



CITY OF NEWPORT BEACH

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July 24, 2007

Honorable Nancy Wieben Stock
Presiding Judge of the Superior Court of California
700 Civic Center Drive West
Santa Ana, CA 92702

Subject: Response to Orange County Grand Jury Report, "Newport Harbor Moorings: Are They Held in the Public Trust or for Private Profit?"
May, 2007

Dear Judge Stock:

Per your request and in accordance with California Penal Code §933 and §933.05, enclosed please find my response to the FY 06-07 Grand Jury Report. If you have any questions, please contact Assistant City Manager Dave Kiff at (949) 644-3002 or City Attorney Robin Clauson at (949) 644-3131.

Respectfully,

STEVEN ROSANSKY
Mayor

cc: Mike Penn, Foreman Orange County Grand Jury

Grand Jury Report

“Newport Harbor Moorings: Are They Held in the Public Trust or Private Profit?”

RESPONSES TO FINDINGS

F-1. Private profits are being made from the current procedures used in transferring the mooring permits located on the public tidelands in Newport Harbor. Because the mooring equipment and the vessel currently assigned to that mooring must be sold to the same person, when a vessel on a mooring is sold, the new owner transfers that mooring permit into his or her name, rather than vacating the mooring and allowing the waiting list to proceed in order.

Response:

Disagree Partially: The City recognizes that the availability of a mooring can enhance the sale price of a boat when the market demand for moorings is high; however, there has been no economic analysis to establish whether or not private profits are being made. There is no requirement that a boat must be sold along with its mooring equipment and its mooring permit. A waiting list for moorings is being reviewed in conjunction with proposed revisions to the municipal code.

F-2. The offshore mooring areas now extend beyond the lines originally established by the United States Army Corps of Engineers in 1941.

Response:

Disagree Partially: The current mooring areas are necessarily different than those established by the Corps of Engineers 66 years ago. The recently proposed realignment of mooring areas is consistent with safe navigation, the maintenance of open waterways, and the public interest, as are the current mooring areas.

F-3. Certain procedures adopted by the Newport Beach City Council regarding mooring permits are not enforceable because they are not included in the City's Municipal Code.

Response:

Disagree Partially: Regulations related to moorings are found in Chapter 17.22 of the Municipal Code and are enforceable. A review of City Council Policies and Municipal Code is currently underway and elements of the policies that require enforcement will be drafted into the code.

F-4. The last assessment of the fair market value of mooring permit fees took place almost ten years ago.

Response:

Agree: A study of mooring permit fees is currently under way.

F-5. Although a mooring permit can be held in the name of one (1) person only and the permit cannot be placed in a company name, exceptions have been made for certain private yacht clubs. Additionally, vessels and moorings are now registered in family trusts. After a principal's death, the intent of a trust is to follow the vessel; however, there is an unjustified perception that this also includes the mooring permit.

Response:

Disagree Partially: The City has determined that the public benefits from the long-standing administration of certain mooring areas in Newport Harbor by the designated yacht clubs. These moorings and the clubs that administer them are a consistently reliable resource for visiting cruising vessels.

While vessels may be owned or registered in the name of a family trust, the mooring permit will only be issued to a single individual who is also trustee of the family trust. As to vessels registered through family trusts, there is no requirement or authority for a mooring to be transferred with a vessel pursuant to the terms of a trust. Further, a trust that purports to restrict a living permit holder's ability to transfer a mooring would be disregarded by the City.

F-6. The County (1) follows State statutes and regulations concerning mooring and buoy permits and (2) along with the City of Newport Beach shares financial responsibility for funding the Harbor Patrol to provide management services; however, the County performs no oversight of the City's regulations and procedures on a regular basis.

Response:

No response required from the City. However, the City would offer some clarification of the finding. The City ownership of the Harbor is derived from State of California legislation granting tide and submerged lands to the City of Newport Beach. As such City has jurisdiction to enact its own laws and policies for regulations and procedures concerning moorings and buoy permits on City Tidelands and has contracted with the County to provide mooring administration services for which the City contributes financial support.

F-7. The Harbor Patrol follows the regulations and procedures set down by the City; however, they have begun re-enforcing certain, but not all, regulations, e.g., the derelict boat rule is being enforced but abandoned moorings are allowed. The result of this is that the harbor now seems cleaner; however, permittees are allowed to maintain moorings without vessels.

Response:

Disagree partially: The City strives for consistent enforcement of regulations and procedures. Progress in removing derelict boats has been significant, and will continue. Abandoned moorings are not allowed. Abandoned moorings revert to the City or to the County. Vacant but properly maintained moorings are allowed, and are available for rent to the public.

F-8. The mooring waiting list has not been reviewed or updated for years.

Response:

Agree: Management of a mooring waiting list is being reviewed in conjunction with proposed revisions to the municipal code.

F-9. The majority of the current mooring permit fees fall below the Orange County Minimum Value Ordinance.

Response:

No response from the City is required.

RESPONSES TO 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.

Response:

The recommendation requires further analysis and a proposed implementation plan will be submitted to the City Council for consideration by November, 2007. Transfer fees will be adjusted, if necessary to appropriately protect the public interest, while at the same time maintaining the accessibility and affordability of moorings to all boaters.

R-2. Consider public access to available moorings through adopting a more effective waiting list.

Response:

The recommendation requires further analysis and a proposed plan to address public access to moorings will be submitted to the City Council for consideration by November, 2007. Management of a mooring waiting list is being reviewed in conjunction with proposed revisions to the municipal code, including longer term rentals of vacant moorings.

R-3. Reestablish the original mooring boundaries.

Response:

The recommendation will not be implemented. Mooring boundaries consistent with safe navigation and the public interest have been proposed for consideration by the appropriate federal agencies. "Original" mooring boundaries established 66 years ago are neither practical nor consistent with safe navigation. The current mooring areas and the proposed realigned mooring areas do not occupy a greater portion of the harbor than the "original" mooring areas.

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.

Response:

The recommendation requires further analysis and a proposed implementation plan will be submitted to the City Council for consideration by November, 2007. Title 17 of the municipal code is currently under review by the City. The City of Newport Beach strives for consistency in the drafting, implementation and enforcement of all codes, ordinances, regulations and procedures.

R-5. Review the Municipal Code on a regular basis to be sure that it incorporates the revised ordinances and procedures to allow uniform enforcement.

Response:

The recommendation has been implemented. The City continually reviews the Municipal Code on a regular basis, as needed.

R-6. Establish a regularly scheduled independent appraisal for the fair market value of mooring permit fees, e.g., based on a percentage of the cost of a slip.

Response:

The recommendation will be implemented and a proposed revision will be presented to the City Council for consideration by November

2007. An analysis of mooring permit fees utilizing relevant methodologies is under way.

R-7. Review the inclusion of yacht clubs and trusts as mooring permittees.

Response:

The recommendation will be implemented and a proposed revision will be presented to the City Council for consideration by November 2007. The inclusion of yacht clubs and trusts as permittees will be presented to the City Council for review.

R-8. The City of Newport Beach and the County of Orange should review their ordinances to make sure that they are consistent with each other.

Response:

The recommendation has been implemented. The City and the County will continue to review their ordinances for consistency as necessary.

R-9. Review and update the mooring waiting list.

Response:

The recommendation will be implemented and a proposed revision will be presented to the City Council for consideration by November 2007. Management of a mooring waiting list is being reviewed in conjunction with proposed revisions to the municipal code.

R-10. The Assessor Department should coordinate with the city to review the value of mooring permit fees on a regular basis to see if they rise above the Orange County Minimum Value Ordinance.

Response:

No response from the City is required.