



CITY OF

NEWPORT BEACH

City Council Staff Report

February 10, 2015
Agenda Item No. 16

TO: HONORABLE MAYOR AND MEMBERS OF THE CITY COUNCIL

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TITLE: Residential Piers: Adjusting the Rental Calculation and Approving a Revised Model Permit Template

ABSTRACT:

At the January 27, 2015 Study Session, the City Council directed staff to return with a revised residential pier permit reflecting language protecting private property rights, a revised fair market value rental fee, an adjusted pier footprint, and to contact staff at the State Lands Commission (“SLC”) regarding the City Council’s proposed changes.

RECOMMENDATION:

Adopt Resolution No. 2015-10, *A Resolution of the City Council of the City of Newport Beach Adjusting the Rental Calculation and Approving a Revised Model Permit Template for Residential Piers Located Upon Tidelands*, which revises the residential pier permit to protect residential piers from unlawful seizure, adjusts the rental fee to reflect a revised fair market value of \$0.50/SF, and reduces the pier footprint to exclude the interior U-shape of a slip.

FUNDING REQUIREMENTS:

The result of the action will be a reduction in estimated revenue of about \$179,107/year from residential pier rental rates by 2017. This includes the lowering of the rent to \$0.50/SF from \$0.525/SF as well as the reduction in the net rentable area of 313,506 SF (the amount of SF removed by removing the water in the U from the rental calculation).

DISCUSSION:

A majority of the waterways in Newport Harbor are tidelands, owned by the State on behalf of the people of California. The California Legislature through the Beacon Bay Bill granted the City of Newport Beach (“City”) trusteeship of most of the tidelands within Newport Harbor (the County of Orange acts as trustee over some tidelands). The Beacon Bay Bill authorizes the City to allow third parties to use the tidelands to construct certain improvements, including residential piers. The Beacon Bay Bill, the State Constitution, and the Newport Beach Municipal Code require the City to receive fair market value rent as consideration

for allowing a third party to construct a residential pier on tidelands.

To determine fair market value rent for residential piers, the City commissioned two appraisals of the tidelands by Rasmuson Appraisal Services and Netzer & Associates. The appraisals were very close to each other, Netzer & Associates identified an assessed value of \$0.55 sf while Rasmuson Appraisal Services identified \$0.50 sf. The City Council has the discretion under the Beacon Bay Bill and the Newport Beach Municipal Code to determine the fair market value rent for residential piers based in part upon these two appraisals. The resolution attached to this staff report proposes to use the \$0.50 sf valuation derived from the Rasmuson appraisal.

The attached resolution also revises the footprint used for calculating fair market value rent to reflect not charging for the interior of the U-shaped slip (Attachment B). This approach is consistent with the footprint used for slips that do not have an interior space. Please see the examples below. In addition, the residential pier permit is revised to further protect private property rights in the physical structure of the pier and provide simpler language describing payments. Residential pier permittees are billed 1/6 of their annual rent via their Municipal Services Statement (a.k.a., "Water Bill") every other month. The revised residential pier permit is in full compliance with the February 21, 2014 Settlement Agreement entered into between the City and the Newport Beach Dock Owners Association.

Following the Study Session, staff discussed the City Council's proposed changes to the residential pier program with SLC staff. SLC staff was generally not opposed to the revisions to the residential pier permit and the use of the Rasmuson appraisal of \$0.50 sf. However, SLC staff stated that is the SLC's practice to include the interior U-shape of a slip within the pier footprint, as doing so reflects what they see as a private use of public property (i.e. few if any visitors will consider the interior of the U - if vacant - to be usable public space).

Ultimately, the decision to include or exclude the interior U-shape of a slip is left to the discretion of the City Council. As to whether the SLC will deem our actions (especially relating to the water in the U) as contrary to our responsibilities under the Tidelands Trust, that is unknown.

Pending the City Council's adoption of the attached resolution, staff is prepared to mail out the revised residential pier permits with a new ten year term by March 1, 2015.

ENVIRONMENTAL REVIEW:

The adjustment of residential pier 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 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 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 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 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.

NOTICING:

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

ATTACHMENTS:

Description

[Attachment A - Resolution](#)

[Attachment B - Residential Pier Footprint](#)

RESOLUTION NO. 2015- __

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

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 26, 2013, the City Council adopted Resolution No. 2013-88, approving a model residential pier permit for residential piers located upon tidelands and establishing fair market value rent;

WHEREAS, on January 27, 2015, the City Council considered, at its regularly scheduled study session, the current status of the City’s tidelands regulations and rents for moorings, commercial piers and residential piers 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 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 City Council finds the adjustment of residential pier 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 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 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 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 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 5: 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 6: 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 10th day of February, 2015.

Edward D. Selich,
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 Cents (\$0.50) 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:



Proposed - 215 VIA LIDO SOUD

Total Permit Area = 992 sq. ft.
2017 Rental Fee = **\$496**
(\$0.50/sq. ft.)



Proposed - 417 EDGEWATER PL

Total Permit Area = 637 sq. ft.
2017 Rental Fee = **\$318.95**
(\$0.50/sq. ft.)

- (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 Cents a square foot (\$0.50/SF):

Fifty Cents (\$0.50) Rent Phase-in Table and Adjustment

Examples	2012	2013	2014	2015	2016	2017
	\$100	$\frac{[A-\$100]}{5} + \100	$\frac{[A-\$100]}{5} + 2013 \text{ Rent}$	$\frac{[A-\$100]}{5} + 2014 \text{ Rent}$	$\frac{[A-\$100]}{5} + 2015 \text{ Rent}$	Fully Phased-In Rent (A)
Example #1: 1,139 SF	\$100	\$194	\$288	\$382	\$476	\$570
Example #2: 1,426 SF	\$100	\$223	\$345	\$468	\$590	\$713
Example #3: 3,480 SF	\$100	\$428	\$756	\$1,084	\$1,412	\$1,740
A = square footage x \$0.50						

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 and shall exclude the interior U-Shape of a slip.
- (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, and pier platform. The Residential Pier shall specifically exclude the interior U-Shape of a slip.
- (8) Tidelands mean 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]).

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. 2015-__ or any successor/amended resolution. Resolution No. 2015-__ 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) Payment of Rent: All rent shall be annually prorated and billed through Permittee’s Municipal Services Statement (“MSS”). All rent shall be due and payable pursuant to the terms of Permittee’s MSS.
- (B) Late Charges: A ten percent (10%) late charge shall be added to all payments due but not received by City by the due date.
- (C) 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.
- (7) Property Right Protection: The residential pier maintained under this Permit is private property and shall be protected to the maximum extent under the law from unlawful seizure.

Attachment 1

Description & Depiction of Premises

Premise's Address (or description of general location):

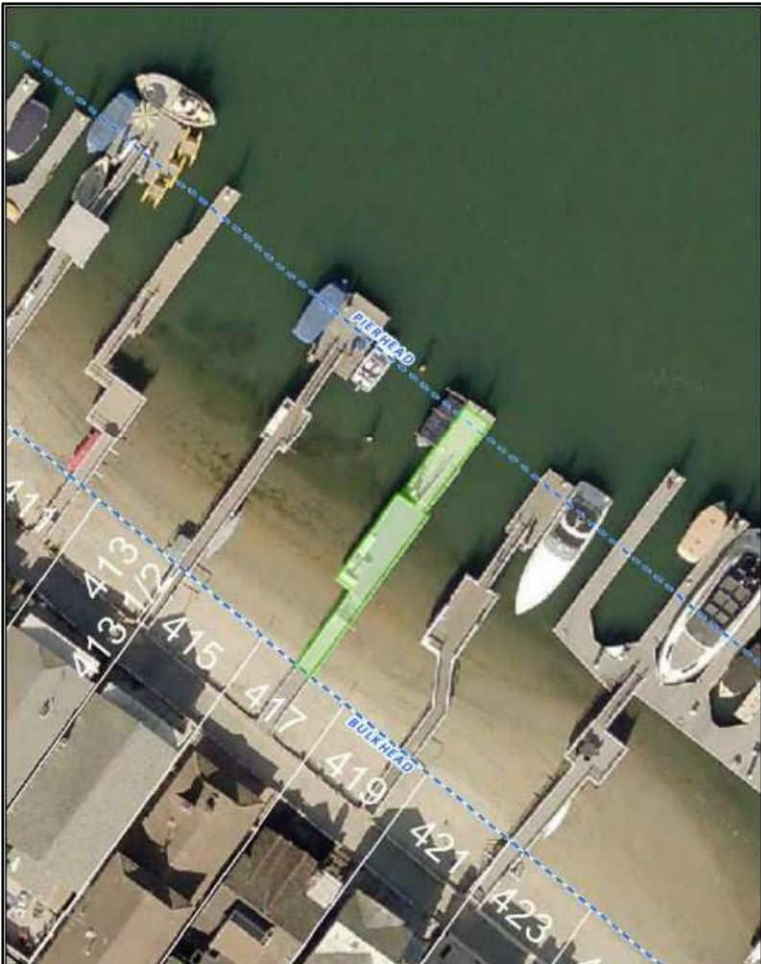
Premise's Square Footage:

Premise's Depiction:



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