshore mooring shall be set at 6.9% of the Newport Harbor Marina Index while a one-year permit for an onshore mooring shall be set at half of that resulting dollar amount; and
2. 2012 billings shall be set at 8.7% of the Newport Harbor Marina Index while a one-year permit for an onshore mooring shall be set at half of that resulting dollar amount;

3. 2013 billings shall be set at 10.5% of the Newport Harbor Marina Index while a one-year permit for an onshore mooring shall be set at half of that resulting dollar amount;
4. 2014 billings shall be set at 12.3% of the Newport Harbor Marina Index while a one-year permit for an onshore mooring shall be set at half of that resulting dollar amount; and
5. 2015 billings shall be set at 14.0% of the Newport Harbor Marina Index while a one-year permit for an onshore mooring shall be set at half of that resulting dollar amount; and
6. That successive years' rates be set at 14.0% of the Newport Harbor Marina Index while a one-year permit for an onshore mooring shall be set at half of that resulting dollar amount and both offshore and onshore moorings shall be adjusted annually within the Master Fee Resolution based on the Newport Harbor Marina Index; and be it further

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

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

...and be it further

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

ADOPTED this 23rd day of November, 2010.

KEITH CURRY
Mayor of Newport Beach

ATTEST:

LEILANI BROWN
City Clerk