Additional Materials Received
Item 6.3 Objective 2.3 Public Correspondence
Novermber 9, 2022 Harbor Commission Meeting

Hermosa Beach Office
Phone: (310) 798-2400

San Diego Office
Phone: (858) 999-0070
Phone: (619) 940-4522

CBCM
Chatten-Brown, Carstens & Minteer LLP
2200 Pacific Coast Highway, Suite 318
Hermosa Beach, CA 90254
www.cbcearthlaw.com

Douglas P. Carstens
Email Address:
dpc@cbcearthlaw.com

November 8, 2022

VIA E-MAIL (HarborCommission@newportbeachca.gov, harborfeedback@newportbeachca.gov)

City of Newport Beach Harbor Commission
c/o Office of the City Clerk
P.O. Box 1768
Newport Beach, CA 92658

Re: Harbor Code Amendments to Mooring Procedures Require Coastal Development Permit; November 9, 2022 Harbor Commission Meeting Agenda Item 3

Dear Honorable Commissioners,

On behalf of the Newport Mooring Association - a Non Profit Corporation, we are writing to inform the Harbor Commission that a Coastal Development Permit application is required in order for the City of Newport Beach ("City") to proceed with its proposal to amend the City of Newport Beach Harbor Code (Municipal Code, Title 17, sections 17.25.020 and 17.60.040) in order to modify mooring procedures. The City's proposal to eliminate mooring extensions and conduct a pilot test constructing new moorings constitutes development under the Coastal Act, for which a Coastal Development Permit is required. Further, the proposal would encourage unsafe navigation by large vessels in the mooring fields, and would impede coastal views. Thus, we urge the Harbor Commission to advise the City that it may not proceed without obtaining a Coastal Development Permit from the California Coastal Commission.

I. The Coastal Commission Has Original Jurisdiction Over the Mooring Fields.

The Coastal Act recognizes the importance of protecting recreational and commercial boating and fishing activities. (See Pub. Resources Code §§30224, 30234, 30234.5.) The City of Newport Beach's Local Coastal Program Land Use Plan ("LUP") also emphasizes the importance of maintaining access to moorings, with Policy 3.3.2-3 which states "Continue to

provide shore moorings and offshore moorings as an important source of low-cost public access to the water and harbor."

Though the City has adopted a Local Coastal Program, the Coastal Commission retains original jurisdiction for developments in the tidelands, public trust, and submerged lands. (Pub. Resources Code §30519, subd. (b); see City of Newport Beach's Post LCP Certification and Appeal Jurisdiction Map, available at: https://www.newportbeachca.gov/PLN/LCP/LCP_Zoning/Maps/21_80_045_Permit_and_Appeal_Jurs_Maps/Offcial_CNB_PostCert_Map.pdf.) Thus, any development in the mooring fields at Newport Harbor, which are submerged lands, require review and approval by the Coastal Commission in the first instance.

II. The Proposed Revisions to the Harbor Code Eliminating Mooring Extensions Constitute Development and Require a Coastal Development Permit.

The proposed revisions to the Harbor Code (Newport Beach Municipal Code, Title 17) constitute development under the Coastal Act. Under the Coastal Act, development includes, inter alia, "change in the intensity of use of water, or of access thereto." (Pub. Resources Code §30106; *Surfrider Foundation v. Martins Beach 1, LLC* (2017) 14 Cal.App.5th 238, 250.) Under the existing Harbor Code, permittees may request mooring extensions for vessels longer than the assigned vessels, and extensions five feet or under may be granted by the Harbormaster without seeking approval from the Harbor Commission. (Newport Beach Municipal Code §17.60.040, subd. (M).) The proposed revisions to the Harbor Code drastically change this process by eliminating mooring extensions. (October 12, 2022 Harbor Commission Agenda Packet, pp. 59-60; November 9, 2022 Harbor Commission Staff Report, Attachment C, pp. 8-9.) These revisions will alter and impede the access of permitholders to moorings, thereby constituting development under the Coastal Act.

The proposed revisions state:

> Requests for mooring extensions shall no longer be considered. Instead, requests for a longer or extended mooring will require relocating to a larger mooring. The mooring permittee making the request shall pay a fee for the relocation request and shall

> bear all costs of relocating their vessel and the displaced vessel. Relocations will require payment of a fee and be contingent upon availability of a vacant mooring or another permittee in the same mooring field (or also an adjacent field in the case of moorings in the H and J fields) having a vessel in a mooring row that is designated for a length of at least 5-feet greater. In no event will relocations be considered for mooring lengths in excess of 5' of the current mooring length for the permittee making such request. Authority to approve relocation requests shall lie with the Harbormaster.

(November 9, 2022 Harbor Commission Staff Report, Attachment A.)

These revisions alter access to water because they will result in requests even for small, de minimus extensions to be considered as a request for *relocation* of a permittee's mooring. The location of a permittee's mooring is an important access consideration, because if a mooring is relocated far away from a permittee's dinghy location, it will be difficult for the permittee to access their mooring. Additionally, flipping any moorings where boaters have to now access the mooring in a downwind fashion will change access to and from moorings and make accessing a mooring more difficult as the operator will have less control. Finally, these revisions impose the cost of unnecessary relocations onto permittees and requires them to pay a relocation fee, which further impedes access to moorings and is contrary to LUP Policy 3.3.2-3 which requires provision of moorings as a source of "low-cost" access. These modifications to the public's access to moorings require review and approval by the Coastal Commission.

III. The Proposed Phase I Pilot Test Constitutes Development and Requires a Coastal Development Permit.

As part of the City's plan to reconfigure the Harbor, the City plans to conduct an initial reconfiguration of C Field (Phase I), with a pilot test constructing 3 to 6 double mooring systems in one row to verify engineering and functionality. (October 12, 2022 Harbor Commission Agenda Packet, p. 86.) Under the Coastal Act, development includes "in or under water, the placement or erection of any solid material or structure; [or] construction . . . of any structure . . . ." (Pub. Resources Code §30601.) The construction of new moorings thus falls squarely within the definition of development, for

which a Coastal Development Permit is required. Construction of new moorings during the pilot test will require installation and placement of new shared anchors, shackles, chains, and buoys within the mooring fields. (October 12, 2022 Harbor Commission Agenda Packet, pp. 48, 78.) As described above, development within the mooring fields is subject to the Coastal Commission's original jurisdiction and thus requires a Coastal Development Permit. Accordingly, the City cannot proceed with the Phase I pilot test without a Coastal Development Permit.

IV. The Proposed Mooring Reconfiguration Would Encourage Unsafe Navigation of Large Vessels in the Mooring Fields.

The mooring fields as currently configured provides protection from larger vessels. We are concerned that the proposed mooring reconfiguration, which provides for wide, up to 100-foot fairways, would encourage navigation of large vessels in the mooring fields. This would both obstruct coastal access and create a safety concern for permittees operating small vessels, as well as for paddleboarders, kayakers, and others operating small human-powered vessels in the safe haven of the mooring fields. This goes against the Chapter 3 policies of the Coastal Act, which protect such activities. (Pub. Resources Code §§30211, 30220, 30224.) Marine life that frequent the harbor, such as dolphins, may also be impacted by the introduction of larger vessels. (See Pub. Resources Code §30230.)

The mooring areas in Newport Harbor are designated "Special Anchorages" by the Coast Guard. (33 C.F.R. §110.95; see 77 Fed. Reg. 22489, available at: https://www.govinfo.gov/content/pkg/FR-2012-04-16/pdf/2012-9006.pdf.) Special anchorage areas "should be well removed from the fairways and located where general navigation will not endanger or be endangered by unlighted vessels." (33 C.F.R. §109.10.) Thus, fairways that accommodate large vessels should not be located within the mooring fields.

V. The Proposed Mooring Reconfiguration Would Impact Harbor Views.

We are also concerned with City staff's questionable assertion that the mooring reconfigurations would greatly improve harbor views. (October 12, 2022 Harbor Commission Agenda Packet, p. 82.) The proposal to push mooring rows together will alter view corridors from the public boardwalk around Balboa Island (and other boardwalks in Newport Harbor). (See Pub.

Resources Code § 30251 ["The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance."]) The plan will also alter homeowner views of the harbor. While under the proposed reconfiguration, views *may* be improved for some—those whose properties are fronted by a fairway—views may also be greatly worsened for others, including those whose properties are fronted by the proposed double-wide tandem rows of boats.

VI. Conclusion.

The proposed revisions to the Harbor Code present significant changes that would alter access to water and construct new moorings in the submerged mooring fields. The proposed mooring reconfiguration would encourage unsafe navigation of large vessels that impede coastal access for small-scale recreational boaters and others, and would obstruct coastal views. Accordingly, the proposed mooring plan constitutes development under the Coastal Act and appears to be in conflict with the Coastal Act. As such, it must be reviewed for approval by the Coastal Commission. We request that the Harbor Commission, in fulfilling its charge, advise the City of these issues prior to making any recommendation.

Sincerely,

Douglas P. Carstens
Sunjana Supekar

From:	Sunjana Supekar <sss@cbcearthlaw.com>
Sent:	November 08, 2022 4:07 PM
To:	Harbor Commission; Harbor Feedback
Cc:	Doug Carstens
Subject:	November 9, 2022 Harbor Commission Meeting; Comments re Agenda Item 3
Attachments:	2022-11-08 Letter to Harbor Commission fnl.pdf

[EXTERNAL EMAIL] DO NOT CLICK links or attachments unless you recognize the sender and know the content is safe.

Dear Honorable Commissioners,

Please see attached a comment letter from the office of Chatten-Brown, Carstens and Minteer on behalf of the Newport Mooring Association regarding Agenda Item 3 for the November 9, 2022 City of Newport Beach Harbor Commission Meeting.

Thank you for your consideration of these comments.

Sincerely,
Sunjana Supekar

--

Sunjana Supekar (she/her)

CHATTEN-BROWN, CARSTENS & MINTEER

2200 Pacific Coast Highway, Ste. 318

Hermosa Beach, CA 90254

Tel: 310-798-2400 Ext. 7

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Douglas P. Carstens
Email Address:
dpc@cbcearthlaw.com

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Sincerely,

Douglas P. Carstens
Sunjana Supekar

From:	Fred Fourcher <fred@bitcentral.com>
Sent:	November 08, 2022 3:53 PM
To:	Harbor Feedback
Subject:	Document to be entered into the record for tomorrow's Harbor Commission Meeting
Attachments:	Dear Chair Scully and Honorable Harbor Commissioners.docx

[EXTERNAL EMAIL] DO NOT CLICK links or attachments unless you recognize the sender and know the content is safe.

Fred Fourcher, Chairman
Bitcentral, Inc.
fred@bitcentral.com
Direct 949 417 4111
Cell 714 914 1000

bitcentral
efficient media workflows

Fred Fourcher
507 Larkspur
Corona Del Mar, CA 92625

Dear Chair Scully and Honorable Harbor Commissioners,

I have lived in Corona Del Mar since 1979 and have had my offshore and onshore moorings since 1976. My offshore mooring and onshore mooring are on Balboa Island and adjacent to each other.

It is stated that the intent is to improve the harbor to the benefit of mooring permittees. What is being decided is if the **City of Newport Beach can move our boat to a different mooring permanently without our permission and at our expense**, is clearly not for the benefit of mooring permittees and has some other purpose. **Mooring locations are picked for a reason,** Permittees acquired permits in specific locations such as proximity to their house, yacht club or shore mooring. This major disruption will result in lawsuits and political fallout. The people who you are supposed to be serving will do whatever it takes to keep the current order in the harbor. This is simply a bad idea with massive un-intended consequences.

This proposal is deeply troubling because the Harbor Commission is usurping the decision-making responsibility from our Elected Officials. There is no reason to be revising the city harbor code for a pilot test of a questionable mooring system.

This proposal is not for the benefit of the Mooring Permittees. I along with others will mobilize to fight the Harbor Commission to keep this poorly conceived proposal from being implemented.

Fred Fourcher

From:	Admin <mail@newportmooringassociation.org>
Sent:	November 08, 2022 3:23 PM
To:	Harbor Commission; Blank, Paul; harborfeedback@newportbeachca.org
Cc:	NMA Email Board
Subject:	Newport Mooring Association Comments and Concerns
Attachments:	Newport Mooring Association's comments regarding the 11-9-22 Harbor Commission Item 3 .pdf

[EXTERNAL EMAIL] DO NOT CLICK links or attachments unless you recognize the sender and know the content is safe.

To the Harbor Commission –

Please find attached the Newport Mooring Association's comments regarding the November 9th, 2022, Newport Beach Harbor Commission **Item #3 -Recommendations Resulting from Commission Objective 2.3 to Improve Navigation Safety, Allow for Additional Moorings Within the Fields and Mooring Size Exchange Requests.**

Thank you,

The Board of Directors
Newport Mooring Association
https://newportmooringassociation.org

Newport Mooring Association

November 8, 2022

NMA Comments regarding the November 9th 2022 Newport Beach Harbor Commission **Item #3 - Recommendations Resulting from Commission Objective 2.3 to Improve Navigation Safety, Allow for Additional Moorings Within the Fields and Mooring Size Exchange Requests**

Dear Honorable Members of the Harbor Commission,

Please find the following documents for your consideration. For your convenience we provide the following table of contents:

1. NMA concerns regarding the proposed Harbor Code revisions and plan — Page 2
2. Summary list of recommendations regarding Agenda Item #3 — Page 4
3. Correspondence from Attorney Doug Carstairs identifying legal concerns — Page 5
4. Letter from Master Mariner Captain James L. Haley detailing concerns — Page 10
5. Harbor Commission Tracking Sheet with harbor code revisions and complete mooring plan presented to NMA and public for the first time October 12th — Page 12
6. Professional and timely email responses from the NMA to Harbor Commission — Page 13
7. Follow-up email from L. Scott Karlin to Commissioner Beer 10-26-22 with attachments with specific recommendations to clarify language in Title 17 — Page 18

Newport Mooring Association

November 8th, 2022

Dear Chair Scully and Harbor Commissioners,

Thank you for the opportunity to provide comments regarding November 9th Harbor Commission Agenda Item #6-3 (Objective 2.3) involving significant revisions to the harbor code and the initial stage (pilot test) of a plan to significantly change access to the mooring fields.

The NMA is extremely concerned that revisions to the harbor code are being considered in advance of an untested mooring plan concept. These specific proposed harbor code revisions were seen by the public, for the first time ever, on the October 12th, 2022, agenda. The proposed revisions to the harbor code (Title 17) were not developed in public and were not hashed out in any public stakeholder meetings. The revisions appear to have been developed in closed door subcommittee meetings with no public oversight or input. The proposed harbor code revisions would allow the harbormaster or the Harbor Commission, to move large numbers of boats or moorings to new locations in the name of "realignment" without any constraints or conditions, and without City Council approval. We have also heard concerns from many homeowners. We want to be good neighbors and are also concerned that this will have an impact not only on mooring holders, but also on residences and homeowners who may have their views altered now and, in the future, again without restrictions or City Council approval. Some homeowners may have a bit better view, some worse, but no one will know how this will play out now or in the future.

We are also concerned with the harbor code revision involving transferring certain mooring decision making authority from our elected City Council to the Harbor Commission. The City Charter appropriately differentiates the formal responsibility of the Harbor Commission as an advisory panel and the City Council as the formal decision-making body. Notably, the Council is comprised of individuals elected to serve their constituents and they are therefore responsible and accountable for their decisions.

The timing is also problematic. The granting of broader authority to the Harbor Commission and Harbormaster while they embark on a new mooring plan that has already been identified as problematic to the permittees will create another point of contention. Transparency, accountability, and collaboration should not be compromised during this phase.

As you may be aware, the complete mooring report, with the supporting engineering study on the holding power of the proposed anchor system was first presented for public review at the October 12th, 2022, Harbor Commission meeting. Numerous members of the public expressed concern regarding increased risk and the difficulty of use of the proposed "shared anchor" mooring plan that involves moving mooring rows closer together and the requirement for a mooring user to be forced to approach a mooring in a downwind manner given our prevailing westerly winds. Approaching a mooring in a downwind fashion is never recommended as it involves less control of a vessel, which in turn, increases risk.

Given we have not been presented with a revised plan since the October 12th Harbor Commission meeting, we find it difficult, if not impossible, to comment on what may be presented on November 9th as we have not seen any revisions to the mooring plan.

The NMA opposes a mooring plan that requires a mooring user to approach a mooring in a downwind manner (and depart a mooring in an upwind manner). The proposal presented on October 12th pushes the shared-anchor mooring rows close together which indicates there will only be "one way in" and "one way out"'. This is less safe compared to the current configuration that has sufficient spacing between rows which gives mooring users the option to approach and depart from either direction depending on wind and current.

We believe the shared-anchor mooring concept has not been adopted throughout Southern California because it is inherently risky. We are only aware of a shared anchor mooring system in use in SoCal location, America's Cup Harbor, which is a fully protected marina within in an already protected harbor that is protected by Point Loma adjacent to "Shelter" Island in San Diego. The conditions in America's Cup and Newport Harbor are not comparable.

The NMA respectfully requests the Harbor Commission put the Title 17 revisions and mooring plan revisions on hold and schedule public stakeholder meetings to allow for more robust community engagement and stakeholder input. We would like to point out that the Harbor Commission held numerous stakeholder meetings when revising the harbor code a few years ago. These informal public stakeholder meetings allowed for robust community engagement, thoughtful back-and-forth which resulted in stakeholder buy-in to harbor code revisions. In contrast, these revisions have been developed out of public view and without robust community and stakeholder engagement.

It is our understanding that the initial intent of Objective 2.3 was to straighten out a few mooring rows. We believe this can be accomplished through voluntary and incentivized relocations.

The NMA looks forward to collaborating with the Harbor Commission to improve Newport Harbor while preserving the established mooring access we enjoy today.

Sincerely,

The Board Of Directors
Newport Mooring Association
https://newportmooringassociation.org

Newport Mooring Association

Summary List of Newport Mooring Association Recommendations:

1. Postpone this agenda item in favor of public stakeholder meetings
2. Collaborate with the NMA on a voluntary mooring relocation plan to straighten out mooring fields.
3. The City can adjust a few moorings by a few feet at minimal cost to straighten out some mooring rows.
4. The City can better utilize existing vacant moorings by setting establishing a longer term boat storage rate for subleasing moorings. The current sublease rate is set high for visiting short term boaters. Establishing a lower rate for longer term users will generate significant revenue and better utilize existing vacant moorings.
5. The City should encourage mooring contractors to use GPS technology to make sure moorings are replaced in exact locations when they are lifted for service.
6. The City and NMA can collaborate to have biannual service of mooring hardware accomplished during the same general time period for the various mooring fields (ex. J field in February, H field in March). This will allow the contractors to make sure everything is lined up nicely and may save contractor and permittees in mobilization costs because they will be working the same mooring field for several days in a row.
7. If one objective is to create more “Open Water” then do not add more moorings and boats. This will create less “Open Water”.

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The Coastal Act recognizes the importance of protecting recreational and commercial boating and fishing activities. (See Pub. Resources Code §§30224, 30234, 30234.5.) The City of Newport Beach's Local Coastal Program Land Use Plan ("LUP") also emphasizes the importance of maintaining access to moorings, with Policy 3.3.2-3 which states "Continue to

provide shore moorings and offshore moorings as an important source of low-cost public access to the water and harbor."

Though the City has adopted a Local Coastal Program, the Coastal Commission retains original jurisdiction for developments in the tidelands, public trust, and submerged lands. (Pub. Resources Code §30519, subd. (b); see City of Newport Beach's Post LCP Certification and Appeal Jurisdiction Map, available at: https://www.newportbeachca.gov/PLN/LCP/LCP_Zoning/Maps/21_80_045_Permit_and_Appeal_Jurs_Maps/Offcial_CNB_PostCert_Map.pdf.) Thus, any development in the mooring fields at Newport Harbor, which are submerged lands, require review and approval by the Coastal Commission in the first instance.

II. The Proposed Revisions to the Harbor Code Eliminating Mooring Extensions Constitute Development and Require a Coastal Development Permit.

The proposed revisions to the Harbor Code (Newport Beach Municipal Code, Title 17) constitute development under the Coastal Act. Under the Coastal Act, development includes, inter alia, "change in the intensity of use of water, or of access thereto." (Pub. Resources Code §30106; *Surfrider Foundation v. Martins Beach 1, LLC* (2017) 14 Cal.App.5th 238, 250.) Under the existing Harbor Code, permittees may request mooring extensions for vessels longer than the assigned vessels, and extensions five feet or under may be granted by the Harbormaster without seeking approval from the Harbor Commission. (Newport Beach Municipal Code §17.60.040, subd. (M).) The proposed revisions to the Harbor Code drastically change this process by eliminating mooring extensions. (October 12, 2022 Harbor Commission Agenda Packet, pp. 59-60; November 9, 2022 Harbor Commission Staff Report, Attachment C, pp. 8-9.) These revisions will alter and impede the access of permitholders to moorings, thereby constituting development under the Coastal Act.

The proposed revisions state:

> Requests for mooring extensions shall no longer be considered. Instead, requests for a longer or extended mooring will require relocating to a larger mooring. The mooring permittee making the request shall pay a fee for the relocation request and shall

> bear all costs of relocating their vessel and the displaced vessel. Relocations will require payment of a fee and be contingent upon availability of a vacant mooring or another permittee in the same mooring field (or also an adjacent field in the case of moorings in the H and J fields) having a vessel in a mooring row that is designated for a length of at least 5-feet greater. In no event will relocations be considered for mooring lengths in excess of 5' of the current mooring length for the permittee making such request. Authority to approve relocation requests shall lie with the Harbormaster.

(November 9, 2022 Harbor Commission Staff Report, Attachment A.)

These revisions alter access to water because they will result in requests even for small, de minimus extensions to be considered as a request for *relocation* of a permittee's mooring. The location of a permittee's mooring is an important access consideration, because if a mooring is relocated far away from a permittee's dinghy location, it will be difficult for the permittee to access their mooring. Additionally, flipping any moorings where boaters have to now access the mooring in a downwind fashion will change access to and from moorings and make accessing a mooring more difficult as the operator will have less control. Finally, these revisions impose the cost of unnecessary relocations onto permittees and requires them to pay a relocation fee, which further impedes access to moorings and is contrary to LUP Policy 3.3.2-3 which requires provision of moorings as a source of "low-cost" access. These modifications to the public's access to moorings require review and approval by the Coastal Commission.

III. The Proposed Phase I Pilot Test Constitutes Development and Requires a Coastal Development Permit.

As part of the City's plan to reconfigure the Harbor, the City plans to conduct an initial reconfiguration of C Field (Phase I), with a pilot test constructing 3 to 6 double mooring systems in one row to verify engineering and functionality. (October 12, 2022 Harbor Commission Agenda Packet, p. 86.) Under the Coastal Act, development includes "in or under water, the placement or erection of any solid material or structure; [or] construction . . . of any structure . . . ." (Pub. Resources Code §30601.) The construction of new moorings thus falls squarely within the definition of development, for

which a Coastal Development Permit is required. Construction of new moorings during the pilot test will require installation and placement of new shared anchors, shackles, chains, and buoys within the mooring fields. (October 12, 2022 Harbor Commission Agenda Packet, pp. 48, 78.) As described above, development within the mooring fields is subject to the Coastal Commission's original jurisdiction and thus requires a Coastal Development Permit. Accordingly, the City cannot proceed with the Phase I pilot test without a Coastal Development Permit.

IV. The Proposed Mooring Reconfiguration Would Encourage Unsafe Navigation of Large Vessels in the Mooring Fields.

The mooring fields as currently configured provides protection from larger vessels. We are concerned that the proposed mooring reconfiguration, which provides for wide, up to 100-foot fairways, would encourage navigation of large vessels in the mooring fields. This would both obstruct coastal access and create a safety concern for permittees operating small vessels, as well as for paddleboarders, kayakers, and others operating small human-powered vessels in the safe haven of the mooring fields. This goes against the Chapter 3 policies of the Coastal Act, which protect such activities. (Pub. Resources Code §§30211, 30220, 30224.) Marine life that frequent the harbor, such as dolphins, may also be impacted by the introduction of larger vessels. (See Pub. Resources Code §30230.)

The mooring areas in Newport Harbor are designated "Special Anchorages" by the Coast Guard. (33 C.F.R. §110.95; see 77 Fed. Reg. 22489, available at: https://www.govinfo.gov/content/pkg/FR-2012-04-16/pdf/2012-9006.pdf.) Special anchorage areas "should be well removed from the fairways and located where general navigation will not endanger or be endangered by unlighted vessels." (33 C.F.R. §109.10.) Thus, fairways that accommodate large vessels should not be located within the mooring fields.

V. The Proposed Mooring Reconfiguration Would Impact Harbor Views.

We are also concerned with City staff's questionable assertion that the mooring reconfigurations would greatly improve harbor views. (October 12, 2022 Harbor Commission Agenda Packet, p. 82.) The proposal to push mooring rows together will alter view corridors from the public boardwalk around Balboa Island (and other boardwalks in Newport Harbor). (See Pub.

Resources Code § 30251 ["The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance."]) The plan will also alter homeowner views of the harbor. While under the proposed reconfiguration, views *may* be improved for some—those whose properties are fronted by a fairway—views may also be greatly worsened for others, including those whose properties are fronted by the proposed double-wide tandem rows of boats.

VI. Conclusion.

The proposed revisions to the Harbor Code present significant changes that would alter access to water and construct new moorings in the submerged mooring fields. The proposed mooring reconfiguration would encourage unsafe navigation of large vessels that impede coastal access for small-scale recreational boaters and others, and would obstruct coastal views. Accordingly, the proposed mooring plan constitutes development under the Coastal Act and appears to be in conflict with the Coastal Act. As such, it must be reviewed for approval by the Coastal Commission. We request that the Harbor Commission, in fulfilling its charge, advise the City of these issues prior to making any recommendation.

Sincerely,

Douglas P. Carstens
Sunjana Supekar

To: City of Newport Beach Harbor Commission

From: Capt. James L. Haley

79 Dapplegray Lane

Palos Verdes Peninsula, Ca. 90274

November 6, 2022

Dear Commissioners:

I have been asked by the Newport Mooring Association to give my expert opinion on the proposals contained in the published "Solution for Improved Safety and Utilization of Space and Adding New Moorings".

I have held a US Coast Guard License as Master Mariner since 1982, including First Class Pilotage, Unlimited Tonnage in Los Angeles and Long Beach harbors and employed as a pilot in the Port of Long Beach for the past 32 years. I have been admitted as an expert in numerous State and Federal courts as an expert in ship handling and navigation. I have also been a recreational sail and power boat owner for over fifty years and a frequent user of moorings in Southern California.

It is my opinion that any proposal that involves moving mooring rows closer together and forcing any vessels to approach or depart a mooring in a down wind fashion (relative to the prevailing winds) will create much greater risk of collision and injury and a less safe usage of the mooring arrangement.

It would be almost impossible to overstate the negative impacts of configuring moorings that are not approached as nearly bow into the prevailing winds as practical. The increased difficulty of approaching or departing any mooring or dock in a downwind direction would certainly increase risk of collision, allision, damage to boats and injury to boaters. All authoritative books on seamanship or boat handling are in emphatic agreement on this simple point. The vast majority of sail vessels and many power boats are single engined, and have very limited steering or maneuverability when moving astern. Departing moorings downwind would be as likely as approaches to result in boat collisions, allisions, damage and injuries.

The America's Cup harbor arrangement that has been offered as an example is not comparable to Newport for the simple reason that it is shielded from wind by the topography of Point Loma and protected from tidal currents by virtue of being land locked on three sides. Newport, by contrast is surrounded by low land masses that do little to protect the mooring fields from prevailing winds, and tidal currents flow unimpeded through the moorings as well.

The current proposal creates a less safe situation by moving alternate mooring rows within 20 feet of each other. Less space affords less reaction time and decreases space to maneuver to avoid collisions or allisions when boats inevitably experience a failed mooring attempt such as when the wind or current are greater than anticipated. Page 84 of the October 12th presentation indicates the distance between all mooring rows range from 41 to 65 feet with an average of 53ft in the "C" mooring field. In the new mooring plan, on page 85, it indicates alternate mooring rows will be moved closer and within 20 feet of each other. In my opinion, moving the mooring rows within 20 feet decreases the ability to safely maneuver, especially in the event of strong winds, a failed mooring attempt or mechanical failure.

Any changes to the existing mooring arrangement that has served the boating community quite well for decades should give the most serious consideration to the input of the current permittees. Their experience is the best source of knowledge about what works and what will create problems for them and their fellow boaters.

Please feel free to call me with any questions at (928) 713-6277

Sincerely,

Capt. James Haley

HARBOR COMMISSION OBJECTIVES TRACKING SHEET—Excerpted for Objective #2.3

2. Harbor Viability (Beer) - Matters pertaining to Assets, Amenities, and Access.

	2.3 Evaluate the current mooring fields and provide a recommendation for new guidelines that better define rows and fairways to improve navigation, safety, and optimization of space within the mooring fields. (Beer)	NMA NOTES REGARDING TIMELINE
January 12, 2022	Nothing to report.	
February 9, 2022	Nothing to report.	
March 9, 2022	Nothing to report.	
April 13, 2022	Vice Chair Beer discussed this objective in detail earlier in the meeting. He noted he is waiting for the third audit to come in and will bring it back to the Commission.	Presented no substantive details of mooring plan No harbor code revisions presented
May 11, 2022	The third audit has been received. Further feedback will be requested of the Commission at next month's meeting.	Presented no substantive details of mooring plan No harbor code revisions presented
June 8, 2022	Vice Chair Beer discussed this objective in detail earlier in the meeting. He brought before the Commission his draft plan for feedback.	Presented slideshow of mooring field redesign No harbor code revisions presented
July 13, 2022	Vice Chair Beer has received information from the engineering firm and will provide a more comprehensive update at next month's meeting.	No updates, engineering report "coming"
August 10, 2022	Vice Chair Beer noted that he is waiting on the final report from the City's contract engineer. Once he receives that he can verifiy the information and provide a report to the Commission.	Presented no substantive details of mooring plan No harbor code revisions presented
September 14, 2022	Vice Chair Beer will provide a complete report of this objective at the next meeting.	Presented no substantive details of mooring plan No harbor code revisions presented
October 12, 2022	Vice Chair Beer provided a complete report on Objective goal 2.3 for consideration by the Harbor Department.	FIRST PRESENTATION OF COMPLETE REPORT FIRST SUBMISSION OF HARBOR CODE REVISIONS
November 9, 2022		
December 14, 2022		

From: "megandelaney@[redacted] <megandelaney@[redacted]
Date: Monday, September 26, 2022 at 12:55 PM
To: "Beer, Ira" <IBeer@newportbeachca.gov>, 'Admin' <mail@newportmooringassociation.org>
Cc: Dept - City Council <CityCouncil@newportbeachca.gov>, 'NMA Email Board' <nmaboard@indigoharbor.com>, "Miller, Chris" <CMiller@newportbeachca.gov>, "Jung, Jeremy" <JJung@newportbeachca.gov>
Subject: RE: Mooring Reconfiguration Proposal and Mooring Fees

Thank you, Ira!

Megan

From: Beer, Ira <IBeer@newportbeachca.gov>
Sent: Monday, September 26, 2022 11:46 AM
To: Admin <mail@newportmooringassociation.org>
Cc: Dept - City Council <CityCouncil@newportbeachca.gov>; 'NMA Email Board' <nmaboard@indigoharbor.com>; Miller, Chris <CMiller@newportbeachca.gov>; Jung, Jeremy <JJung@newportbeachca.gov>
Subject: Re: Mooring Reconfiguration Proposal and Mooring Fees

Hello Megan,

Attached herewith please find a copy of the initial engineering study for the mooring field reconfiguration. Should you have any questions, comments, or feedback, please do not hesitate to respond back to me. Should you wish to discuss any of the information provided, or any other aspects of the project, please do not hesitate to let me know as I am happy to meet with you and/or the NMA board prior to the next scheduled Harbor Commission meeting where this item will likely be agendized for public comment.

As you know, this project is a part of the Harbor Commission's Open Water Initiative intended to improve safety, navigation, create more moorings for public use and increase the usable space for mariners in Newport Harbor. I look forward for the opportunity to share any of the details with you, your board, and its members.

Best regards,

Ira Beer
Harbor Commissioner
ibeer@newportbeachca.gov
(949) 702-6900

From: "Beer, Ira" <IBeer@newportbeachca.gov>
Date: Wednesday, July 6, 2022 at 11:06 AM
To: Admin <mail@newportmooringassociation.org>
Cc: Dept - City Council <CityCouncil@newportbeachca.gov>, 'NMA Email Board'

9

<nmaboard@indigoharbor.com>, Harbor Commission
<HarborCommission@newportbeachca.gov>
Subject: Re: Mooring Reconfiguration Proposal and Mooring Fees

Hi Megan,

Thank you for your kind words of congratulation on my reappointment and the acknowledgment of work surrounding the commitment in accepting such an appointment. It has been, and continues to be an honor to serve on the Harbor Commission.

As mentioned in my last email, the engineering study is not completed. However, it is well underway. While the financial aspect is yet another conversation, the engineering study when completed will be discussed at a regular Harbor Commission meeting and will be open to public comment as such time.

As for the offshore mooring appraisal, to the best of my knowledge that has not been completed yet, nor have I seen any drafts. As there is quite a lot of information required for the Harbor Commission to review when considering a recommendation of mooring rate increases, I expect that could be a while to compile the data and have it available for review and public comment, also at a Harbor Commission meeting in the future.

Please do not hesitate to let me know if you require additional information or have further questions.

Best regards,

Ira Beer
Harbor Commissioner
ibeer@newportbeachca.gov
(949) 702-6900

From: Admin <mail@newportmooringassociation.org>
Date: Wednesday, July 6, 2022 at 1:42 PM
To: "Beer, Ira" <IBeer@newportbeachca.gov>
Cc: Dept - City Council <CityCouncil@newportbeachca.gov>, 'NMA Email Board' <nmaboard@indigoharbor.com>, Harbor Commission <HarborCommission@newportbeachca.gov>
Subject: RE: Mooring Reconfiguration Proposal and Mooring Fees

Hi Ira,

First, congratulations on your reappointment to the Harbor Commission. It's quite a responsibility, and we are glad and thankful when volunteers step up to shoulder this level of work.

I appreciate your response to my question. Just so I understand exactly, your proposal for the mooring field reconfiguration is only a concept at this time – that the engineering, financial and feasibility analysis have not been started at this time? We had assumed that much of those analyses had been completed. I think that assumption has caused some confusion among the membership.

As it relates to the mooring fee increase, yes, that **is** a separate topic and a question for the Harbor Commission. I apologize that you interpreted it as being connected with the mooring reconfiguration proposal. Can you or another Commissioner address that question? According to the Harbor Commission goals and other documents, we have assumed that the offshore mooring appraisal has been completed. And, as you know, this is a very explosive issue with all mooring permitees. Do you have any information on timing that you can share with us?

Thanks again for all your time and effort!

Megan

From: Beer, Ira <IBeer@newportbeachca.gov>
Sent: Tuesday, June 28, 2022 2:34 PM
To: Megandelaney@[redacted] 'Admin' <mail@newportmooringassociation.org>; Harbor Commission <HarborCommission@newportbeachca.gov>
Cc: Dept - City Council <CityCouncil@newportbeachca.gov>; 'NMA Email Board' <nmaboard@indigoharbor.com>
Subject: Re: Mooring Reconfiguration Proposal and Mooring Fees

Hello Megan,

Thank you for your email. This project is still in a review stage. The assumptions in the draft proposal, while based on prior discovery, are subject to engineering review not yet completed. I appreciate the questions from your board set forth in the email received on June 14, 2022. I am however struggling to see how they relate directly to what was presented at the June 8, 2022, Harbor Commission meeting. The purpose of the mooring initiative discussed and defined in item 2.3 of the Harbor Commission Objectives is to evaluate the current mooring fields and provide a recommendation for new guidelines that better define rows and fairways to improve navigation, safety, and optimization of space within the mooring fields. Economics of the proposal and mooring rate increases were not a part of the discussion or the primary subject matter of the Objective.

I would be happy to meet with you and the NMA board in person or via Zoom to discuss what was presented and the items related thereto. Please let me know. Otherwise, I hope you will watch for when this topic is agendized at future Harbor Commission meetings as I and the Harbor Commission value your comments and any input you feel compelled to share. Thank you.

Best regards,

Ira Beer
Harbor Commissioner
ibeer@newportbeachca.gov
(949) 702-6900

From: "Megandelaney@[redacted] <Megandelaney@[redacted]
Date: Monday, June 27, 2022 at 4:17 PM
To: 'Admin' <mail@newportmooringassociation.org>, Harbor Commission

<HarborCommission@newportbeachca.gov>
Cc: Dept - City Council <CityCouncil@newportbeachca.gov>, 'NMA Email Board' <nmaboard@indigoharbor.com>
Subject: RE: Mooring Reconfiguration Proposal and Mooring Fees

To Commissioner Beer and the Harbor Commissioners –

We haven't heard nay response to our email of June 14th. Can you give us any update you have on the harbor reconfiguration? What are your next steps?

Thank you,

The NMA Board of Directors
Looking out for the interest of all mooring owners
Newport Mooring Association
P.O. Box 1118, Newport Beach, CA 92659-1118
mail@NewportMooringAssociation.org

From: Admin <mail@newportmooringassociation.org>
Sent: Tuesday, June 14, 2022 3:30 PM
To: HarborCommission@newportbeachca.gov
Cc: Dept - City Council <Citycouncil@newportbeachca.gov>; NMA Email Board <nmaboard@indigoharbor.com>
Subject: Mooring Reconfiguration Proposal and Mooring Fees

To Commissioner Beer and the Harbor Commissioners,

At the June 8th Harbor Commission meeting, Commissioner Beer presented his new mooring system proposal. The proposal involves realigning the mooring fields, installing a new anchoring system, and having a shared mooring on one end of the two-point mooring systems. To better understand the proposed changes to the mooring system, we would like to review any supporting documents for the presentation, and we have the following questions:

1. Has this mooring reconfiguration been approved by City Management? Or is this still in a conceptual phase?
2. What financial analysis has been performed - revenues and expenditures, investment and payback - for the extensive capital and services outlay to implement this revised system? We have noted that this new project doesn't seem to appear in the proposed FY2022-23 budget document.
3. If the City pays for the new hardware, we believe the City will assume the liability when a boat breaks loose from any new system or when the new system causes damage to a vessel. If the City installs and owns the new system, what is the City's exposure for accidents caused by the new system? How will the City manage the assumption of liability?

4. We would like to review the engineering analysis on the specific hardware being proposed for the shared mooring system. The proposed solution is far more rigid with greatly reduced catenary (thus reduced shock absorbing potential) between a vessel and the mooring anchor to limit movement of the boats, and we are very concerned about the potential stresses on boat cleats and other attachments. We are also concerned with how the system will perform under the heavy Santa Ana winds we have in Newport Beach.
5. Does this project require any approvals from the Coastal Commission? Does it require an Environmental Impact Report? Does it require a Coastal Development Permit (CDP) to move forward? Have any of these documents been completed at this time?
6. What type of "proof of concept" or trial moorings for implementation is being considered? Has Commissioner Beer identified areas that will be implemented first? What is the proposed timeframe for the implementation?
7. Was there an incident or a series of accidents that prompted the safety concerns that drove this proposal? We are concerned that the shared moorings make it more difficult to get a vessel on and off the mooring, and as previously discussed, may cause other issues and potential damage to vessels.
8. It should be noted that Commissioner Beer's earlier study from 2020 had identified a plan for a mooring realignment for safer fairways that now appears to have been abandoned for this far more complex reconfiguration.

Mooring Rate Increases - In addition to our questions on this new mooring configuration proposal, when we will next hear about the onshore/offshore mooring rates and appraisal? We assume that the offshore mooring appraisal has been completed. Our members are very concerned and want to be prepared to discuss the new proposed rates.

We would like to reiterate the NMA's willingness to work collaboratively on policy and procedures that affect our harbor.

Thank you,

The NMA Board of Directors
Looking out for the interest of all mooring owners
Newport Mooring Association
P.O. Box 1118, Newport Beach, CA 92659-1118
mail@NewportMooringAssociation.org

Wednesday October 26, 2022

City of Newport Beach Harbor Commission
Paul Blank, Harbormaster

Dear Commissioner Beer:

I would like to thank you and Harbormaster Blank for meeting with Jerry LaPointe and me on October 20, for an initial preliminary meeting to answer some questions about the proposal to move almost all the offshore moorings and/or boats on the moorings. As mentioned at the meeting, this was intended to be an initial meeting to answer some questions to be followed by a second meeting with you, other commissioners, and the NMA.

At this initial meeting we asked for your personal assurance that any proposal to change Title 17 not be voted on at the November 9 Harbor Commission meeting, but instead postponed to allow the NMA and stakeholders to study the new proposal, and allow time for the City to send notice to all the stakeholders, including permit holders, followed by one or more stakeholder meetings. As stated previously, the NMA does not think it is appropriate to make any changes to Title 17 at this time. Certainly, a six boat trial test of a new concept in mooring layout and design does not require a Title 17 rewrite. Let's ask for volunteers instead of mandating that permittees cooperate. However, since Title 17 changes may need to happen eventually, we are hereby giving you our initial modifications to your earlier proposed language changes.
While the NMA does have a list of permittees, it is not as up to date or complete as the City's list, and it is our personal view that a mailing should not be placed on the shoulders of the NMA. We also requested that you ask other Commissioners if the matter could be placed on the agenda as a discussion item only, and not as an item to be voted on. We asked that you let us know as soon as possible to avoid our having to notify as many people as possible that the proposals in current form would be voted on at the November 9 meeting.

At the meeting you indicated the proposed changes to Title 17 were being made and that there was a deadline for us to comment on the changes. You indicated that you would try to provide us with these changes on Friday October 21, although you were not sure if that could be done and you might only be able to provide your work notes outlining the changes. You requested that we provide our comments on the Title 17 proposed and revised changes by the end of the day, Wednesday October 26. At approximately noon on Monday Oct 24 (two days ago), you sent the Title 17 revised changes in a pdf file. Yesterday I attempted to "convert" that file and gather comments from a few people on the NMA Board in order to meet the deadline of today. We understand that it was difficult to provide us with the new proposed changes before they were sent, and we ask you to appreciate the fact that putting together our views in a day and a half on the proposed revised Title 17 changes sent in a pdf file format, with the need to consult with numerous people, most of whom are working full time, is a difficult task.
At this preliminary meeting, in addition to discussing the timing and need for stakeholder meetings after notice is mailed, we expressed concerns and asked questions about placing the bow of boats within 20 feet from the bow or stern of another boat. We discussed in general concerns over safety, the difficulty in securing a boat to a mooring with another boat so close even when using a spreader line to help. We asked questions about where each mooring would be relocated and the need for each permit holder to know where their mooring would be relocated. We asked about the best way

to keep multiple buoys attached to the same anchor or weight system as far apart as possible, and we asked about how to best study a theoretical reconfiguration in real life conditions. This is not intended to cover all the questions and matters discussed, but just a few that come to mind.

Again, with just a day and a half to provide some comments on the Title 17 changes, attached are some concepts. I have tried to put this in a format that is "readable" but it was difficult to work with the color coded pdf files that were sent to us.

I attempted to show our changes and modifications of your proposal by placing them in bold 14 point font with yellow highlight. Some of the words embedded in the highlight might have been in the original or in the proposed revisions.

To make it somewhat easier to follow the highlighted modifications, here is some background and additional comments. The letters refer to the corresponding Title 17 document letters.

Note: ***The version originally sent on Oct 26 to meet the deadline contained formatting errors, including some items that appear to be "strikeout" but are either embedded line of boxes that should have been removed and also at least one date error. Most of these embedded lines and boxes have been removed in the items noted as attachments.***

17.25.020

F. Safety, safety and safety. The highlighted modifications attempt to make clear what should be otherwise obvious, that any new system or reconfiguration would first require proof of being safe without materially increasing the difficulty in getting on and off a mooring, particularly for elderly and disabled boaters and sailors under all wind, tide, and current conditions (over and above the existing level of difficulty in the same conditions). We do not think any responsible person would have difficulty with that concept, but without it being expressly stated in the code changes, when we are on the verge of a massive change in all parts of the harbor affected by winds and currents in a different way, this needs to be expressly stated and not just "implied".
Much of the discussion that follows, but not all, concerns what we generally call the two-buoy type of mooring.

F. 2. Spreader lines. Spreader lines are a good idea, but Harbormaster should be able to determine the different types of lines used. Spreader lines serve a number of functions in addition to warning other boaters of a mooring with a spreader line. They are often used to temporarily tie onto a cleat on a boat, and would need to be of the appropriate size for the cleat. There are much stronger lines of smaller diameter that float and last longer when exposed to the sun. The Harbormaster should be able to handle this.

G. Sand Lines. If the use of sand lines (aka mud lines) is being considered in some situations, the Harbormaster should determine if the mud on which the line will sit for days is contaminated. If contaminated, when picking up the line, the contaminated mud will get on skin and clothes, and may cause heath concerns. We do not know if the City has tested the mud under all the mooring fields.

17.60.040

B. Issuance of Permit. There is a lot of concerns about confusion in the documents between "existing moorings" and "newly created moorings". This is both a technical drafting issue, but is also a public relations and stakeholder issue. Some of the changes are just to clarify what appears to be the intent, in particular that transferability is not changing for existing permits, and a transferee after transfer will have the same right. To help make this clear, we have included definitions of New Moorings and Existing Moorings, among other ways to make it clearer.

B. 2. Permit Requirements

J. Authorization to Move.

Currently, Title 17 allows when "necessary" to move boats (not moorings). Historically, that has been interpreted to mean moving boats on a temporary basis to accommodate maintenance, dredging, etc. The proposed new language still refers to moving boats (vessels) but adds that this can be done when not necessary, and includes the reconfiguration of the entire mooring fields when there have been zero instances of any reported accidents or other issues with the existing configuration over 100 years of mooring use. We understand that some members of the Harbor Commission have a vision of a tidier Harbor and may have an aesthetic vision that boats in perfect rows make a nicer water view. However others may differ on this and find the more natural view of boats swaying naturally in the harbor is the more pleasing view. No painter has ever painted boats lined up like in a parking lot, yet there are tens of thousands of paintings of boats sitting naturally in a harbor. The NMA does not think the current system needs to be radically changed. At the very least, there needs to be stakeholder meetings after a mailing describing proposed changes. There needs to be opportunities to be heard by all those impacted, and also extensive study of real world usage of the suggested new configuration before any changes are made to Title 17. If changes are ultimately made to Title 17 allowing for the future moving of boats or moorings, under some different plan of reconfiguration, then the same type of stakeholder meetings, safety, and accessibility studies should be a prerequisite of such major changes.

In the event that any Title 17 changes are made to allow for reconfigurations, despite the fact that it is not needed, we would address some of the conditions on what should be imposed to address safety, potential difficulty of use, accessibility for the old and disabled, and fairness of location. We have also tried to address what appears to be major confusion in the proposed language as it relates to moving boats vs moving moorings.

Moving Boats vs Moving Moorings.

Much of the proposed language changes refers to moving boats or moving vessels. We believe this does not fit with any proposal that in effect is an attempt to move moorings into certain rows. Here are a few examples of the havoc that would result in referring to moving boats vs moving moorings. Permit holder Joe, who has a 50 foot mooring Z-12 (there is no Z field it is used as an example only), and Joe at one time had his 46 foot boat called Joes Dream on the mooring. Joe sold his boat and acquired a 34 foot sailboat, Joes Folly, to use to race in the Thursday afternoon races. Joes Folly is now on Z-12, but in three or four years, Joes knows he may give up sailboat racing given his age and he plans to put another 46 foot powerboat back on Z-12. Under the proposed authorization, the Harbormaster can move Joes Folly to some other, smaller mooring, and

move someone else's 50 foot boat onto Z-12. Under the proposed plan, as I understand it and which refers to moving boats, we could have the following scenario: Joe will pay for the 50 foot mooring (that he is not using), Joe will pay to maintain the 50 foot mooring (that he is not using), and Joe will have no say in how his new mooring is being maintained, as some other mooring permittee will be on his 50 foot mooring. However in a few years when he sell's Joes Folly, and buys a 46 foot trawler Joe's Last Boat, he will have not a place to put the retirement boat of his dreams.

Here's another example: Joe's uncle, Sam, owns the mooring next to Joe and he follows the harbor scuttlebutt closely. Right now his 40-foot mooring Z-11 is usually vacant, although he occasionally puts an old 16 foot skiff on it for occasional use. Hearing what is going on and planning to buy another boat a few years from now, he goes out and buys the cheapest 40 foot boat he can, just to have a "place holder" so he will have a place to put his new boat in three or four years, and no one will be moved in the meantime to his underutilized 40 foot mooring.

These are only two of a thousand different situations that could come up over time in the lifetime of a boater. People do change boats.

To avoid all of this confusion, the language addresses the issue directly and speaks directly about moving moorings and under what situations and conditions that would be appropriate. While the NMA believes there is clearly no need and no necessity to do that on a wholesale basis, there may be some areas in the harbor where it makes sense. With this in mind we have offered language that would address this and have added safeguards that would discourage potential abuse, while at the same time increasing safety, and avoiding creating difficulties of use and accessibility. The language allows for transparency and mandates the use of appropriate stakeholder meetings, and some checks and balances, including ultimate approval by the City Council.

B.2.l Transfer of Permit / Permit Requirements

These are mostly technical clarifications, to make clear the status of a transferee of an "Existing Permit" and the status of a second name on the mooring permit as having a different status that does not create a "transfer" and provides a method to remove the second named person.

M. Request to Extend Mooring Length or Relocate to Larger Mooring.

Extensive changes were needed here, which are too many to summarize. These changes are made in an attempt to avoid some of the issues discussed above regarding moving boats vs moving moorings. For example, if a 50 foot boat on a 50 foot mooring is moved to a 60 foot row (by for example a private sale), or for realignment purposes a 50 foot mooring is placed in a 60 foot row, perhaps because it was on the end of a row and the only end of row mooring available is in a 60 foot row, the person with the 50 foot boat should not lose his or her mooring and be subject to relocation of boat or mooring. Moreover, if after a few years, the person with the 50 foot boat, sells the boat and asks to allow his new 52 foot boat to be on his mooring and asks for his 50 foot mooring, which is in the 60 foot row to be extended to a 55 foot mooring, he or she should at least be allowed to make the request, and the Harbormaster and/or the Harbor Commission should be allowed to address the request on a case by case basis so long as the boat will be well within the length limits of the row. The proposed changes take into account the different type of situations, and avoids the "move the boat only" without moving the mooring issues, discussed in detail above.

As a final note, because of the edits, re-edits, and conversions from pdf files to Word files, some of the internal numbers and cross references may need to be adjusted.
We of course would have preferred more than one and a half days to address the major proposed changes, as revised, to Title 17, and we are hopeful that we will have the time and opportunity to work with the Harbor Commission to come up with reasonable and appropriate changes through transparency and with safety, usability, and accessibility in mind.

Thank you for your kind attention,

L. Scott Karlin

and the

Board of Directors
Newport Mooring Association
https://newportmooringassociation.org

Attachments:

First Attachment:

17.25.020 Anchorage, Berthing and Mooring Regulations.

A. Location. No person having charge of any vessel shall berth or anchor the same in Newport Harbor except within designated areas. Any vessel which is berthed, moored or anchored at a place not designated for such vessel shall be moved as directed by the Harbormaster. In the designation of mooring areas and anchorage areas, consideration shall be given to the needs of commerce, the utilization of turning basins, the use of channels for navigation, and the economy of space. No vessels shall be moored or anchored in any part of any turning basin or channel unless secured both fore and aft except as provided in subsection (H) of this section. Every vessel moored or anchored in any part of the harbor outside of any turning basin or channel shall be so moored or anchored as to prevent such vessel from swinging or drifting into any turning basin or channel.

1. No person owning, leasing, occupying or having charge or possession of any vessel shall:

    a. Berth or anchor the same in Newport Harbor except within the designated areas; or

    b. Anchor a vessel in any of Newport Harbor's designated public anchorage areas or at any location on the open waters of the Pacific Ocean within five hundred (500) yards of a designated protected swimming area for a cumulative period of time that exceeds seventy-two (72) hours within any thirty (30) calendar day period. The Harbormaster may authorize, in writing, an extension to the seventy-two (72) hour time limit if the Harbormaster determines that given the particular circumstances an extension of time is reasonable and warranted.

2. Any vessel which is berthed, moored or anchored at a place in Newport Harbor not designated for such vessel shall be moved as directed by the Harbormaster. In the designation of mooring areas and anchorage areas in Newport Harbor, consideration shall be given to the needs of

commerce, the utilization of turning basins, the use of channels for navigation, and the economy of space.

B. Application of Chapter. The terms of this chapter, as they relate to moorings and buoys, shall apply to "on-shore moorings" which are moorings located landward of the pierhead line and to "offshore moorings" which are located bayward of the pierhead line, with equal force and effect.

C. Berthing.

1. Boats berthed at private or public piers shall not extend beyond the prolongation of the side property lines of the property or properties to which the pier is connected in accordance with Section 17.35.020.

2. Any boat berthed at a pier or slip shall not extend bayward beyond the end of the pier or slip by a distance of more than the maximum width of its beam. Between Bulkhead Station 256, beginning at Collins Avenue to Bulkhead Station 255, boats moored at a pier or slip shall not extend more than fifteen (15) feet bayward beyond the end of the pier or slip or more than the width of the beam of the boat, whichever is less.

D. Permit Required. No person shall place, erect, construct or maintain a pier mooring or buoy in the waters of Newport Harbor over City-owned or controlled tidelands without first having obtained a permit pursuant to this title.

E. Unauthorized Use of Mooring. No person shall use a mooring unless he or she holds a current and valid permit except with the permission of the Harbormaster for temporary use, as herein provided.

F. Chains and Fastenings of ~~Helix~~ Anchor Mooring System. Offshore moorings in the City's mooring fields which are designed to secure a boat with two anchors, one secured to the bow and one to the stern, may, at the direction of the City, consist of:

~~one Helix Anchor weight for every two~~ vessels ~~(if proven safe for~~ the **use of the mooring in all wind, tide, and current conditions in the particular** field and area where the boat will be moored**, including the vessel safely being secured to the mooring without undue difficulty when approaching and leaving the mooring by persons of all ages and persons with disabilities consistent with the Americans with Disability Act and the California State Unruh and Disabled Person's Act**); or two separate anchor weights for each vessel, **If moorings in a field are reconfigured to be closer to other moorings in a field either side to side or fore or aft, such** reconfiguration shall first proven to be **safe for the use of the moorings in all wind, tide, and current conditions in the particular field and area where the boat will be moored, including the vessel safely being secured to the mooring without undue difficulty when approaching and leaving the mooring by persons of all ages and persons with disabilities consistent**

with the Americans with Disability Act and the California State Unruh and Disabled Persons Act.

Mooring permittees shall be responsible for maintaining, repairing, and replacing all anchor system components, including but not limited to, all the chains, shackles, weights, lines, buoys and all other gear and equipment used in securing their vessels to the mooring.

If the City has installed a helical anchor system for use as the shared anchor mooring system, the City shall maintain, repair, and replace only the shared helical anchor at its cost.

1. No person shall erect, construct or maintain any mooring in Newport Harbor unless all chains and fastenings are of sufficient size to stand a breaking strain of at least six times the weight of the mooring.

2. All mooring lines on buoys (excluding a Spreader Line as described below) shall be so arranged that, when dropped, they will immediately sink.

All double or two-point moorings that are equipped with two mooring buoys for mooring to both bow and stern, are at all times required to have (i) a vessel properly tied to both mooring buoys, or (ii) a single 3/4" polypropylene line **of a diameter approved by the Harbor Master for that sized boat and mooring**, secured and connected to both the bow and stern buoys, **or other floating line, or of another size or type approved by the Harbor Master**. The line shall be no longer than five feet plus the length of the mooring and equipped with 9" long two-color buoys affixed in-place to the line that are no less than ten feet apart from each other, (the "Spreader Line"), and (iii) two lines that are appropriately sized and specified for attachment to each mooring buoy that will be secured one each to the port and starboard cleats at each the bow and stern at all times the vessel is occupying the mooring space, and (iv) maintained the Spreader Line keeping it clean from algae and other marine growth to prevent the line from submerging below the surface and not remaining easily visible to other approaching mariners.

G. Sand Line Moorings. With the approval of the Harbormaster, mMooring permittees may use a single buoy system for a two-point mooring by use of a Sand Line. A "Sand Line" is a line from one anchor line to the opposing anchor line. The Sand Line shall be properly weighted to immediately sink when dropped. The permittee must submit a Mooring Modification Request to the Harbormaster and shall include details of the modification (including diagrams, if requested)., The Harbormaster may approve the request based upon his or her determination that the modification will result in any safety or navigational concerns, **and prior to approving said use of any sand line, the Harbormaster shall consider if the upper 12 inches of the bottom soil that the sand line will contact is contaminated which may make contact with the sand line in any place that which may come into contact with a person handling the sand line through the skin or by inhalation. If the Harbormaster becomes aware of such contamination, the**

Harbormaster shall report the information to both the Harbor Commission, the City Council and the City Manager.

G. Buoy Markings. Mooring buoys shall be painted with the number allocated thereto by the Harbormaster to the mooring, the numeral(s) of which shall be at least three inches in height.

H. Mooring, Anchoring and Vessel Condition Requirements.

1. Mooring ~~Anchoring~~Anchoring and Mooring. All vessels anchored on the open waters of the Pacific Ocean shall be anchored in such a manner so that the vessel does not come in contact with another vessel or structure. All vessels anchored in Newport Harbor in the designated anchorage area shall be anchored in such a manner so that the vessel does not come in contact with another vessel or structure and does not extend beyond the demarcation line of the designated anchorage area. All vessels using moorings in Newport Harbor shall be firmly anchored to a mooring from bow and stern in such a manner as to prevent the vessel from swinging, turning or excessive drifting, except in areas designated by the Harbormaster as single mooring areas. Vessels in single mooring areas shall be tied from the bow. A vessel's Adjusted LOA shall not exceed the designated length of its mooring row. At no time may any portion of the vessel or object attached to the vessel extend into the fairway. All vessels anchored in Newport Harbor in the designated anchorage area shall be anchored in such a manner so that the vessel does not come in contact with another vessel or structure and does not extend beyond the demarcation line of the designated anchorage area.

h. Violation of the terms and conditions of other use or rental permits as granted by the 2.
Vessel Condition. Safety, Seaworthiness and Operability. Vessels assigned to a mooring by permit must be maintained in a safe, seaworthy and operable condition. If, based upon the appearance of the vessel, inspection by the City or other facts, the Harbormaster has cause to believe a vessel is not safe, seaworthy and operable, the Harbormaster shall give written notice to the permittee, in accordance with the service requirements of Section 1.05.030, requesting a demonstration that the vessel is safe, seaworthy and operable. The permittee shall, upon written notice specifying the date and time, demonstrate to the Harbormaster that the vessel assigned to the mooring is safe, seaworthy or operable. In the event that the Harbormaster determines that vessel is not safe, seaworthy or operable, the permittee shall:

a. Commence repairs within thirty (30) calendar days upon service of the written notice of such determination and complete repairs within ninety (90) calendar days of the commencement unless the Harbormaster, upon written request from the permittee specifying the reasons therefor, approves an extension of time to complete the repairs; or

b. Remove the vessel within thirty (30) calendar days of service of the written notice of such determination and request assignment of a different vessel that is safe, seaworthy and operable to the mooring within sixty (60) calendar days after the removal of the vessel. This section is not intended to apply to any brief period of repair common to most vessels. The Harbormaster may repeat his or her request to test operability and seaworthiness as needed.

3. Vessel Condition—Public Nuisance. No person owning, leasing, occupying or having charge or possession of any vessel shall maintain, permit, cause or allow to exist on such vessel any of the

following conditions:

a. Promotion of a fire hazard, including, but not limited to, improper open fuel storage, deficiencies in the vessel's fuel storage tanks, inoperable electrical systems, storage of combustible or other flammable material that constitutes a fire hazard to any vessel;

b. Retention of water that becomes stagnant, unsanitary, or polluted;

c. Accumulation or storage of rubbish, trash, debris, rubble, containers, or boxes that are visible aboard the vessel or stored inside the vessel in such a way as to make the vessel inoperable for its intended use;

d. Storage or securing a vessel in such a way that it impedes pedestrian travel on City beaches and tidelands;

e. Contribution to hazards to public safety or health, such as, but not limited to: propagation of vermin, rats, insects, or unsanitary conditions from the accumulation of fecal materials;

f. Maintenance in such nonseaworthy condition that the vessel is unsafe, unsightly or poorly maintained, including, but not limited to: broken windows, unsecured doors or hatches, excessive marine growth attached to the vessel, being inoperable for the vessel's intended use, partially destroyed or partially repaired for more than three continuous months, providing access to marine mammals, actively seeping hazardous or toxic material into the surrounding waters, or would present a physical danger to public safety personnel during emergency access;

g. Operation of its mechanical or electrical systems creates excessive noise, odors, vibrations, fumes, discharges or emissions that constitute an impact on public health or safety;

i. Allowance of repetitive, boisterous or unruly conduct by the vessel operator or occupants when that conduct:

i. Is offensive to a person of ordinary sensibility, and

ii. Continues after a written or oral request to terminate the conduct, or

iii. Is offensive to a considerable number of people;

j. Anchorage in an area controlled by the City without adequate anchor(s) rope or chain appropriate for the wind and sea conditions encountered in Newport Bay;

k. Inability of a vessel on a shore mooring to be self-righting on an incoming tide without flooding the vessel;

l. Attachment to a mooring in such a way that the vessel regularly drifts or impedes safe navigation in Newport Bay; or

m. Installation of a marine sanitation device that is not connected directly to an internal holding tank at all times while in Newport Bay.

Violation of this subsection (H) is hereby declared to be a public nuisance. In the event that the City determines that a vessel is a public nuisance, the City may commence public

nuisance abatement as provided in this title.

4. If, based upon the appearance of the vessel, inspection by the City or Harbormaster or other facts, the Harbormaster determines that a sea lion has boarded a moored vessel, the Harbormaster shall issue and serve a notice of violation in accordance with Section 1.05.030 and the permittee shall take any and all necessary action to employ and maintain appropriate measures to deter sea lions from boarding the vessel within seven calendar days of the notice of violation. If the Harbormaster determines that appropriate deterrent measures have not been taken within seven calendar days of the notice of violation, the Harbormaster may issue an administrative citation or take any other enforcement action authorized by this Code. In the event the Harbormaster issues an administrative citation, the permittee shall:

a. Take any and all necessary action to employ and maintain appropriate sea lion deterrent measures; or

b. Remove the vessel from Newport Harbor.

"Appropriate deterrent measures" shall be defined as the latest methodology permitted by National Marine Fisheries Service to minimize sea lion boarding of vessels assigned to a mooring. If the City is unable to reach the permittee within the seven calendar days, the Harbormaster may install temporary deterrent measures as needed and recover the City's cost of compliance.

I. Maintenance. All moorings shall be kept in good and serviceable condition in the location assigned by the Harbormaster.

J. Specifications. Specifications for the size of chains required on moorings, and weights of moorings, and all other mooring equipment shall be as adopted by resolution of the ~~City Council~~ Harbor Commission. No person shall erect, construct or maintain any mooring in Newport Harbor unless all chains and fastenings are of sufficient size to stand a breaking strain of at least six times the weight of the mooring. All mooring lines on buoys shall be so arranged that, when dropped, they will immediately

sink. With a double mooring, however, it shall be permissible to connect two mooring lines with a spreader line having floats attached thereto to keep such line afloat when the mooring is unoccupied.

K. Inspection of Moorings. Each mooring shall be lifted by the owner for inspection by the Harbormaster at least once every two years and shall be repaired, as necessary, so as to be in good condition before being replaced; provided, that the Harbormaster may require any mooring to be lifted at any time when deemed necessary to assure it is in good condition. If the permittee has such lifting performed by a marine contractor, then the Harbormaster may authorize such contractor to inspect the mooring on behalf of the Harbormaster and certify the results to the Harbormaster in writing. The permittee shall pay the costs of any inspection performed by a contractor on behalf of the Harbormaster.

L. Rental Not Permitted. Except as authorized in Section 17.60.040(B)(1)(a), no mooring may be leased or rented by the permittee to another person except with the written permission of the Harbormaster.

M. Administration. The Harbormaster shall administer all provisions in this section.

N. Reconfiguration of Moorings.

1. No plan, and no amended or modified plain, of reconfiguration of moorings within a mooring field shall be adopted or enacted without advanced notice first sent b~~m~~y mail, and if the City has email addresses, by emails to all stakeholders who may be affected by said plan followed by an opportunity for comments and two or more stakeholder meetings allowing for open and reasonable comments and discussions with the persons or agency who~~how~~ have the authority to adopt, or advise on the adoption or enactment of the plan. Stakeholders would include mooring permittees, residences located within 1,000 feet of the high tide line of any part of the mooring field(s) subject to the proposal, and other stakeholders that~~ey~~ might be impacted by the proposals, including homeowner associations and other organizations whose members include other stakeholders such as the Lido Island Homeowner's Association, the Balboa Homeowner's Association, Newport Harbor Yacht Club, Balboa Yacht Club, and the other Yacht Clubs in Newport Harbor, If the plan is not adopted or enacted within 9 months of said stakeholder meeting, then any resubmission of the plan or similar plan, shall be subject to the same required stakeholder meetings before adoption or enactment.

2. Following said stakeholder meetings, any plan of reconfiguration of moorings within a mooring field that is advised by, adopted by, or enacted by the Harbor Commission or by the Harbormaster or any of its agents or committees shall be first subject to the approval of the City Council after first being placed on the regular agenda of the City Council that allows for public comment (not on the City Council's consent calendar).

3. Plan of reconfiguration of ~~a~~ moorings as referred to above, shall include moving moorings to different areas within a mooring field or to a different mooring field, moving moorings closer together either to the side or in front or to the back, moving moorings which would have an affect (negatively or positively) on views from homes, residences, or street ends, within 1,000 feet

of the high tide mark where moorings may be moved or relocated.

Second Attachment:

17.60.040 Mooring Permits.

A. Permit Required. No person shall place, erect, construct, maintain, use or tie to a mooring in the waters of Newport Harbor over City-owned or controlled tidelands (i.e., an offshore mooring) or in the nearshore perimeter of Newport Harbor perpendicular to the shoreline (i.e., an onshore mooring) without first having obtained a mooring permit from the Harbormaster or having otherwise complied with this section. A mooring permit is in the nature of license for the temporary use of a specific location within Newport Harbor.

B. Issuance of Permit—Conditions. The Harbormaster, in furtherance of the tideland grants to the City, may issue a mooring permit or mooring sub-permit to allow the mooring permittee or mooring sub permittee to temporarily use a portion of the waters of Newport Harbor for the mooring of a vessel if the Harbormaster makes the findings set forth in Section 17.05.140(D)(1). In the event that the City is able to

and does create new Moorings on or **after** January 1, 2022 ***[Error – Should be January 1, 2023***], **then the City may use such new Moorings (referred to herein as "New Moorings" for the purpose of long term rentals for recreational boat use or may issue a permit, similar to existing permits, for such use.** If a Mooring permit is issued or a long term rental is issued each ~~s~~ shall be issued according to a lottery, followed by a waiting list. A mooring permittee may hold up to two mooring permits at any time. A mooring permittee that held or continues to hold more than two mooring permits prior to May 11, 2017, may continue to hold the mooring permits until the permits are sold, revoked, or otherwise transferred under this chapter.

1. Exceptions.

   a. The Balboa Yacht Club and the Newport Harbor Yacht Club (collectively, "yacht clubs") currently hold permits for single point moorings placed within certain mooring area boundaries established by the City, as noted in subsection (B)(3)(h) of this section. In addition, the Lido Isle Community Association ("LICA") has permits for onshore moorings on Lido Isle. These organizations shall hold their respective permits under the yacht club, or respective organization name, for the moorings identified by the City as under their respective control at the time of enactment of the ordinance codified in this section. The yacht clubs and LICA shall be solely responsible for managing moorings under their control and shall be permitted to assign moorings under their control to yacht club members and members of LICA, respectively. The yacht clubs and LICA shall keep accurate records of the name and address of the club members and community association members to which each mooring has been assigned and the corresponding length of each vessel. The yacht clubs and LICA may not sell or otherwise transfer the moorings under their control to a third party that is not a member of the yacht club or LICA. Mooring records and 24/7 emergency contact information shall be provided annually to the

Harbormaster by the yacht clubs and LICA on or before February 1st.

b. Mooring of a Tender. A single vessel no longer than fourteen (14) feet in overall length to serve as access to and from the assigned vessel may be secured to the assigned vessel or may be secured to the offshore mooring in the absence of the assigned vessel. The vessel must be secured in such a manner so as not to intrude into the fairway or obstruct neighboring permittees. Notwithstanding the single vessel restriction, permitted live-aboards may secure up to two vessels no longer than fourteen (14) feet in overall length to the assigned vessel, to serve as access to and from the assigned live-aboard vessel.

c. Multiple Vessel Mooring System Program. The Harbormaster may approve a multiple vessel mooring system in the single anchor mooring areas of Newport Harbor. An application and applicable fee, established by resolution of the City Council, for a multiple vessel mooring system shall be submitted in writing to the Harbormaster, who shall evaluate the application based upon standards established and the application shall be approved if the Harbormaster makes the findings under the applicable standards and those set forth in Section 17.05.140(D)(1).

2. Permit Requirements. Each mooring permit may be issued for up to two persons ("mooring permittee(s)") who shall be individually and collectively responsible for all activities related to the mooring permit. Mooring permits shall be subject to the following conditions and requirements, with which mooring permittee(s) shall fully comply: To the satisfaction of the Harbormaster, the mooring permittee(s) shall:

a. Identify on the permit the full legal name(s), current address(es), current telephone number(s) and current email address(es), if one exists, of the mooring permittee(s);

b. Agree to be responsible for permit rent, fees, maintenance and repair of mooring equipment;

c. The permit for joint ownership moorings shall provide that all parties shall have equal rights under the permit and shall be held jointly responsible for compliance with all rules, regulations, and conditions set forth in the mooring permit;

d. Grant permission to the City to temporarily assign the mooring to another vessel when it is unoccupied through the issuance of a mooring sub-permit;

e. Agree to defend and indemnify the City and any other government entity with jurisdiction against any claims or losses arising out of, or related to the use of, the mooring permit except where the claim or loss arises from the sub-permittee's damage of the mooring, or out of the negligence and/or misconduct of a person assigned the mooring as a mooring sub-permittee under subsections (G) and/or (H) of this section;

f. Provide proof of insurance for the assigned vessel naming the City as an additional insured to the satisfaction of the Risk Manager;

g. Provide registration or other proof of controlling possessory right in the assigned vessel, all to the satisfaction of the Harbormaster;

h. Agree to pay fair market value rent, as established by resolution of the City Council, on a rent schedule established by the Harbormaster, which shall be similar to the schedule used to

collect rent from other tidelands users in Newport Harbor;

i. Agree that the mooring permit does not provide any ownership interest in the underlying tidelands, which are held in trust by the City and owned by the people of the State of California;

j. ~~Authorize the City, or its designee, to move the vessel on the mooring to another location when deemed necessary by the Public Works Director and/or Harbormaster, including but not limited to increasing and improving safety or the utilization and organization of the mooring fields, and agree that such relocation shall be at the permittee's expense; and~~

j. **Authorize the City, or its designee, to move the vessel on the mooring to another location when deemed necessary by the Public Works Director and/or Harbormaster on a temporary basis in the interest of safety, dredging, public works project, or similar necessities at the City's expense, unless the boat owner, or operator, or mooring permittee is in violation of one or more regulations applying to boats or moorings, in which case said move shall be at the expense of both the boat owner and the mooring permittee.**

Authorize the City, or its designee to relocate a mooring to a new location on a one-time basis only, within a mooring field, in accordance with a plan of reconfiguration first approved under the following conditions:

1. The plan of reconfiguration which includes the field has been approved by both the Harbor Commission and the City Council after proven safety of, lack of difficulty of use of, and accessibility of moorings affected by the reconfiguration, and after stakeholder meetings following reasonable notice by mail to the stakeholders both before and after the study and real life testing in different wind, current and tide conditions in representative areas each of the mooring fields.

2. The new location be as close as Possible to the old location, except as may be approved by the permittee,

3. The new location for moorings which historically did not have a permanent mooring assigned to another permittee behind or in front of it shall be a similar type of mooring, and the new location for beginning or end of row moorings shall also be either an end or beginning of row mooring, unless otherwise approved by the permittee, and moorings that are within the service area of shore boat service by a yacht club, such as BYC or NHYC, shall not be moved to a location outside the area of shore boat service.

k. Agree to allow the Harbormaster, or his designee, to board the permittee's vessel at any time to inspect the condition and operability of the marine sanitation device(s) and/or insert dye tablets to determine whether said devices are discharging overboard in accordance with applicable laws.

l. If a single mooring permit holder has requested, or will request, a second name to be added as a permit holder for the mooring, the original permittee who made the request will be the "Primary Permittee" and the second permit holder is the "Second Permittee." The addition of, or creation of, an additional permit holder does not result in a transfer of the mooring permit. The Primary Permittee, or his or her successor in interest, such as a person obtaining the permit by inheritance, shall have the right to remove the Second Permittee as a permittee. Following such removal, the Second Permittee shall remain liable for any violations of any City Code or regulations during the time the Second Permittee was a permittee.

3. Permittee/Transferee Qualifications. A mooring permit may be held only by a natural person(s) holding title to an assigned vessel. Mooring permits that were issued before <<specific date or date of adoption of ordinance>>, including the subsequent transfer of such permit to another natural person(s), may be held by, or transferred to, only the following persons:

a. A natural person(s) holding title to an assigned vessel;

b. An executor or administrator carrying out the terms of a will or administering a probated estate that holds a mooring permit, but only for the period of time prior to distribution of the estate;

c. An inter vivos trust, family trust, or other similar type of trust estate holding a mooring permit, so long as all trustors are natural persons and the primary mooring permittee shall be the trustee of the trust;

d. An approved transferee whose vessel and/or mooring permit are subject to any of the

terms and conditions stated in subsection (E) of this section;"Immediate family," which shall mean the mooring permittee's spouse and heirs at law to the second degree of consanguinity;

e. A marine contractor, or marine support service provider, holding a mooring permit used to provide current or ongoing harbor infrastructure and marine or fishing services (such as maintenance or dredging);

f. Balboa Island Yacht Club for the purposes of youth education in boating and marine activities; Kerckhoff Marine Laboratories for the purpose of marine and oceanographic research; and American Legion Post 291 for the purpose of serving veterans and their families and supplying them with affordable access to boating and harbor activities; or similar marine educational entities; or

g. The Balboa Yacht Club, Newport Harbor Yacht Club (collectively "yacht clubs") and the Lido Isle Community Association—only for those moorings assigned by the City within certain established mooring areas or locations, prior to January 13, 2011. These designated mooring areas may not be expanded. The boundaries of all mooring areas in Newport Harbor are graphically depicted by National Oceanographic and Atmospheric Administration (NOAA) Chart Number 18754. Yacht clubs shall be entitled to a maximum number of moorings identified in NOAA Chart Number 18754 that are located within the yacht club's established mooring fields and at a minimum the current number of moorings assigned to them as of January 13, 2011.

C. Plans and Specifications Required. No mooring permit shall be issued for placing, erecting, constructing or maintaining a mooring or buoy unless such mooring or buoy is constructed:

1. In accordance with standard plans and specifications approved by the Harbormaster and at a location approved by the Harbormaster; or

2. In accordance with other plans and specifications for such mooring or buoy which have been submitted by the applicant, showing the construction of such proposed mooring or buoy together with the location thereof, and which meet the requirements established in this chapter and which have been approved by the Harbormaster.

D. Late Fees. A late charge shall be added to all payments due but not received by the City by the due date in accordance with Section 17.05.120.

E. Transfer of Permit**. New Mooring Permits (permits for the use of a New Mooring as defined issued or in existence with the sole exception of mooring permits that were issued on or before January 1, 2022 [Error should be January 1, 2023) are transferable in accordance with the regulations set forth herein. above, (Moorings issued for the first time on or after January 1, 2022 [Error should say January 1, 2023]) to a new permit holder "New Permit") Mooring permits are shall be non-transferable. Existing Permits, which are mooring permits to an existing permit holder or the holder's transferee, which permits were In the event an additional name is added to an Existing Permit does not change the**

character of the permit which shall still be considered an Existing Permit under these regulations, and the periodic return and signing of a questionnaire or similar request for updated information regarding a mooring or vessel on the mooring, which may ask for an acknowledgement that the permittee has read the mooring regulations, is not, and does not result in the issuance of a New Permit.

~~before <<specific date or date of adoption of ordinance>>. including the subsequent transfer of such permit to another natural person(s), which may be transferred only to the persons specified in subsection (B)(3) of this section.~~

No mooring permittee shall transfer a permit for a mooring or buoy granted under the provisions of this chapter, except:

~~1. When transferred from a natural person to another member of his or her immediate family, which shall be defined for the purposes of this section as the mooring permittee's spouse and heirs at law to the second degree of consanguinity; or~~

1. Except when transferred to immediate family, a mooring permit may only be transferred ~~under this subsection up to one time~~ once in any twelve (12) month period, but additional transfers shall be allowed after that, but only once, in any twelve (12) month period..

F. Procedures for Transfers. Permits shall not be transferred without the prior written approval of the Harbormaster. The Harbormaster may approve the transfer of a mooring permit under the procedures set out below:

1. The mooring permittee(s) (or, if the permittee is deceased or incapacitated, the transferee) shall submit to the Harbormaster:

    a. A completed mooring transfer form (on the form provided by the Harbormaster); and

    b. Documentation that the proposed new mooring permittee (transferee) qualifies as a mooring permittee under subsection (B)(3) of this section.

2. If transferee intends to purchase an assigned vessel but does not have title on the assigned vessel owned by the mooring permittee and transferor at the time of transfer, then:

    a. Within sixty (60) days of a transfer, transferee shall submit to the Harbormaster a copy of a California Department of Motor Vehicles registration or other current registration (or, in lieu thereof, U.S. Coast Guard documentation of ownership) documenting transferee's ownership of the assigned vessel or, in the case of an onshore mooring, a photograph of the assigned vessel if it is not subject to vessel registration laws. The Harbormaster shall inspect the vessel at its office for compliance with Section 17.25.020(H) before the assignment is approved; or

    b. If such documentation is not received by the Harbormaster within the sixty (60) day period, then the vessel or the mooring may be impounded, and the mooring may be deemed vacant and assigned pursuant to subsections (G) and (H) of this section.

3. If transferee intends to moor a vessel other than the assigned vessel and does not have title to

the vessel that will be moored at the time of transfer, then:

a. Within sixty (60) days of an approved transfer, the transferee shall notify the Harbormaster that the assigned vessel has been removed from the mooring and before a new vessel may be placed on the mooring shall submit to the Harbormaster a copy of a California Department of Motor Vehicles registration or other current registration (or, in lieu thereof, U.S. Coast Guard documentation of ownership) documenting transferee's ownership of the new assigned vessel, or in the case of an onshore mooring, a photograph of the new assigned vessel if it is not subject to vessel registration laws. The Harbormaster shall inspect the vessel at its office for compliance with Section 17.25.020(H) before the assignment is approved; or

b. If the documentation is not received within sixty (60) days of a transfer, the mooring may be deemed vacant by the Harbormaster and the mooring may be assigned pursuant to subsections (G) and (H) of this section. The mooring may remain vacant until such time the permittee notifies the Harbormaster of their intent to assign their vessel to the mooring.

4. The transfer request shall be denied unless mooring permit rent, including late payment fees, is paid current; required mooring inspections are current; registration or documentation and insurance are provided; required maintenance and repairs are complete and there are no derelict

or unauthorized vessel(s) on the mooring; and the vessel is of appropriate length with the appropriate weights and chains.

5. The mooring permittee and transferee shall provide a written agreement to defend and indemnify the City of Newport Beach in any dispute with a third party over transferee's right to be the mooring permittee or in any dispute with a third party over the mooring permittee's right to transfer the permit.

6. Transfer Approval. Upon confirmation of compliance with this subsection, the Harbormaster must find all of the following conditions to approve the transfer of a mooring permit:

a. The mooring permittee no longer owns the assigned vessel or has retained ownership of the assigned vessel and has permanently vacated the mooring;

b. The transferee has met all the qualifications and conditions for issuance of a permit in subsection (B) of this section;

c. The transferor or transferee has reported to the Harbormaster the price paid for the mooring permit, and has paid to the City the required transfer fee; and

d. The transferor represents that the person did not discriminate against any transferee or prospective transferee because of race, religious creed, color, national origin, ancestry, physical handicap, medical condition, marital status, sex, sexual orientation, age or any other impermissible basis under law.

7. The Harbormaster may approve a one-for-one exchange of moorings between two mooring permittees, subject to compliance with this subsection without any transfer fee imposed by the City.

8. The Harbormaster may approve the changing of an assigned vessel on the permit, subject to

the requirements of subsection (B) of this section, without any transfer fee imposed by the City.

9. Following an approved transfer, the Harbormaster shall list the transfer price of the mooring permit on a publicly available website hosted by the City, or on a third party's website under contract with the City to host information regarding mooring permit transfers.

G. City's Authority to Assign Moorings through Use of Sub-Permits. With the exception of the Balboa Yacht Club, the Newport Harbor Yacht Club, and the Lido Isle Community Association's designated moorings, mooring permittee may not rent, assign, or transfer the use of the mooring to any other person. With the exception of moorings issued to mooring permittees described in subsection (B)(3)(g) of this section, the Harbormaster shall have the authority to assign vacant moorings to sub-permittees pursuant to the following provisions:

1. Deemed Vacant Moorings. The Harbormaster may assign deemed vacant moorings through the issuance of sub-permits at his or her own discretion. Sub-permits may be renewed upon availability. The mooring permittee may reclaim its mooring upon three days' prior written notice to the Harbormaster of its intent to return the assigned vessel to the mooring.

A "deemed vacant mooring" shall be defined as a mooring upon which:

a. An assigned vessel has not been attached for thirty (30) consecutive days or more; or

b. A vessel, other than an assigned vessel or approved sub-permittee vessel approved in accordance with subsection (H) of this section, has been attached for thirty (30) days or more; or

c. Required documentation for an assigned vessel has not been provided for a transfer request pursuant to subsection (F) of this section.

2. Noticed Vacant Moorings. The Harbormaster may assign noticed vacant moorings through the issuance of a mooring sub-permit for any period of time, up to the reoccupation date on the mooring permittee's written notice, or the twenty-four (24) hour written notice per subsection (G)(2)(b) of this section. If the mooring continues to be vacant for thirty (30) days past the reoccupation date indicated on mooring permittee's notice, and there is no further written notice from mooring permittee, the mooring shall become a deemed vacant mooring.

a. Mooring permittee may provide written notice to the Harbormaster of its intent to vacate its mooring for fifteen (15) days or more. These moorings shall be "noticed vacant moorings." Written notice shall include the date the mooring permittee intends to vacate his/her mooring, and the date he/she intends to reoccupy the mooring with the assigned vessel.

b. If a mooring permittee provides written notice, the mooring permittee may reclaim the assigned mooring on the reoccupation date indicated in his/her written notice or, if the mooring permittee returns prior to or after the reoccupation date, upon twenty-four (24) hours' written notice to the Harbormaster.

H. Procedures for Mooring Sub-Permit Issuance. Issuance of a mooring sub-permit shall be subject to the following conditions:

1. Provision of a written representation of the mooring sub-permittee's vessel length which shall be satisfactory to the Harbormaster;

2. The mooring sub-permittee agrees to be responsible for any damage to mooring equipment; to defend and indemnify the City of Newport Beach and the mooring permittee against any claims or losses arising out of, or related to, the mooring rental; to provide proof of insurance as may be determined by the City's Risk Manager; to provide registration or other proof of ownership; to provide an equipment damage deposit, all to the satisfaction of the Harbormaster; and authorize the City, or its designee, to move the vessel on the mooring to another location when deemed necessary by the Public Works Director and/or Harbormaster;

3. The repair of any damage to the mooring equipment shall be paid by the mooring sub permittee. If the mooring is damaged by a vessel assigned by the City, or the City's agent, the City shall arrange for the repair of the mooring with a qualified vendor and provide notice to the permittee of the occurrence and the arranged repair date. Should the sub-permittee fail to pay for the damage for any reason, the City will pay for the required repairs to the mooring, and then seek reimbursement from the sub-permittee. Also, the City shall make available a mooring without charge for the returning vessel of the mooring permittee until such time as their permitted mooring is repaired;

4. The mooring sub-permittee shall provide approved mooring lines which shall be removed at the end of the rental period;

5. A mooring sub-permit may be up to fifteen (15) days and may terminate at any time for any reason, and may be renewed based on availability. Upon return of the assigned vessel to the mooring, the Harbormaster will attempt to reassign the sub-permittee to another mooring. Mooring sub-permittees have no right of renewal or substitute moorings upon return of the assigned vessel, or upon termination of a mooring sub-permit for any reason. Mooring sub-permittees accept an indefinite term at their own risk. The decision by the Harbormaster to terminate a sub-permit shall be final and nonappealable;

6. The mooring sub-permit rent will be based on a rate established by resolution of the City Council; and

7. Mooring sub-permits are offered to the public on a first-come, first-served basis. City owned and operated moorings may be reserved in advance.

l. Mooring Permit Transfer Nonrefundable Fee. The City shall charge the mooring permittee for the right to transfer a mooring permit under subsection (E) of this section in an amount equal to seventy-five (75) percent of the annual mooring rent as established by City Council resolution. This transfer fee represents a one-time nonrefundable transfer fee for the use of a mooring. A mooring permit transfer fee shall not be required if:

1. The transfer is from the mooring permittee to the same mooring permittee as trustor of an inter vivos trust, living trust or other similar estate planning tool;

2. The transfer is made under subsections (F)(7) and (8) of this section; or

3. The transfer is made pursuant to under subsection (E)(1) (B)(3)(d)) of this section (immediate family).

J. Surrendered Mooring Equipment. If the mooring permittee sells, transfers, or otherwise no longer owns the assigned vessel and does not intend to apply for, or does not receive, approval to transfer the permit to another, the permittee may provide written notice to the Harbormaster of his or her intent to surrender the mooring permit; otherwise the provisions of subsection (G) of this section regarding a vacant mooring shall apply.

Once a mooring permit is surrendered, the mooring permittee shall remove the assigned vessel and/or the mooring equipment thirty (30) days after written notice of surrender of the permit, or, upon failure to remove the mooring equipment, title shall vest in the City and the City shall compensate the mooring permittee the fair value for the mooring equipment, less rent or fees owed, as provided in subsection (L) of this section.

K. Revocation of Permit.

1. The grounds and procedure for revocation of a mooring permit are set forth in Section 17.70.020.

2. Upon revocation of the mooring permit, it shall be the duty of the mooring permittee to immediately remove the mooring equipment and any moored vessel. If not removed within thirty (30) days of revocation of the permit, the mooring equipment shall vest in the City and may be auctioned by the City to another person or may be removed by the Harbormaster and the cost of mooring equipment removal shall be paid by the mooring permittee. Any moored vessel or equipment not removed within thirty (30) days may be impounded by the City and disposed of in the manner provided by law. City-incurred costs of removal of mooring equipment or any vessel moored thereto

may be charged against the permittee and collected in any court of competent jurisdiction or recovered by the City from the proceeds of sale of the vessel or mooring equipment.

3. During any revocation proceeding, if the mooring is unoccupied, it may be temporarily assigned as a mooring for guest vessels by the Harbormaster.

L. Moorings Reverting Back to City. Should a mooring revert back to the City for any reason, whether through abandonment, surrender, failure to provide documents pursuant to subsection (F) of this

section, or for any other reason other than as set forth in subsection (K) of this section, the following shall apply:

1. The mooring permittee shall be entitled to recover all of the mooring permittee's mooring equipment within thirty (30) days of reversion;

2. If the mooring permittee does not recover his or her mooring equipment, the mooring permittee shall be entitled to payment from the City of the fair value of the mooring equipment as depreciated by use in an amount to be determined by the Harbormaster and as set in the City's master fee resolution, after any and all past due rent and fees, if applicable, have been satisfied; and

3. The mooring equipment may be publicly auctioned by the City, or the City's designated representative, or the mooring equipment may be used for other City purposes.

Request to Extend Mooring Length or to Relocate to Larger Mooring.

1. **Review Authority.** **No mooring lengths shall be extended beyond the designated mooring length for any mooring row; or that will result in extending into or impeding upon any portion of the adjacent fairway(s) to the mooring or otherwise create safety concerns.**

2. **If a permittee requests or obtains an assignment of a smaller vessel to the mooring and the smaller vessel has a LOA that is equal to or less than the designated length for the row, neither the mooring or the vessel will not be subject to relocation because it is smaller than the designated length for vessels in its row.**

3. **Handling of Requests.**

a. Move to Different Mooring and Row. If an offshore mooring permittee wishes to moor a vessel that is or will be longer than the assigned vessel and which will extend beyond the designated mooring length for the mooring row, **an application request to relocate the mooring shall be submitted to the Harbormaster for consideration and at his or her discretion**, may approve the request to relocate to a larger mooring if an appropriate-sized mooring to be exchanged with a mooring in the same mooring field with the consent of the permittee of the other mooring. If the relocation is approved, the existing offshore mooring permit(s) shall be amended to reflect (i) the new assigned mooring location(s), **and (ii). the extension** of the vessel occupancy length to accommodate a longer vessel up to a maximum of five additional feet in accordance with this subsection, and up to the maximum length of the new row with the approval of the Harbor Commission.

b. Extension within Conforming Row. If an offshore mooring permittee wishes to moor a vessel that is or will be longer than the assigned vessel and which will not extend beyond the designated mooring length for the mooring row where the mooring is located**, an application request to extend the mooring shall be submitted to the Harbormaster for consideration and at his or her discretion,** may approve the request to extend the mooring, and if approved, the existing offshore mooring permit(s) shall be amended to reflect **the extension of** the mooring length to accommodate a longer vessel up to a maximum of five additional feet in accordance with this subsection, and up to the maximum length of the new row with the approval of the Harbor Commission.

After review by the Harbormaster, applications for the relocation or extension of mooring length in excess of five feet shall be submitted to the Harbor Commission for consideration and rendering of a decision. For applications requiring the approval of the Harbor Commission, the Harbormaster shall present to the Harbor Commission all relevant facts to support the findings included in Section 17.05.140(D)(1).

> *Example:* Permittee A wants to replace *Atlantis* (40' LOA), which is in a 40' row, with *Atlantis II* (42' LOA). A larger mooring is required. Permittee B's *Barnacle* (41' LOA) is in a 45' row. Permittee C's *Calypso* (40' LOA) is in 45' row. All three moorings are in the same mooring field. A's mooring assignment can be switched with C, but not with B.

4. Application.

a. Filing and Review of Request. An offshore mooring permittee shall file a written request for mooring relocation **or extension** with the Harbor Department on a form prescribed by the Harbormaster, together with the filing fee required by the City's fee schedule adopted by resolution of the City Council.

c. Application Requirements. An application for a mooring **extension or** relocation shall include the following information in addition to such other information as may be required by the Harbormaster:

i. The full identification of the applicant and the vessel for which **an amendment to the existing offshore mooring permit or** the mooring relocation is sought, certifying that the applicant and the assigned vessel have complied with (or in the event the vessel identification is unknown, applicant will certify that such unidentified vessel prior to occupying the mooring space will comply with) all of the applicable United States Coast Guard license, inspection, and certification requirements, and certifying that the applicant has read and is otherwise familiar with all of the applicable rules and regulations promulgated by the City, including, but not limited to, the provisions of this title;

ii. Such plans and specifications as may be required by the Harbormaster for the proposed longer vessel **to be accommodated at the new or extended mooring; and**

iii. Detailed information regarding the vessel including make, model, year, LOA, beam, dimension, vessel ID, and if the vessel identification is not known at the time of making an application, the LOA and adjusted LOA (including bowsprits, swim steps, or stern-mounted dinghies) of the proposed vessel for which the applicant seeks approval. The LOA as published by the manufacturer of a particular vessel shall be used to determine the required mooring size of a particular vessel, and the size of the specification for the chains, weights, and tackle necessary to secure a vessel on a particular mooring for a permittee. Adjusted LOA shall be used to determine the maximum vessel length that can fit in any particular slip or side-tie.

3. **Action on Application.** Upon receipt of a completed application , the Harbormaster or the Harbor Commission, as applicable, may approve or conditionally approve the relocation an amendment to the offshore mooring permit to allow the extension of the vessel occupancy length (in the event of an application for an unidentified vessel only a conditional approval may be obtained) only after making the findings set forth in Section 17.05.140(D)(1) and making the following findings:

a. There have been no changes in the conditions or circumstances of the existing offshore mooring permit so that there would have been grounds for denial of the original offshore mooring permit or grounds for revocation thereof at the time an application for extension of the assigned vessel occupancy length is filed;

b. The proposed extension of the assigned vessel occupancy length Relocation will not:

i. Impede or obstruct the fairways or channels or prevent or obstruct the passage of other vessels between the rows;

ii. Impede, obstruct or prevent other mooring permittees from safely navigating in and out of adjacent moorings or moorings in other rows connected by the same fairway to the row of the permittee's vessel;

iii. Result in vessel(s) extending beyond the outer boundaries of the mooring area or row; or

iv. Violate the designated maximum vessel LOA for the row or mooring area in which the vessel will be moored.; or

c. The applicant and the assigned vessel have complied with all of the appropriate United States Coast Guard license, inspection, and certification requirements for the assigned vessel and all of the applicable rules and regulations promulgated by the City, including, but not limited to, the provisions of this title; and

4. The applicant agrees to cover all costs associated with **modifying the length or relocating to the longer** mooring, including, but not limited to, any costs associated with relocating mooring anchors and tackle, and any costs associated with resizing mooring tackle to meet applicable mooring standards (e.g., chain size or anchor weights).

5. Conditions of Approval., **Approval of a request for mooring extension or relocation** shall be conditional and contingent upon the following requirements:

a. The costs of extension and/or relocation shall be borne by the permittees making the request.

b. **The mooring permittee must occupy the new extended mooring or new relocated mooring** with the new vessel within twelve (12) months following the date of approval; and

3. For a mooring permit that is transferable, the mooring permittee may not transfer the permit or the mooring permittee's rights pursuant to a valid mooring permit, as amended, and such mooring permit and rights pursuant thereto shall not be sold or otherwise transferred until a period of twelve (12) months following the date of occupancy of the mooring with the new vessel. The sale or transfer of said permit shall comply with the requirements of subsections (B)(3), (E) and (F) of this section.

5. Noncompliance with this section will constitute grounds for the Harbormaster to rescind the relocation approval and terminate the amendment to the mooring permit. In the event that the Harbormaster terminates the amendment to the mooring permit issued pursuant to this chapter, Within thirty (30) days of written notice of such recission and termination, **if the permittee has moved the new vessel to a different mooring,** the permittee shall at its sole expense return its vessel and the displaced vessel to their respective previously-assigned mooring **locations, if and when available, if it will not become available, to such other mooring locations as become first available and as deemed appropriate by the Harbormaster**, and, the mooring permittee may thereafter continue to use the mooring in accordance with all of the terms and conditions of the original offshore mooring permit and subject to all of the terms and provisions of this title applicable to mooring permits. **The Intentional Violation of subsection (M)(4)(a) of this section shall be**

From: jerry mcgraw <pooinoroa@gmail.com>
Sent: November 07, 2022 3:16 PM
To: Harbor Commission; Dept - City Council; Mail@yournma.org
Cc: Blank, Paul
Subject: Mooring Re-configeration

[EXTERNAL EMAIL] DO NOT CLICK links or attachments unless you recognize the sender and know the content is safe.

We as stakeholders of mooring permits have had no workshop type meetings regarding Commissioner Beers mooring realignment proposal. As We can only voice3 minute statements at Commission meetings and neither ask or receive answers to questions, perhaps one of you or some staff would be kind enough to answer a few for me.

As it is stated there will be no "upfront" cost to the existing permittees, what is the projected cost to the City? Whose budget will it come from? How much has already been spent on an untested system for Newport Harbor? Whose budget?

If the City is responsible for maintenance of the Helix system are they going to pay for the chain attached to the Helix anchor and the diver to inspect it and install new chain if necessary?

With the Helix system, I'm guessing not assuming that weight will still be used for the other end of the mooring? If that is correct and the scope of the chain rode is reduced from 35' to 25' how much weight will be required for the weighted end? If more than the current minimum of 2000lbs. for a 50' mooring who is responsible for the cost. about $1.00/lb. for the additional weight?

Why has the City not tested this system before trying to push it through the objections of the current mooring permittees? This could be easily done using the City's current sandline guest moorings. Such a test could be set up and current permittees could use their own vessels in varying weather conditions and provide feedback to the Commission. I don't believe it is necessary to do a beta test in one of the mooring areas at tax payers expense when there are City sandline moorings to be used.

In reading Commissioner Beer's proposal it appears a driving interest is to create more open space in the harbor and make moorings more affordable. If the city adds their proposed 96 new moorings throughout the harbor what are their proposed rental fees? Using the City's current guest rental of $1.33 per foot per day for a 40' mooring is $53.20/day or long term almost $1600!!! Is that affordable? If a boater must use a larger mooring due to availability will they be charged for the larger mooring? That's the practice for the guest slips at Marina Park as you pay for a 40' slip, if your vessel is 44' you pay an additional charge. The moorings here in Newport have no shore boat service and the few public docks are already overcrowded and have time limits making shore trips difficult. What will happen when there are 96 more dinghies trying to find a place to park?

If the intent is to truly open more navigable space perhaps the two yacht clubs having single can swing moorings should also be changed to a double row configuration or is dealing with the yacht clubs to much of a political issue.

I have operated boats in his harbor for the past 68 years, including 27 years with the

sheriff's harbor patrol and it's predecessor the Orange County Harbors, Beaches & Parks retiring in 1999.
this included one night working in a 26' patrol boat with winds of 70 to 90 kts. here in Newport along with a number of times in winds of 30 kts plus never having a problem working in the various mooring areas.Today as a liveaboard in the harbor I never see the current Harbor services workers or sheriff's deputies out under any sort of extreme weather.

I feel this double row configuration is not in the interest of safe navigation but perhaps only a plan to fill the City's coffers.

Jerry McGraw
Permitted Liveaboard H-032

From: Keith Garrison <keith@gbfenterprises.com>
Sent: November 07, 2022 4:02 PM
To: Harbor Commission; Dept - City Council
Cc: Mail@YourNewportMooringAssocation.org; Cheryl Nowak, President; Tom Miller
Subject: Your Proposal Changes

[EXTERNAL EMAIL] DO NOT CLICK links or attachments unless you recognize the sender and know the content is safe.

Gentle Persons,
I wanted to share my opinion as a mooring holder of more than 20 years that I feel you are railroading the current mooring holders into a reconfiguration that is not wanted by the majority of us. There should be transparency and and several public hearings where the proposed changes are discussed and voted on by all the mooring holders in the Harbor. So I urge you to call for open meetings and share publicly all of your discussions wit any engineering firms analyzing reconfiguring the mooring layout. You are elected and appointed to be working for us and it seems that we were no acknowledged or considered. Please let me know what positive actions are being considered to remedy this situation.
With best regards,
Keith
--

Keith Garrison - VP/Gen. Mgr.

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From: larry reid <birdsworking@msn.com>
Sent: November 07, 2022 9:39 AM
To: Dept - City Council; Harbor Commission
Cc: Newport Mooring Association; larry reid
Subject: Pre-Nov. 9, 2022 meeting comments
Attachments: council letter-revised for Nov 9.docx

[EXTERNAL EMAIL] DO NOT CLICK links or attachments unless you recognize the sender and know the content is safe.

Good Afternoon,

I have attached a letter addressing some of my concerns about the upcoming agenda items to be presented this Wednesday. Please consider these as you try to make these major changes to the current Title 17 rules.

Sincerely,

Larry Reid
Permittee A-231 and P-047.

OPEN LETTER TO THE DISTINGUISHED

MEMBERS OF THE NEWPORT BEACH CITY COUNCIL

and

HARBOR COMMISSION

Dear Council Members,

I am writing this letter in an effort to persuade you to head off the current direction of the Harbor Commission in its' effort to not only change the current rules concerning transferability of mooring permits, but also, in my opinion, the outrageous format presented to validate the increase in shore mooring rates. I will follow with a brief family history and comment on the mooring transfer issue and then conclude with a comment on the proposed lease rate increases.

My name is Lawrence Reid. I am a permittee for mooring sites, A-231 and P-047, both an offshore and on shore mooring. I have been so since 2013 when I acquired the permit rights via the open market subject to all requirements and conditions in place at that time. My family has been involved and concerned with Newport Harbor since my grandfather purchased a homesite on 6th Street in 1915 and built a cottage home there in 1917 and continue to be involved to this day. I personally solidified that involvement by finding a complimentary pair of moorings to settle into a "life on the water" situation.

At that time of my searching for two moorings, the management of the moorings fell under the jurisdiction of the OCSO. The "Golden Rule" of trying to purchase permit rights on the open market at that time was to make ABSOLUTELY sure that there was a remaining transfer option available to me after purchase. There were many mooring sites on the market that had already exhausted that option so the due diligence I invested was paramount to preserve that future transfer option for me. While not cheap, the verified confirmation and assurance from the OCSO that I had another transfer available made it doable.

Therefore, I urge you to strongly oppose any new proposal that negates the existing status quo of the ability to transfer permit rights on the private market to not only those permittees that had additional transfer rights conferred to them, but to all mooring permittees as a group.

To the current discussions on the rental rate increases for a shore mooring permit. As proposed, the shore mooring lease fees will be based off of prime commercial property lease rates as indicated in the current commercial tideland appraisal. On the surface, this is certainly not an example of an apple to apple comparison on so many different levels. Shore permittees are already being charged the most per square foot for tideland use when compared to residential dock, pier and commercial tideland rates. It is neither fair nor equitable to make any significant rate increase that does not take into consideration the disproportional fee considerations that the pier permittees do not have to pay for the use of the same tidelands, not to mention the revenue streams available to them for slip or side tie rentals without any restrictions.

When you consider the hoops that I as a shore mooring leasee has to go through, under the current formats, I receive no benefit from my lease. The Harbor Department can rent out my space if unoccupied

without notice for long periods of time but I can't sublet my mooring without "owning" the boat that is being used. I pay for all of the upkeep without any maintenance monies being set aside to assist in the upkeep. The City keeps it all. As far as insurance coverage goes, I have to indemnify the City whether my boat is on my mooring or not, the City requires the rental craft to indemnify the City prior to use but nowhere in the City Title does it require the transient boat to indemnify me. I am left again, holding a wet, empty paper bag.

Currently, we are now faced with some agenda items to be presented at the November 9, 2022 commission meeting. Unfortunately, I will not be able to attend in person. For the life of me I can't understand the massive effort being mustered to completely eviscerate the parity and quality of life that both the on-shore and off-shore permittees should expect.

What is the main push to change what has been the norm for almost forever? To think that a double off-shore mooring is going to improve the off-shore mooring lifestyle is ludicrous in my opinion. Who will pay for the added upkeep for the new common mooring ball? Why would you create a navigational hazard knowing the prevailing winds are from the west in the harbor. The current set-up allows for maximum maneuverability in ALL wind conditions? Now to consider the possibility that in order to use my offshore mooring I would need to first see if my boat has been moved to another part of the harbor for reasons that appear to be so flaky it makes me shudder.

I could go on and on, but let me close by saying, the Harbor Commission needs to quit treating the mooring permittees as the black sheep of the family and quit trying to legislate these ill-founded extra burdens on current permittees.

Thank you for your time and effort. It is not an easy job and you won't please everyone as you know. The current proposed changes need to be "deep sixed" immediately.

Sincerely yours,

Lawrence Reid

Permittee A-231 and P-047

From: Stacy Kline <stacykline@gmail.com>
Sent: November 07, 2022 8:26 AM
To: Dept - City Council
Cc: Harbor Commission
Subject: Concerns Regarding Proposed Changes to Newport Harbor Mooring Fields & Title 17 of Newport Beach Municipal Code

[EXTERNAL EMAIL] DO NOT CLICK links or attachments unless you recognize the sender and know the content is safe.

Esteemed City of Newport Beach Councilmembers,

My husband and I are long time Newport Harbor Mooring Permit Holders. We purchased our mooring permit in 2005, and we are deeply connected to this issue. We would like for our current and future City of Newport Beach councilmembers to understand why we are concerned about the proposed changes to the Newport Harbor Mooring Fields and Title 17 of the Newport Beach Municipal Code governing Newport Harbor.

We have several concerns regarding the proposed changes by the Newport Harbor Commission.

➡️ Protecting our Beautiful Newport Harbor
We understand the value of our exquisite harbor, its importance to our Orange County watershed and marine ecosystem, and its value to our local sailing and watersports community. To that end, we have paid our annual mooring permit fees, scheduled and paid for a biennial mooring overhaul, and have kept our 28' Bristol Channel Cutter in outstanding condition, demonstrating that we have been good stewards of our mooring for over 17 years.

➡️ Maintaining our Current Mooring Position
My husband and I chose our mooring in the C Mooring field near the Fernando Street dock, specifically for its location near our home. As you know, taking care of a sailboat, monitoring it for sea lions, and keeping it in seaworthy condition, takes constant effort, and having this particular mooring, so close to our home, in no small part has helped us to keep our sailboat in a state that we are proud to share in our Newport Harbor community. Forcing us to move our sailboat to a new mooring position is an unnecessary hardship, especially with regards to the attention we have paid to keep it in such good condition.

➡️ Maintaining a Safe and Navigable Mooring
The mooring field configuration changes proposed by the Newport Harbor Commission (bow-to-bow shared anchor set-up/bow-to-stern shared anchor set-up and only 20 feet separating the boats) is an unsafe configuration. Given the strong prevailing westerly/southerly winds in Newport Harbor and the strong tidal currents, this extremely close proximity between boats makes mooring extremely challenging and risky given the strong forces involved. Additionally, the Newport Harbor Commission's proposed "sand lines" are untenable in Newport Harbor. Our seafloor consists of muddy silt and any "sand line" on the stern would be covered with muck and unusable.

➡️ Mooring Extension Restrictions

Several years ago the city raised the annual fees for mooring permit holders considerably. Since our sailboat is only 28 feet on deck, we reduced our mooring from 45' to 30'. With the current mooring configuration, our sailboat fits comfortably and safely within its mooring footprint. However, our sailboat has a 8 foot bowsprit, and with the proposed close-quarters mooring configuration, our length overall (LOA) will render our mooring too small to accomodate our sailboat. We would gladly return our mooring length to its original 45' size, but we are no longer allowed to do so (not without a $1250 appeals fee that has no guarantee of success). Had we been made aware back of the Newport Harbor Commission's proposed configuration plans back in June 2022, when the final opportunity to lengthen a mooring was offered, we would have requested the change back to our original 45' mooring permit length.

➡️ Mooring Transferability

As a school teacher and a small business owner, my husband and I are middle-class sailboat owners. Purchasing a mooring in 2005 for $49,000, because we were told by Newport Beach City officials that it was the only way to secure a mooring in Newport Harbor, was no small investment. We were very grateful to acquire our mooring, and have proudly cared for the mooring and our sailboat ever since. Although much has been said about the cost of moorings, we have seen no increase in value whatsoever in 17 years of owning our mooring permit. As you can imagine, the proposed changes to remove our ability to transfer our mooring to a new permit holder is deeply concerning. We do not expect to gain anything monetarily from our mooring permit; however, the ability to recoup some of the expense of the initial purchase of this mooring permit is understandable to a councilmember. Several years ago Title 17 was settled law, allowing mooring transferability with reasonable restrictions regarding number of moorings allowed per year, and a transfer fee that serves to restrict the number of transfers annually. There is no reason to change Title 17 at this point, it will cause harm to current mooring permit holders who have consistently played by the rules, paid their fees, and kept their mooring and vessels in seaworthy condition.

➡️ Transparency of Mooring Field Planning for all Stakeholders

My husband and I were not made aware of the plans to significantly change the configuration of the mooring field of which we are permit holders, and the proposed changes to Title 17 and mooring permit transferability until the October 10, 2022, Newport Harbor Commission meeting. I spoke at this meeting, identified myself as a mooring permit holder, and asked that the mooring permit holders be involved in the planning process due to the significant impact our moorings have had on our lives. I mentioned that we had received no notifications about these plans via mail or email, and that I was startled to realize that there was to be a final vote to proceed during the meeting, rather than simply a discussion on these proposed plans. It is important that all stakeholders feel that "they are part of the solution" and that "things are not just happening to them".

We are planning on attending the next Harbor Commission meeting on Wednesday, November 9, 2022.

We are very grateful for your concern about this issue.

Best regards,

Stacy & Greg Kline
Newport Beach, California

From: Nicolas Jonville-Jonville Team/Keller Williams Realty <nicolas@jonvilleteam.com>
Sent: November 04, 2022 1:38 PM
To: Beer, Ira
Cc: Blank, Paul
Subject: RE: Moorings in Newport Beach Harbor

[EXTERNAL EMAIL] DO NOT CLICK links or attachments unless you recognize the sender and know the content is safe.

Thank you Mr. Beer,
Mine is a 50' mooring.
Thank you for the clarification. The 20' seem very light bow to stern with the other boat. I like the option of the sand line… It might ease the access with more space while entering the mooring space.

In you original email, you mentioned the following:

- ***No upfront cost to existing mooring permittees. If approved as is, the City of Newport Beach will pay all costs for the improvements.***
- ***This current proposed initiative will have no change to current mooring permittee transferability of permits as per Title 17 of the Civil Code.***

  but I have heard that there were conversations about charging the boat owner for the relocation cost.

Which is it please?

I am not sure I can attend the meeting… At what time is it please?

Thanks,
Nicolas Jonville

From: Beer, Ira <IBeer@newportbeachca.gov>
Sent: Friday, November 4, 2022 12:43 PM
To: nicolas@jonvilleteam.com
Cc: Blank, Paul <PBlank@newportbeachca.gov>
Subject: Re: Moorings in Newport Beach Harbor

Hello Mr. Jonville,

Thank you for your comments and input. I assure you that all your concerns are taken very seriously. One item mentioned may not be clear from the prior drawings is the increased space between boats in the same row (average about 50' on center) and the increased fairway widths (minimum 60' stern to stern between rows). This allows for an approach from either fairway under prevailing conditions.

I hope you will be able to attend the Harbor Commission meeting next Wednesday, November 9, 2022 where this initiative will be discussed in detail, and I am sure the commission would love to hear your input.

Best regards,

Ira Beer
Harbor Commissioner
ibeer@newportbeachca.gov
(949) 702-6900

From: Nicolas Jonville-Jonville Team/Keller Williams Realty <nicolas@jonvilleteam.com>
Organization: Nicolas Jonville-JonvilleTeam/Keller Williams Realty
Reply-To: "Nicolas@JonvilleTeam.com" <nicolas@jonvilleteam.com>
Date: Friday, November 4, 2022 at 12:19 PM
To: Harbor Commission <HarborCommission@newportbeachca.gov>
Cc: "Nicolas@JonvilleTeam.com" <nicolas@jonvilleteam.com>
Subject: Moorings in Newport Beach Harbor

[EXTERNAL EMAIL] DO NOT CLICK links or attachments unless you recognize the sender and know the content is safe.

Hello!
Dear Harbor commissioners,
I am a mooring permittee in Newport Beach Harbor, in the A field, near the Balboa Pavilion.

I am very concerned and against the **1-** proposed reconfiguration of Newport Beach mooring field (example of America's Cup Harbor) and also **2-** strongly against the proposed revisions to the Harbor Code (I believe Title 17) making any relocation at the owner's cost and without consideration for owner's will regarding location.

Regarding **#1-**

a- I have been a sailor for 40+ years, and the weather and conditions are completely different in the America's Cup Harbor. My boat used to be in San Diego area and I am very familiar with the set-up there. In Newport beach, the impact of wind and currents are much more prominent than in San Diego America's Cup harbor. They are much more challenging in Newport Beach. The new set-up with only 20' or so between two boats (aft or forward) is not reasonable and will likely turn into serious potential issues under medium to strong conditions (wind and current). We see boats dancing by far more than 20' at times with gusts and strong current – It will most certainly result in damages and accidents, possibly injuries.

b- The approach will be much more difficult for some of the boats that might have to enter their mooring space in windy conditions with the wind pushing the boat into the mooring, with another boat very close to their boat bow (20' or so). This makes it far more difficult and hazardous compared to going forward, against the wind most of the time (with the wind slowing the boat down), to set the forward mooring line first, upwind…the safest

option, and allowed by the current lay-out. The current lay-out has far more than 20' from the bow to the other boat's aft.

c- Any new set-up should be tested on a voluntary basis before any implementation to any larger scale.

d- Again, the proposed changes will most likely result in damages and accidents, possibly injuries.

Regarding **#2-**

a- All boat owners have acquired their mooring permit based on size, and location. Changing the rules by making the boat owners relocate at their cost and without their input/agreement on location is not appropriate, nor fair and any relocation should be with their approval and not at the mooring permittee's cost.

Thank you for your time and consideration. Looking forward to the discussion and appropriate decision.
Best Regards,

Nicolas Jonville, Newport Beach mooring permit owner
T: 760-207-7130
Nicolas@JonvilleTeam.com

From: Karl Drews <kdrews43@gmail.com>
Sent: November 04, 2022 12:32 PM
To: Harbor Commission; Dept - City Council
Subject: Title 17

[EXTERNAL EMAIL] DO NOT CLICK links or attachments unless you recognize the sender and know the content is safe.

Dear Harbor Commission and City Council,

My wife and I have been residents of Newport Beach and have had a license for an offshore mooring for 35 years. We oppose the proposed Title 17 for many reasons. The primary reason is the proposed mooring field is dangerous. With the impact of the wind and tides the boater needs to have the option of approaching the mooring from weather direction.

The proposed design does not allow that choice.

Regards,

Karl Drews

From: Nicolas Jonville-Jonville Team/Keller Williams Realty <nicolas@jonvilleteam.com>
Sent: November 04, 2022 12:19 PM
To: Harbor Commission
Cc: Nicolas@JonvilleTeam.com
Subject: Moorings in Newport Beach Harbor

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a- All boat owners have acquired their mooring permit based on size, and location. Changing the rules by making the boat owners relocate at their cost and without their input/agreement on location is not appropriate, nor fair and any relocation should be with their approval and not at the mooring permittee's cost.

Thank you for your time and consideration. Looking forward to the discussion and appropriate decision.
Best Regards,

Nicolas Jonville, Newport Beach mooring permit owner
T: 760-207-7130
Nicolas@JonvilleTeam.com

From: Donald Farley <dvfarley@att.net>
Sent: November 03, 2022 1:13 PM
To: Harbor Feedback; Beer, Ira
Subject: Proposed Changes to Mooring Fields J and H
Attachments: Newport Harbor Commissioners, 11-2-22a.pdf

[EXTERNAL EMAIL] DO NOT CLICK links or attachments unless you recognize the sender and know the content is safe.

Hello,

Please consider the attached comments.

Thank you.

Don
Mooring J54

Donald V. Farley
139 Carlin Lane
Riverside, CA 92307
Phone/Fax (951) 683-1050
Cell/Voice Mail (909) 228-6970
e-mail: dvfarley@att.net

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Donald V. Farley
139 Carlin Lane, Riverside, CA 92507
Mooring J54

Newport Beach Harbor Commission (Harborfeedback@newportbeachca.gov)
Ira Beer, Harbor Commissioner and Vise Chairman (ibeer@newportbeachca.gov)

November 2, 2022

COMMENTS REGARDING: e-mail dated 10/26/2022, from Ira Beer "Important Information Concerning Your Mooring"

Newport Beach Harbor Commission, and/or Ira Beer,

SUMMARY:

At first look, the proposed changes to mooring fields J and H seem desirable, however after further consideration, many of the proposed changes could have undesirable consequences, including impaired safety and functionality.

COMMENTS AND CONCERNS INCLUDE:

In general, there is a prevailing wind direction through the harbor. Presently, moored, boats tend to be facing into the wind, which is desirable, and is easier and safer when boats are approaching a mooring. Furthermore, present spacing allows boats to leave a mooring by going forward into the wind (particularly desirable for sail boats). The proposed plan would have some boats with their stern to the wind, not desirable, and would require most boats to back from a mooring when leaving.

The examples shown for the proposed arrangement show only 40, and 50-foot moorings. Boats in the 30-to-40-foot range should be considered.

While it may be desirable to cleanup the alignment of moorings, that should be possible with the current arrangement, if mooring placement can be as precise as implied for the proposed plan. Also, to prevent mooring buoys from drifting into the fairways, spreader lines could be installed on current buoys.

The desire to add additional moorings is fine if it does not interfere with the functionality of existing moorings. Furthermore, there will never be enough moorings.

Though I have sailed in Newport Harbor for over 50 years and had a mooring there for more than 30 years, I would welcome a discussion with, and input from, others with more experience regarding the management of moorings.

Thank you for your consideration.

If you have questions or comments, please contact me at 909-228-6970 and/or dvfarley@att.net
.
Thank you for your consideration.

Donald V. Farley

OPEN LETTER TO THE DISTINGUISHED

MEMBERS OF THE NEWPORT BEACH CITY COUNCIL

and

HARBOR COMMISSION

Dear Council Members,

I am writing this letter in an effort to persuade you to head off the current direction of the Harbor Commission in its' effort to not only change the current rules concerning transferability of mooring permits, but also, in my opinion, the outrageous format presented to validate the increase in shore mooring rates. I will follow with a brief family history and comment on the mooring transfer issue and then conclude with a comment on the proposed lease rate increases.

My name is Lawrence Reid. I am a permittee for mooring sites, A-231 and P-047, both an offshore and on shore mooring. I have been so since 2013 when I acquired the permit rights via the open market subject to all requirements and conditions in place at that time. My family has been involved and concerned with Newport Harbor since my grandfather purchased a homesite on 6th Street in 1915 and built a cottage home there in 1917 and continue to be involved to this day. I personally solidified that involvement by finding a complimentary pair of moorings to settle into a "life on the water" situation.

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Therefore, I urge you to strongly oppose any new proposal that negates the existing status quo of the ability to transfer permit rights on the private market to not only those permittees that had additional transfer rights conferred to them, but to all mooring permittees as a group.

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without notice for long periods of time but I can't sublet my mooring without "owning" the boat that is being used. I pay for all of the upkeep without any maintenance monies being set aside to assist in the upkeep. The City keeps it all. As far as insurance coverage goes, I have to indemnify the City whether my boat is on my mooring or not, the City requires the rental craft to indemnify the City prior to use but nowhere in the City Title does it require the transient boat to indemnify me. I am left again, holding a wet, empty paper bag.

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What is the main push to change what has been the norm for almost forever? To think that a double off-shore mooring is going to improve the off-shore mooring lifestyle is ludicrous in my opinion. Who will pay for the added upkeep for the new common mooring ball? Why would you create a navigational hazard knowing the prevailing winds are from the west in the harbor. The current set-up allows for maximum maneuverability in ALL wind conditions? Now to consider the possibility that in order to use my offshore mooring I would need to first see if my boat has been moved to another part of the harbor for reasons that appear to be so flaky it makes me shudder.

I could go on and on, but let me close by saying, the Harbor Commission needs to quit treating the mooring permittees as the black sheep of the family and quit trying to legislate these ill-founded extra burdens on current permittees.

Thank you for your time and effort. It is not an easy job and you won't please everyone as you know. The current proposed changes need to be "deep sixed" immediately.

Sincerely yours,

Lawrence Reid

Permittee A-231 and P-047

Fred Fourcher
507 Larkspur
Corona Del Mar, CA 92625

Dear Chair Scully and Honorable Harbor Commissioners,

I have lived in Corona Del Mar since 1979 and have had my offshore and onshore moorings since 1976. My offshore mooring and onshore mooring are on Balboa Island and adjacent to each other.

It is stated that the intent is to improve the harbor to the benefit of mooring permittees. What is being decided is if the **City of Newport Beach can move our boat to a different mooring permanently without our permission and at our expense**, is clearly not for the benefit of mooring permittees and has some other purpose. **Mooring locations are picked for a reason,** Permittees acquired permits in specific locations such as proximity to their house, yacht club or shore mooring. This major disruption will result in lawsuits and political fallout. The people who you are supposed to be serving will do whatever it takes to keep the current order in the harbor. This is simply a bad idea with massive un-intended consequences.

This proposal is deeply troubling because the Harbor Commission is usurping the decision-making responsibility from our Elected Officials. There is no reason to be revising the city harbor code for a pilot test of a questionable mooring system.

This proposal is not for the benefit of the Mooring Permittees. I along with others will mobilize to fight the Harbor Commission to keep this poorly conceived proposal from being implemented.

Fred Fourcher

Donald V. Farley
139 Carlin Lane, Riverside, CA 92507
Mooring J54

Newport Beach Harbor Commission (Harborfeedback@newportbeachca.gov)
Ira Beer, Harbor Commissioner and Vise Chairman (ibeer@newportbeachca.gov)

November 2, 2022

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Though I have sailed in Newport Harbor for over 50 years and had a mooring there for more than 30 years, I would welcome a discussion with, and input from, others with more experience regarding the management of moorings.

Thank you for your consideration.

If you have questions or comments, please contact me at 909-228-6970 and/or dvfarley@att.net
.
Thank you for your consideration.

Donald V. Farley

Newport Mooring Association

November 8, 2022

NMA Comments regarding the November 9th 2022 Newport Beach Harbor Commission **Item #3 - Recommendations Resulting from Commission Objective 2.3 to Improve Navigation Safety, Allow for Additional Moorings Within the Fields and Mooring Size Exchange Requests**

Dear Honorable Members of the Harbor Commission,

Please find the following documents for your consideration. For your convenience we provide the following table of contents:

1. NMA concerns regarding the proposed Harbor Code revisions and plan — Page 2
2. Summary list of recommendations regarding Agenda Item #3 — Page 4
3. Correspondence from Attorney Doug Carstairs identifying legal concerns — Page 5
4. Letter from Master Mariner Captain James L. Haley detailing concerns — Page 10
5. Harbor Commission Tracking Sheet with harbor code revisions and complete mooring plan presented to NMA and public for the first time October 12th — Page 12
6. Professional and timely email responses from the NMA to Harbor Commission — Page 13
7. Follow-up email from L. Scott Karlin to Commissioner Beer 10-26-22 with attachments with specific recommendations to clarify language in Title 17 — Page 18

Newport Mooring Association

November 8th, 2022

Dear Chair Scully and Harbor Commissioners,

Thank you for the opportunity to provide comments regarding November 9th Harbor Commission Agenda Item #6-3 (Objective 2.3) involving significant revisions to the harbor code and the initial stage (pilot test) of a plan to significantly change access to the mooring fields.

The NMA is extremely concerned that revisions to the harbor code are being considered in advance of an untested mooring plan concept. These specific proposed harbor code revisions were seen by the public, for the first time ever, on the October 12th, 2022, agenda. The proposed revisions to the harbor code (Title 17) were not developed in public and were not hashed out in any public stakeholder meetings. The revisions appear to have been developed in closed door subcommittee meetings with no public oversight or input. The proposed harbor code revisions would allow the harbormaster or the Harbor Commission, to move large numbers of boats or moorings to new locations in the name of "realignment" without any constraints or conditions, and without City Council approval. We have also heard concerns from many homeowners. We want to be good neighbors and are also concerned that this will have an impact not only on mooring holders, but also on residences and homeowners who may have their views altered now and, in the future, again without restrictions or City Council approval. Some homeowners may have a bit better view, some worse, but no one will know how this will play out now or in the future.

We are also concerned with the harbor code revision involving transferring certain mooring decision making authority from our elected City Council to the Harbor Commission. The City Charter appropriately differentiates the formal responsibility of the Harbor Commission as an advisory panel and the City Council as the formal decision-making body. Notably, the Council is comprised of individuals elected to serve their constituents and they are therefore responsible and accountable for their decisions.

The timing is also problematic. The granting of broader authority to the Harbor Commission and Harbormaster while they embark on a new mooring plan that has already been identified as problematic to the permittees will create another point of contention. Transparency, accountability, and collaboration should not be compromised during this phase.

As you may be aware, the complete mooring report, with the supporting engineering study on the holding power of the proposed anchor system was first presented for public review at the October 12th, 2022, Harbor Commission meeting. Numerous members of the public expressed concern regarding increased risk and the difficulty of use of the proposed "shared anchor" mooring plan that involves moving mooring rows closer together and the requirement for a mooring user to be forced to approach a mooring in a downwind manner given our prevailing westerly winds. Approaching a mooring in a downwind fashion is never recommended as it involves less control of a vessel, which in turn, increases risk.

Given we have not been presented with a revised plan since the October 12th Harbor Commission meeting, we find it difficult, if not impossible, to comment on what may be presented on November 9th as we have not seen any revisions to the mooring plan.

The NMA opposes a mooring plan that requires a mooring user to approach a mooring in a downwind manner (and depart a mooring in an upwind manner). The proposal presented on October 12th pushes the shared-anchor mooring rows close together which indicates there will only be "one way in" and "one way out"'. This is less safe compared to the current configuration that has sufficient spacing between rows which gives mooring users the option to approach and depart from either direction depending on wind and current.

We believe the shared-anchor mooring concept has not been adopted throughout Southern California because it is inherently risky. We are only aware of a shared anchor mooring system in use in SoCal location, America's Cup Harbor, which is a fully protected marina within in an already protected harbor that is protected by Point Loma adjacent to "Shelter" Island in San Diego. The conditions in America's Cup and Newport Harbor are not comparable.

The NMA respectfully requests the Harbor Commission put the Title 17 revisions and mooring plan revisions on hold and schedule public stakeholder meetings to allow for more robust community engagement and stakeholder input. We would like to point out that the Harbor Commission held numerous stakeholder meetings when revising the harbor code a few years ago. These informal public stakeholder meetings allowed for robust community engagement, thoughtful back-and-forth which resulted in stakeholder buy-in to harbor code revisions. In contrast, these revisions have been developed out of public view and without robust community and stakeholder engagement.

It is our understanding that the initial intent of Objective 2.3 was to straighten out a few mooring rows. We believe this can be accomplished through voluntary and incentivized relocations.

The NMA looks forward to collaborating with the Harbor Commission to improve Newport Harbor while preserving the established mooring access we enjoy today.

Sincerely,

The Board Of Directors
Newport Mooring Association
https://newportmooringassociation.org

Newport Mooring Association

Summary List of Newport Mooring Association Recommendations:

1. Postpone this agenda item in favor of public stakeholder meetings
2. Collaborate with the NMA on a voluntary mooring relocation plan to straighten out mooring fields.
3. The City can adjust a few moorings by a few feet at minimal cost to straighten out some mooring rows.
4. The City can better utilize existing vacant moorings by setting establishing a longer term boat storage rate for subleasing moorings. The current sublease rate is set high for visiting short term boaters. Establishing a lower rate for longer term users will generate significant revenue and better utilize existing vacant moorings.
5. The City should encourage mooring contractors to use GPS technology to make sure moorings are replaced in exact locations when they are lifted for service.
6. The City and NMA can collaborate to have biannual service of mooring hardware accomplished during the same general time period for the various mooring fields (ex. J field in February, H field in March). This will allow the contractors to make sure everything is lined up nicely and may save contractor and permittees in mobilization costs because they will be working the same mooring field for several days in a row.
7. If one objective is to create more “Open Water” then do not add more moorings and boats. This will create less “Open Water”.

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Douglas P. Carstens
Email Address:
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November 8, 2022

VIA E-MAIL (HarborCommission@newportbeachca.gov, harborfeedback@newportbeachca.gov)

City of Newport Beach Harbor Commission
c/o Office of the City Clerk
P.O. Box 1768
Newport Beach, CA 92658

Re: Harbor Code Amendments to Mooring Procedures Require Coastal Development Permit; November 9, 2022 Harbor Commission Meeting Agenda Item 3

Dear Honorable Commissioners,

On behalf of the Newport Mooring Association - a Non Profit Corporation, we are writing to inform the Harbor Commission that a Coastal Development Permit application is required in order for the City of Newport Beach ("City") to proceed with its proposal to amend the City of Newport Beach Harbor Code (Municipal Code, Title 17, sections 17.25.020 and 17.60.040) in order to modify mooring procedures. The City's proposal to eliminate mooring extensions and conduct a pilot test constructing new moorings constitutes development under the Coastal Act, for which a Coastal Development Permit is required. Further, the proposal would encourage unsafe navigation by large vessels in the mooring fields, and would impede coastal views. Thus, we urge the Harbor Commission to advise the City that it may not proceed without obtaining a Coastal Development Permit from the California Coastal Commission.

I. The Coastal Commission Has Original Jurisdiction Over the Mooring Fields.

The Coastal Act recognizes the importance of protecting recreational and commercial boating and fishing activities. (See Pub. Resources Code §§30224, 30234, 30234.5.) The City of Newport Beach's Local Coastal Program Land Use Plan ("LUP") also emphasizes the importance of maintaining access to moorings, with Policy 3.3.2-3 which states "Continue to

provide shore moorings and offshore moorings as an important source of low-cost public access to the water and harbor."

Though the City has adopted a Local Coastal Program, the Coastal Commission retains original jurisdiction for developments in the tidelands, public trust, and submerged lands. (Pub. Resources Code §30519, subd. (b); see City of Newport Beach's Post LCP Certification and Appeal Jurisdiction Map, available at: https://www.newportbeachca.gov/PLN/LCP/LCP_Zoning/Maps/21_80_045_Permit_and_Appeal_Jurs_Maps/Offcial_CNB_PostCert_Map.pdf.) Thus, any development in the mooring fields at Newport Harbor, which are submerged lands, require review and approval by the Coastal Commission in the first instance.

II. The Proposed Revisions to the Harbor Code Eliminating Mooring Extensions Constitute Development and Require a Coastal Development Permit.

The proposed revisions to the Harbor Code (Newport Beach Municipal Code, Title 17) constitute development under the Coastal Act. Under the Coastal Act, development includes, inter alia, "change in the intensity of use of water, or of access thereto." (Pub. Resources Code §30106; *Surfrider Foundation v. Martins Beach 1, LLC* (2017) 14 Cal.App.5th 238, 250.) Under the existing Harbor Code, permittees may request mooring extensions for vessels longer than the assigned vessels, and extensions five feet or under may be granted by the Harbormaster without seeking approval from the Harbor Commission. (Newport Beach Municipal Code §17.60.040, subd. (M).) The proposed revisions to the Harbor Code drastically change this process by eliminating mooring extensions. (October 12, 2022 Harbor Commission Agenda Packet, pp. 59-60; November 9, 2022 Harbor Commission Staff Report, Attachment C, pp. 8-9.) These revisions will alter and impede the access of permitholders to moorings, thereby constituting development under the Coastal Act.

The proposed revisions state:

> Requests for mooring extensions shall no longer be considered. Instead, requests for a longer or extended mooring will require relocating to a larger mooring. The mooring permittee making the request shall pay a fee for the relocation request and shall

> bear all costs of relocating their vessel and the displaced vessel. Relocations will require payment of a fee and be contingent upon availability of a vacant mooring or another permittee in the same mooring field (or also an adjacent field in the case of moorings in the H and J fields) having a vessel in a mooring row that is designated for a length of at least 5-feet greater. In no event will relocations be considered for mooring lengths in excess of 5' of the current mooring length for the permittee making such request. Authority to approve relocation requests shall lie with the Harbormaster.

(November 9, 2022 Harbor Commission Staff Report, Attachment A.)

These revisions alter access to water because they will result in requests even for small, de minimus extensions to be considered as a request for *relocation* of a permittee's mooring. The location of a permittee's mooring is an important access consideration, because if a mooring is relocated far away from a permittee's dinghy location, it will be difficult for the permittee to access their mooring. Additionally, flipping any moorings where boaters have to now access the mooring in a downwind fashion will change access to and from moorings and make accessing a mooring more difficult as the operator will have less control. Finally, these revisions impose the cost of unnecessary relocations onto permittees and requires them to pay a relocation fee, which further impedes access to moorings and is contrary to LUP Policy 3.3.2-3 which requires provision of moorings as a source of "low-cost" access. These modifications to the public's access to moorings require review and approval by the Coastal Commission.

III. The Proposed Phase I Pilot Test Constitutes Development and Requires a Coastal Development Permit.

As part of the City's plan to reconfigure the Harbor, the City plans to conduct an initial reconfiguration of C Field (Phase I), with a pilot test constructing 3 to 6 double mooring systems in one row to verify engineering and functionality. (October 12, 2022 Harbor Commission Agenda Packet, p. 86.) Under the Coastal Act, development includes "in or under water, the placement or erection of any solid material or structure; [or] construction . . . of any structure . . . ." (Pub. Resources Code §30601.) The construction of new moorings thus falls squarely within the definition of development, for

which a Coastal Development Permit is required. Construction of new moorings during the pilot test will require installation and placement of new shared anchors, shackles, chains, and buoys within the mooring fields. (October 12, 2022 Harbor Commission Agenda Packet, pp. 48, 78.) As described above, development within the mooring fields is subject to the Coastal Commission's original jurisdiction and thus requires a Coastal Development Permit. Accordingly, the City cannot proceed with the Phase I pilot test without a Coastal Development Permit.

IV. The Proposed Mooring Reconfiguration Would Encourage Unsafe Navigation of Large Vessels in the Mooring Fields.

The mooring fields as currently configured provides protection from larger vessels. We are concerned that the proposed mooring reconfiguration, which provides for wide, up to 100-foot fairways, would encourage navigation of large vessels in the mooring fields. This would both obstruct coastal access and create a safety concern for permittees operating small vessels, as well as for paddleboarders, kayakers, and others operating small human-powered vessels in the safe haven of the mooring fields. This goes against the Chapter 3 policies of the Coastal Act, which protect such activities. (Pub. Resources Code §§30211, 30220, 30224.) Marine life that frequent the harbor, such as dolphins, may also be impacted by the introduction of larger vessels. (See Pub. Resources Code §30230.)

The mooring areas in Newport Harbor are designated "Special Anchorages" by the Coast Guard. (33 C.F.R. §110.95; see 77 Fed. Reg. 22489, available at: https://www.govinfo.gov/content/pkg/FR-2012-04-16/pdf/2012-9006.pdf.) Special anchorage areas "should be well removed from the fairways and located where general navigation will not endanger or be endangered by unlighted vessels." (33 C.F.R. §109.10.) Thus, fairways that accommodate large vessels should not be located within the mooring fields.

V. The Proposed Mooring Reconfiguration Would Impact Harbor Views.

We are also concerned with City staff's questionable assertion that the mooring reconfigurations would greatly improve harbor views. (October 12, 2022 Harbor Commission Agenda Packet, p. 82.) The proposal to push mooring rows together will alter view corridors from the public boardwalk around Balboa Island (and other boardwalks in Newport Harbor). (See Pub.

Resources Code § 30251 ["The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance."]) The plan will also alter homeowner views of the harbor. While under the proposed reconfiguration, views *may* be improved for some—those whose properties are fronted by a fairway—views may also be greatly worsened for others, including those whose properties are fronted by the proposed double-wide tandem rows of boats.

VI. Conclusion.

The proposed revisions to the Harbor Code present significant changes that would alter access to water and construct new moorings in the submerged mooring fields. The proposed mooring reconfiguration would encourage unsafe navigation of large vessels that impede coastal access for small-scale recreational boaters and others, and would obstruct coastal views. Accordingly, the proposed mooring plan constitutes development under the Coastal Act and appears to be in conflict with the Coastal Act. As such, it must be reviewed for approval by the Coastal Commission. We request that the Harbor Commission, in fulfilling its charge, advise the City of these issues prior to making any recommendation.

Sincerely,

Douglas P. Carstens
Sunjana Supekar

To: City of Newport Beach Harbor Commission

From: Capt. James L. Haley

79 Dapplegray Lane

Palos Verdes Peninsula, Ca. 90274

November 6, 2022

Dear Commissioners:

I have been asked by the Newport Mooring Association to give my expert opinion on the proposals contained in the published "Solution for Improved Safety and Utilization of Space and Adding New Moorings".

I have held a US Coast Guard License as Master Mariner since 1982, including First Class Pilotage, Unlimited Tonnage in Los Angeles and Long Beach harbors and employed as a pilot in the Port of Long Beach for the past 32 years. I have been admitted as an expert in numerous State and Federal courts as an expert in ship handling and navigation. I have also been a recreational sail and power boat owner for over fifty years and a frequent user of moorings in Southern California.

It is my opinion that any proposal that involves moving mooring rows closer together and forcing any vessels to approach or depart a mooring in a down wind fashion (relative to the prevailing winds) will create much greater risk of collision and injury and a less safe usage of the mooring arrangement.

It would be almost impossible to overstate the negative impacts of configuring moorings that are not approached as nearly bow into the prevailing winds as practical. The increased difficulty of approaching or departing any mooring or dock in a downwind direction would certainly increase risk of collision, allision, damage to boats and injury to boaters. All authoritative books on seamanship or boat handling are in emphatic agreement on this simple point. The vast majority of sail vessels and many power boats are single engined, and have very limited steering or maneuverability when moving astern. Departing moorings downwind would be as likely as approaches to result in boat collisions, allisions, damage and injuries.

The America's Cup harbor arrangement that has been offered as an example is not comparable to Newport for the simple reason that it is shielded from wind by the topography of Point Loma and protected from tidal currents by virtue of being land locked on three sides. Newport, by contrast is surrounded by low land masses that do little to protect the mooring fields from prevailing winds, and tidal currents flow unimpeded through the moorings as well.

The current proposal creates a less safe situation by moving alternate mooring rows within 20 feet of each other. Less space affords less reaction time and decreases space to maneuver to avoid collisions or allisions when boats inevitably experience a failed mooring attempt such as when the wind or current are greater than anticipated. Page 84 of the October 12th presentation indicates the distance between all mooring rows range from 41 to 65 feet with an average of 53ft in the "C" mooring field. In the new mooring plan, on page 85, it indicates alternate mooring rows will be moved closer and within 20 feet of each other. In my opinion, moving the mooring rows within 20 feet decreases the ability to safely maneuver, especially in the event of strong winds, a failed mooring attempt or mechanical failure.

Any changes to the existing mooring arrangement that has served the boating community quite well for decades should give the most serious consideration to the input of the current permittees. Their experience is the best source of knowledge about what works and what will create problems for them and their fellow boaters.

Please feel free to call me with any questions at (928) 713-6277

Sincerely,

Capt. James Haley

HARBOR COMMISSION OBJECTIVES TRACKING SHEET—Excerpted for Objective #2.3

2. Harbor Viability (Beer) - Matters pertaining to Assets, Amenities, and Access.

	2.3 Evaluate the current mooring fields and provide a recommendation for new guidelines that better define rows and fairways to improve navigation, safety, and optimization of space within the mooring fields. (Beer)	NMA NOTES REGARDING TIMELINE
January 12, 2022	Nothing to report.	
February 9, 2022	Nothing to report.	
March 9, 2022	Nothing to report.	
April 13, 2022	Vice Chair Beer discussed this objective in detail earlier in the meeting. He noted he is waiting for the third audit to come in and will bring it back to the Commission.	Presented no substantive details of mooring plan No harbor code revisions presented
May 11, 2022	The third audit has been received. Further feedback will be requested of the Commission at next month's meeting.	Presented no substantive details of mooring plan No harbor code revisions presented
June 8, 2022	Vice Chair Beer discussed this objective in detail earlier in the meeting. He brought before the Commission his draft plan for feedback.	Presented slideshow of mooring field redesign No harbor code revisions presented
July 13, 2022	Vice Chair Beer has received information from the engineering firm and will provide a more comprehensive update at next month's meeting.	No updates, engineering report "coming"
August 10, 2022	Vice Chair Beer noted that he is waiting on the final report from the City's contract engineer. Once he receives that he can verifiy the information and provide a report to the Commission.	Presented no substantive details of mooring plan No harbor code revisions presented
September 14, 2022	Vice Chair Beer will provide a complete report of this objective at the next meeting.	Presented no substantive details of mooring plan No harbor code revisions presented
October 12, 2022	Vice Chair Beer provided a complete report on Objective goal 2.3 for consideration by the Harbor Department.	FIRST PRESENTATION OF COMPLETE REPORT FIRST SUBMISSION OF HARBOR CODE REVISIONS
November 9, 2022		
December 14, 2022		

From: "megandelaney@[redacted] <megandelaney@[redacted]
Date: Monday, September 26, 2022 at 12:55 PM
To: "Beer, Ira" <IBeer@newportbeachca.gov>, 'Admin' <mail@newportmooringassociation.org>
Cc: Dept - City Council <CityCouncil@newportbeachca.gov>, 'NMA Email Board' <nmaboard@indigoharbor.com>, "Miller, Chris" <CMiller@newportbeachca.gov>, "Jung, Jeremy" <JJung@newportbeachca.gov>
Subject: RE: Mooring Reconfiguration Proposal and Mooring Fees

Thank you, Ira!

Megan

From: Beer, Ira <IBeer@newportbeachca.gov>
Sent: Monday, September 26, 2022 11:46 AM
To: Admin <mail@newportmooringassociation.org>
Cc: Dept - City Council <CityCouncil@newportbeachca.gov>; 'NMA Email Board' <nmaboard@indigoharbor.com>; Miller, Chris <CMiller@newportbeachca.gov>; Jung, Jeremy <JJung@newportbeachca.gov>
Subject: Re: Mooring Reconfiguration Proposal and Mooring Fees

Hello Megan,

Attached herewith please find a copy of the initial engineering study for the mooring field reconfiguration. Should you have any questions, comments, or feedback, please do not hesitate to respond back to me. Should you wish to discuss any of the information provided, or any other aspects of the project, please do not hesitate to let me know as I am happy to meet with you and/or the NMA board prior to the next scheduled Harbor Commission meeting where this item will likely be agendized for public comment.

As you know, this project is a part of the Harbor Commission's Open Water Initiative intended to improve safety, navigation, create more moorings for public use and increase the usable space for mariners in Newport Harbor. I look forward for the opportunity to share any of the details with you, your board, and its members.

Best regards,

Ira Beer
Harbor Commissioner
ibeer@newportbeachca.gov
(949) 702-6900

From: "Beer, Ira" <IBeer@newportbeachca.gov>
Date: Wednesday, July 6, 2022 at 11:06 AM
To: Admin <mail@newportmooringassociation.org>
Cc: Dept - City Council <CityCouncil@newportbeachca.gov>, 'NMA Email Board'

9

<nmaboard@indigoharbor.com>, Harbor Commission
<HarborCommission@newportbeachca.gov>
Subject: Re: Mooring Reconfiguration Proposal and Mooring Fees

Hi Megan,

Thank you for your kind words of congratulation on my reappointment and the acknowledgment of work surrounding the commitment in accepting such an appointment. It has been, and continues to be an honor to serve on the Harbor Commission.

As mentioned in my last email, the engineering study is not completed. However, it is well underway. While the financial aspect is yet another conversation, the engineering study when completed will be discussed at a regular Harbor Commission meeting and will be open to public comment as such time.

As for the offshore mooring appraisal, to the best of my knowledge that has not been completed yet, nor have I seen any drafts. As there is quite a lot of information required for the Harbor Commission to review when considering a recommendation of mooring rate increases, I expect that could be a while to compile the data and have it available for review and public comment, also at a Harbor Commission meeting in the future.

Please do not hesitate to let me know if you require additional information or have further questions.

Best regards,

Ira Beer
Harbor Commissioner
ibeer@newportbeachca.gov
(949) 702-6900

From: Admin <mail@newportmooringassociation.org>
Date: Wednesday, July 6, 2022 at 1:42 PM
To: "Beer, Ira" <IBeer@newportbeachca.gov>
Cc: Dept - City Council <CityCouncil@newportbeachca.gov>, 'NMA Email Board' <nmaboard@indigoharbor.com>, Harbor Commission <HarborCommission@newportbeachca.gov>
Subject: RE: Mooring Reconfiguration Proposal and Mooring Fees

Hi Ira,

First, congratulations on your reappointment to the Harbor Commission. It's quite a responsibility, and we are glad and thankful when volunteers step up to shoulder this level of work.

I appreciate your response to my question. Just so I understand exactly, your proposal for the mooring field reconfiguration is only a concept at this time – that the engineering, financial and feasibility analysis have not been started at this time? We had assumed that much of those analyses had been completed. I think that assumption has caused some confusion among the membership.

As it relates to the mooring fee increase, yes, that **is** a separate topic and a question for the Harbor Commission. I apologize that you interpreted it as being connected with the mooring reconfiguration proposal. Can you or another Commissioner address that question? According to the Harbor Commission goals and other documents, we have assumed that the offshore mooring appraisal has been completed. And, as you know, this is a very explosive issue with all mooring permitees. Do you have any information on timing that you can share with us?

Thanks again for all your time and effort!

Megan

From: Beer, Ira <IBeer@newportbeachca.gov>
Sent: Tuesday, June 28, 2022 2:34 PM
To: Megandelaney@[redacted] 'Admin' <mail@newportmooringassociation.org>; Harbor Commission <HarborCommission@newportbeachca.gov>
Cc: Dept - City Council <CityCouncil@newportbeachca.gov>; 'NMA Email Board' <nmaboard@indigoharbor.com>
Subject: Re: Mooring Reconfiguration Proposal and Mooring Fees

Hello Megan,

Thank you for your email. This project is still in a review stage. The assumptions in the draft proposal, while based on prior discovery, are subject to engineering review not yet completed. I appreciate the questions from your board set forth in the email received on June 14, 2022. I am however struggling to see how they relate directly to what was presented at the June 8, 2022, Harbor Commission meeting. The purpose of the mooring initiative discussed and defined in item 2.3 of the Harbor Commission Objectives is to evaluate the current mooring fields and provide a recommendation for new guidelines that better define rows and fairways to improve navigation, safety, and optimization of space within the mooring fields. Economics of the proposal and mooring rate increases were not a part of the discussion or the primary subject matter of the Objective.

I would be happy to meet with you and the NMA board in person or via Zoom to discuss what was presented and the items related thereto. Please let me know. Otherwise, I hope you will watch for when this topic is agendized at future Harbor Commission meetings as I and the Harbor Commission value your comments and any input you feel compelled to share. Thank you.

Best regards,

Ira Beer
Harbor Commissioner
ibeer@newportbeachca.gov
(949) 702-6900

From: "Megandelaney@[redacted] <Megandelaney@[redacted]
Date: Monday, June 27, 2022 at 4:17 PM
To: 'Admin' <mail@newportmooringassociation.org>, Harbor Commission

<HarborCommission@newportbeachca.gov>
Cc: Dept - City Council <CityCouncil@newportbeachca.gov>, 'NMA Email Board' <nmaboard@indigoharbor.com>
Subject: RE: Mooring Reconfiguration Proposal and Mooring Fees

To Commissioner Beer and the Harbor Commissioners –

We haven't heard nay response to our email of June 14th. Can you give us any update you have on the harbor reconfiguration? What are your next steps?

Thank you,

The NMA Board of Directors
Looking out for the interest of all mooring owners
Newport Mooring Association
P.O. Box 1118, Newport Beach, CA 92659-1118
mail@NewportMooringAssociation.org

From: Admin <mail@newportmooringassociation.org>
Sent: Tuesday, June 14, 2022 3:30 PM
To: HarborCommission@newportbeachca.gov
Cc: Dept - City Council <Citycouncil@newportbeachca.gov>; NMA Email Board <nmaboard@indigoharbor.com>
Subject: Mooring Reconfiguration Proposal and Mooring Fees

To Commissioner Beer and the Harbor Commissioners,

At the June 8th Harbor Commission meeting, Commissioner Beer presented his new mooring system proposal. The proposal involves realigning the mooring fields, installing a new anchoring system, and having a shared mooring on one end of the two-point mooring systems. To better understand the proposed changes to the mooring system, we would like to review any supporting documents for the presentation, and we have the following questions:

1. Has this mooring reconfiguration been approved by City Management? Or is this still in a conceptual phase?
2. What financial analysis has been performed - revenues and expenditures, investment and payback - for the extensive capital and services outlay to implement this revised system? We have noted that this new project doesn't seem to appear in the proposed FY2022-23 budget document.
3. If the City pays for the new hardware, we believe the City will assume the liability when a boat breaks loose from any new system or when the new system causes damage to a vessel. If the City installs and owns the new system, what is the City's exposure for accidents caused by the new system? How will the City manage the assumption of liability?

4. We would like to review the engineering analysis on the specific hardware being proposed for the shared mooring system. The proposed solution is far more rigid with greatly reduced catenary (thus reduced shock absorbing potential) between a vessel and the mooring anchor to limit movement of the boats, and we are very concerned about the potential stresses on boat cleats and other attachments. We are also concerned with how the system will perform under the heavy Santa Ana winds we have in Newport Beach.
5. Does this project require any approvals from the Coastal Commission? Does it require an Environmental Impact Report? Does it require a Coastal Development Permit (CDP) to move forward? Have any of these documents been completed at this time?
6. What type of "proof of concept" or trial moorings for implementation is being considered? Has Commissioner Beer identified areas that will be implemented first? What is the proposed timeframe for the implementation?
7. Was there an incident or a series of accidents that prompted the safety concerns that drove this proposal? We are concerned that the shared moorings make it more difficult to get a vessel on and off the mooring, and as previously discussed, may cause other issues and potential damage to vessels.
8. It should be noted that Commissioner Beer's earlier study from 2020 had identified a plan for a mooring realignment for safer fairways that now appears to have been abandoned for this far more complex reconfiguration.

Mooring Rate Increases - In addition to our questions on this new mooring configuration proposal, when we will next hear about the onshore/offshore mooring rates and appraisal? We assume that the offshore mooring appraisal has been completed. Our members are very concerned and want to be prepared to discuss the new proposed rates.

We would like to reiterate the NMA's willingness to work collaboratively on policy and procedures that affect our harbor.

Thank you,

The NMA Board of Directors
Looking out for the interest of all mooring owners
Newport Mooring Association
P.O. Box 1118, Newport Beach, CA 92659-1118
mail@NewportMooringAssociation.org

Wednesday October 26, 2022

City of Newport Beach Harbor Commission
Paul Blank, Harbormaster

Dear Commissioner Beer:

I would like to thank you and Harbormaster Blank for meeting with Jerry LaPointe and me on October 20, for an initial preliminary meeting to answer some questions about the proposal to move almost all the offshore moorings and/or boats on the moorings. As mentioned at the meeting, this was intended to be an initial meeting to answer some questions to be followed by a second meeting with you, other commissioners, and the NMA.

At this initial meeting we asked for your personal assurance that any proposal to change Title 17 not be voted on at the November 9 Harbor Commission meeting, but instead postponed to allow the NMA and stakeholders to study the new proposal, and allow time for the City to send notice to all the stakeholders, including permit holders, followed by one or more stakeholder meetings. As stated previously, the NMA does not think it is appropriate to make any changes to Title 17 at this time. Certainly, a six boat trial test of a new concept in mooring layout and design does not require a Title 17 rewrite. Let's ask for volunteers instead of mandating that permittees cooperate. However, since Title 17 changes may need to happen eventually, we are hereby giving you our initial modifications to your earlier proposed language changes.
While the NMA does have a list of permittees, it is not as up to date or complete as the City's list, and it is our personal view that a mailing should not be placed on the shoulders of the NMA. We also requested that you ask other Commissioners if the matter could be placed on the agenda as a discussion item only, and not as an item to be voted on. We asked that you let us know as soon as possible to avoid our having to notify as many people as possible that the proposals in current form would be voted on at the November 9 meeting.

At the meeting you indicated the proposed changes to Title 17 were being made and that there was a deadline for us to comment on the changes. You indicated that you would try to provide us with these changes on Friday October 21, although you were not sure if that could be done and you might only be able to provide your work notes outlining the changes. You requested that we provide our comments on the Title 17 proposed and revised changes by the end of the day, Wednesday October 26. At approximately noon on Monday Oct 24 (two days ago), you sent the Title 17 revised changes in a pdf file. Yesterday I attempted to "convert" that file and gather comments from a few people on the NMA Board in order to meet the deadline of today. We understand that it was difficult to provide us with the new proposed changes before they were sent, and we ask you to appreciate the fact that putting together our views in a day and a half on the proposed revised Title 17 changes sent in a pdf file format, with the need to consult with numerous people, most of whom are working full time, is a difficult task.
At this preliminary meeting, in addition to discussing the timing and need for stakeholder meetings after notice is mailed, we expressed concerns and asked questions about placing the bow of boats within 20 feet from the bow or stern of another boat. We discussed in general concerns over safety, the difficulty in securing a boat to a mooring with another boat so close even when using a spreader line to help. We asked questions about where each mooring would be relocated and the need for each permit holder to know where their mooring would be relocated. We asked about the best way

to keep multiple buoys attached to the same anchor or weight system as far apart as possible, and we asked about how to best study a theoretical reconfiguration in real life conditions. This is not intended to cover all the questions and matters discussed, but just a few that come to mind.

Again, with just a day and a half to provide some comments on the Title 17 changes, attached are some concepts. I have tried to put this in a format that is "readable" but it was difficult to work with the color coded pdf files that were sent to us.

I attempted to show our changes and modifications of your proposal by placing them in bold 14 point font with yellow highlight. Some of the words embedded in the highlight might have been in the original or in the proposed revisions.

To make it somewhat easier to follow the highlighted modifications, here is some background and additional comments. The letters refer to the corresponding Title 17 document letters.

Note: ***The version originally sent on Oct 26 to meet the deadline contained formatting errors, including some items that appear to be "strikeout" but are either embedded line of boxes that should have been removed and also at least one date error. Most of these embedded lines and boxes have been removed in the items noted as attachments.***

17.25.020

F. Safety, safety and safety. The highlighted modifications attempt to make clear what should be otherwise obvious, that any new system or reconfiguration would first require proof of being safe without materially increasing the difficulty in getting on and off a mooring, particularly for elderly and disabled boaters and sailors under all wind, tide, and current conditions (over and above the existing level of difficulty in the same conditions). We do not think any responsible person would have difficulty with that concept, but without it being expressly stated in the code changes, when we are on the verge of a massive change in all parts of the harbor affected by winds and currents in a different way, this needs to be expressly stated and not just "implied".
Much of the discussion that follows, but not all, concerns what we generally call the two-buoy type of mooring.

F. 2. Spreader lines. Spreader lines are a good idea, but Harbormaster should be able to determine the different types of lines used. Spreader lines serve a number of functions in addition to warning other boaters of a mooring with a spreader line. They are often used to temporarily tie onto a cleat on a boat, and would need to be of the appropriate size for the cleat. There are much stronger lines of smaller diameter that float and last longer when exposed to the sun. The Harbormaster should be able to handle this.

G. Sand Lines. If the use of sand lines (aka mud lines) is being considered in some situations, the Harbormaster should determine if the mud on which the line will sit for days is contaminated. If contaminated, when picking up the line, the contaminated mud will get on skin and clothes, and may cause heath concerns. We do not know if the City has tested the mud under all the mooring fields.

17.60.040

B. Issuance of Permit. There is a lot of concerns about confusion in the documents between "existing moorings" and "newly created moorings". This is both a technical drafting issue, but is also a public relations and stakeholder issue. Some of the changes are just to clarify what appears to be the intent, in particular that transferability is not changing for existing permits, and a transferee after transfer will have the same right. To help make this clear, we have included definitions of New Moorings and Existing Moorings, among other ways to make it clearer.

B. 2. Permit Requirements

J. Authorization to Move.

Currently, Title 17 allows when "necessary" to move boats (not moorings). Historically, that has been interpreted to mean moving boats on a temporary basis to accommodate maintenance, dredging, etc. The proposed new language still refers to moving boats (vessels) but adds that this can be done when not necessary, and includes the reconfiguration of the entire mooring fields when there have been zero instances of any reported accidents or other issues with the existing configuration over 100 years of mooring use. We understand that some members of the Harbor Commission have a vision of a tidier Harbor and may have an aesthetic vision that boats in perfect rows make a nicer water view. However others may differ on this and find the more natural view of boats swaying naturally in the harbor is the more pleasing view. No painter has ever painted boats lined up like in a parking lot, yet there are tens of thousands of paintings of boats sitting naturally in a harbor. The NMA does not think the current system needs to be radically changed. At the very least, there needs to be stakeholder meetings after a mailing describing proposed changes. There needs to be opportunities to be heard by all those impacted, and also extensive study of real world usage of the suggested new configuration before any changes are made to Title 17. If changes are ultimately made to Title 17 allowing for the future moving of boats or moorings, under some different plan of reconfiguration, then the same type of stakeholder meetings, safety, and accessibility studies should be a prerequisite of such major changes.

In the event that any Title 17 changes are made to allow for reconfigurations, despite the fact that it is not needed, we would address some of the conditions on what should be imposed to address safety, potential difficulty of use, accessibility for the old and disabled, and fairness of location. We have also tried to address what appears to be major confusion in the proposed language as it relates to moving boats vs moving moorings.

Moving Boats vs Moving Moorings.

Much of the proposed language changes refers to moving boats or moving vessels. We believe this does not fit with any proposal that in effect is an attempt to move moorings into certain rows. Here are a few examples of the havoc that would result in referring to moving boats vs moving moorings. Permit holder Joe, who has a 50 foot mooring Z-12 (there is no Z field it is used as an example only), and Joe at one time had his 46 foot boat called Joes Dream on the mooring. Joe sold his boat and acquired a 34 foot sailboat, Joes Folly, to use to race in the Thursday afternoon races. Joes Folly is now on Z-12, but in three or four years, Joes knows he may give up sailboat racing given his age and he plans to put another 46 foot powerboat back on Z-12. Under the proposed authorization, the Harbormaster can move Joes Folly to some other, smaller mooring, and

move someone else's 50 foot boat onto Z-12. Under the proposed plan, as I understand it and which refers to moving boats, we could have the following scenario: Joe will pay for the 50 foot mooring (that he is not using), Joe will pay to maintain the 50 foot mooring (that he is not using), and Joe will have no say in how his new mooring is being maintained, as some other mooring permittee will be on his 50 foot mooring. However in a few years when he sell's Joes Folly, and buys a 46 foot trawler Joe's Last Boat, he will have not a place to put the retirement boat of his dreams.

Here's another example: Joe's uncle, Sam, owns the mooring next to Joe and he follows the harbor scuttlebutt closely. Right now his 40-foot mooring Z-11 is usually vacant, although he occasionally puts an old 16 foot skiff on it for occasional use. Hearing what is going on and planning to buy another boat a few years from now, he goes out and buys the cheapest 40 foot boat he can, just to have a "place holder" so he will have a place to put his new boat in three or four years, and no one will be moved in the meantime to his underutilized 40 foot mooring.

These are only two of a thousand different situations that could come up over time in the lifetime of a boater. People do change boats.

To avoid all of this confusion, the language addresses the issue directly and speaks directly about moving moorings and under what situations and conditions that would be appropriate. While the NMA believes there is clearly no need and no necessity to do that on a wholesale basis, there may be some areas in the harbor where it makes sense. With this in mind we have offered language that would address this and have added safeguards that would discourage potential abuse, while at the same time increasing safety, and avoiding creating difficulties of use and accessibility. The language allows for transparency and mandates the use of appropriate stakeholder meetings, and some checks and balances, including ultimate approval by the City Council.

B.2.l Transfer of Permit / Permit Requirements

These are mostly technical clarifications, to make clear the status of a transferee of an "Existing Permit" and the status of a second name on the mooring permit as having a different status that does not create a "transfer" and provides a method to remove the second named person.

M. Request to Extend Mooring Length or Relocate to Larger Mooring.

Extensive changes were needed here, which are too many to summarize. These changes are made in an attempt to avoid some of the issues discussed above regarding moving boats vs moving moorings. For example, if a 50 foot boat on a 50 foot mooring is moved to a 60 foot row (by for example a private sale), or for realignment purposes a 50 foot mooring is placed in a 60 foot row, perhaps because it was on the end of a row and the only end of row mooring available is in a 60 foot row, the person with the 50 foot boat should not lose his or her mooring and be subject to relocation of boat or mooring. Moreover, if after a few years, the person with the 50 foot boat, sells the boat and asks to allow his new 52 foot boat to be on his mooring and asks for his 50 foot mooring, which is in the 60 foot row to be extended to a 55 foot mooring, he or she should at least be allowed to make the request, and the Harbormaster and/or the Harbor Commission should be allowed to address the request on a case by case basis so long as the boat will be well within the length limits of the row. The proposed changes take into account the different type of situations, and avoids the "move the boat only" without moving the mooring issues, discussed in detail above.

As a final note, because of the edits, re-edits, and conversions from pdf files to Word files, some of the internal numbers and cross references may need to be adjusted.
We of course would have preferred more than one and a half days to address the major proposed changes, as revised, to Title 17, and we are hopeful that we will have the time and opportunity to work with the Harbor Commission to come up with reasonable and appropriate changes through transparency and with safety, usability, and accessibility in mind.

Thank you for your kind attention,

L. Scott Karlin

and the

Board of Directors
Newport Mooring Association
https://newportmooringassociation.org

Attachments:

First Attachment:

17.25.020 Anchorage, Berthing and Mooring Regulations.

A. Location. No person having charge of any vessel shall berth or anchor the same in Newport Harbor except within designated areas. Any vessel which is berthed, moored or anchored at a place not designated for such vessel shall be moved as directed by the Harbormaster. In the designation of mooring areas and anchorage areas, consideration shall be given to the needs of commerce, the utilization of turning basins, the use of channels for navigation, and the economy of space. No vessels shall be moored or anchored in any part of any turning basin or channel unless secured both fore and aft except as provided in subsection (H) of this section. Every vessel moored or anchored in any part of the harbor outside of any turning basin or channel shall be so moored or anchored as to prevent such vessel from swinging or drifting into any turning basin or channel.

1. No person owning, leasing, occupying or having charge or possession of any vessel shall:

    a. Berth or anchor the same in Newport Harbor except within the designated areas; or

    b. Anchor a vessel in any of Newport Harbor's designated public anchorage areas or at any location on the open waters of the Pacific Ocean within five hundred (500) yards of a designated protected swimming area for a cumulative period of time that exceeds seventy-two (72) hours within any thirty (30) calendar day period. The Harbormaster may authorize, in writing, an extension to the seventy-two (72) hour time limit if the Harbormaster determines that given the particular circumstances an extension of time is reasonable and warranted.

2. Any vessel which is berthed, moored or anchored at a place in Newport Harbor not designated for such vessel shall be moved as directed by the Harbormaster. In the designation of mooring areas and anchorage areas in Newport Harbor, consideration shall be given to the needs of

commerce, the utilization of turning basins, the use of channels for navigation, and the economy of space.

B. Application of Chapter. The terms of this chapter, as they relate to moorings and buoys, shall apply to "on-shore moorings" which are moorings located landward of the pierhead line and to "offshore moorings" which are located bayward of the pierhead line, with equal force and effect.

C. Berthing.

1. Boats berthed at private or public piers shall not extend beyond the prolongation of the side property lines of the property or properties to which the pier is connected in accordance with Section 17.35.020.

2. Any boat berthed at a pier or slip shall not extend bayward beyond the end of the pier or slip by a distance of more than the maximum width of its beam. Between Bulkhead Station 256, beginning at Collins Avenue to Bulkhead Station 255, boats moored at a pier or slip shall not extend more than fifteen (15) feet bayward beyond the end of the pier or slip or more than the width of the beam of the boat, whichever is less.

D. Permit Required. No person shall place, erect, construct or maintain a pier mooring or buoy in the waters of Newport Harbor over City-owned or controlled tidelands without first having obtained a permit pursuant to this title.

E. Unauthorized Use of Mooring. No person shall use a mooring unless he or she holds a current and valid permit except with the permission of the Harbormaster for temporary use, as herein provided.

F. Chains and Fastenings of ~~Helix~~ Anchor Mooring System. Offshore moorings in the City's mooring fields which are designed to secure a boat with two anchors, one secured to the bow and one to the stern, may, at the direction of the City, consist of:

~~one Helix Anchor weight for every two~~ vessels ~~(if proven safe for~~ the **use of the mooring in all wind, tide, and current conditions in the particular** field and area where the boat will be moored**, including the vessel safely being secured to the mooring without undue difficulty when approaching and leaving the mooring by persons of all ages and persons with disabilities consistent with the Americans with Disability Act and the California State Unruh and Disabled Person's Act**); or two separate anchor weights for each vessel, **If moorings in a field are reconfigured to be closer to other moorings in a field either side to side or fore or aft, such** reconfiguration shall first proven to be **safe for the use of the moorings in all wind, tide, and current conditions in the particular field and area where the boat will be moored, including the vessel safely being secured to the mooring without undue difficulty when approaching and leaving the mooring by persons of all ages and persons with disabilities consistent**

with the Americans with Disability Act and the California State Unruh and Disabled Persons Act.

Mooring permittees shall be responsible for maintaining, repairing, and replacing all anchor system components, including but not limited to, all the chains, shackles, weights, lines, buoys and all other gear and equipment used in securing their vessels to the mooring.

If the City has installed a helical anchor system for use as the shared anchor mooring system, the City shall maintain, repair, and replace only the shared helical anchor at its cost.

1. No person shall erect, construct or maintain any mooring in Newport Harbor unless all chains and fastenings are of sufficient size to stand a breaking strain of at least six times the weight of the mooring.

2. All mooring lines on buoys (excluding a Spreader Line as described below) shall be so arranged that, when dropped, they will immediately sink.

All double or two-point moorings that are equipped with two mooring buoys for mooring to both bow and stern, are at all times required to have (i) a vessel properly tied to both mooring buoys, or (ii) a single 3/4" polypropylene line **of a diameter approved by the Harbor Master for that sized boat and mooring**, secured and connected to both the bow and stern buoys, **or other floating line, or of another size or type approved by the Harbor Master**. The line shall be no longer than five feet plus the length of the mooring and equipped with 9" long two-color buoys affixed in-place to the line that are no less than ten feet apart from each other, (the "Spreader Line"), and (iii) two lines that are appropriately sized and specified for attachment to each mooring buoy that will be secured one each to the port and starboard cleats at each the bow and stern at all times the vessel is occupying the mooring space, and (iv) maintained the Spreader Line keeping it clean from algae and other marine growth to prevent the line from submerging below the surface and not remaining easily visible to other approaching mariners.

G. Sand Line Moorings. With the approval of the Harbormaster, mMooring permittees may use a single buoy system for a two-point mooring by use of a Sand Line. A "Sand Line" is a line from one anchor line to the opposing anchor line. The Sand Line shall be properly weighted to immediately sink when dropped. The permittee must submit a Mooring Modification Request to the Harbormaster and shall include details of the modification (including diagrams, if requested)., The Harbormaster may approve the request based upon his or her determination that the modification will result in any safety or navigational concerns, **and prior to approving said use of any sand line, the Harbormaster shall consider if the upper 12 inches of the bottom soil that the sand line will contact is contaminated which may make contact with the sand line in any place that which may come into contact with a person handling the sand line through the skin or by inhalation. If the Harbormaster becomes aware of such contamination, the**

Harbormaster shall report the information to both the Harbor Commission, the City Council and the City Manager.

G. Buoy Markings. Mooring buoys shall be painted with the number allocated thereto by the Harbormaster to the mooring, the numeral(s) of which shall be at least three inches in height.

H. Mooring, Anchoring and Vessel Condition Requirements.

1. Mooring ~~Anchoring~~Anchoring and Mooring. All vessels anchored on the open waters of the Pacific Ocean shall be anchored in such a manner so that the vessel does not come in contact with another vessel or structure. All vessels anchored in Newport Harbor in the designated anchorage area shall be anchored in such a manner so that the vessel does not come in contact with another vessel or structure and does not extend beyond the demarcation line of the designated anchorage area. All vessels using moorings in Newport Harbor shall be firmly anchored to a mooring from bow and stern in such a manner as to prevent the vessel from swinging, turning or excessive drifting, except in areas designated by the Harbormaster as single mooring areas. Vessels in single mooring areas shall be tied from the bow. A vessel's Adjusted LOA shall not exceed the designated length of its mooring row. At no time may any portion of the vessel or object attached to the vessel extend into the fairway. All vessels anchored in Newport Harbor in the designated anchorage area shall be anchored in such a manner so that the vessel does not come in contact with another vessel or structure and does not extend beyond the demarcation line of the designated anchorage area.

h. Violation of the terms and conditions of other use or rental permits as granted by the 2.
Vessel Condition. Safety, Seaworthiness and Operability. Vessels assigned to a mooring by permit must be maintained in a safe, seaworthy and operable condition. If, based upon the appearance of the vessel, inspection by the City or other facts, the Harbormaster has cause to believe a vessel is not safe, seaworthy and operable, the Harbormaster shall give written notice to the permittee, in accordance with the service requirements of Section 1.05.030, requesting a demonstration that the vessel is safe, seaworthy and operable. The permittee shall, upon written notice specifying the date and time, demonstrate to the Harbormaster that the vessel assigned to the mooring is safe, seaworthy or operable. In the event that the Harbormaster determines that vessel is not safe, seaworthy or operable, the permittee shall:

a. Commence repairs within thirty (30) calendar days upon service of the written notice of such determination and complete repairs within ninety (90) calendar days of the commencement unless the Harbormaster, upon written request from the permittee specifying the reasons therefor, approves an extension of time to complete the repairs; or

b. Remove the vessel within thirty (30) calendar days of service of the written notice of such determination and request assignment of a different vessel that is safe, seaworthy and operable to the mooring within sixty (60) calendar days after the removal of the vessel. This section is not intended to apply to any brief period of repair common to most vessels. The Harbormaster may repeat his or her request to test operability and seaworthiness as needed.

3. Vessel Condition—Public Nuisance. No person owning, leasing, occupying or having charge or possession of any vessel shall maintain, permit, cause or allow to exist on such vessel any of the

following conditions:

a. Promotion of a fire hazard, including, but not limited to, improper open fuel storage, deficiencies in the vessel's fuel storage tanks, inoperable electrical systems, storage of combustible or other flammable material that constitutes a fire hazard to any vessel;

b. Retention of water that becomes stagnant, unsanitary, or polluted;

c. Accumulation or storage of rubbish, trash, debris, rubble, containers, or boxes that are visible aboard the vessel or stored inside the vessel in such a way as to make the vessel inoperable for its intended use;

d. Storage or securing a vessel in such a way that it impedes pedestrian travel on City beaches and tidelands;

e. Contribution to hazards to public safety or health, such as, but not limited to: propagation of vermin, rats, insects, or unsanitary conditions from the accumulation of fecal materials;

f. Maintenance in such nonseaworthy condition that the vessel is unsafe, unsightly or poorly maintained, including, but not limited to: broken windows, unsecured doors or hatches, excessive marine growth attached to the vessel, being inoperable for the vessel's intended use, partially destroyed or partially repaired for more than three continuous months, providing access to marine mammals, actively seeping hazardous or toxic material into the surrounding waters, or would present a physical danger to public safety personnel during emergency access;

g. Operation of its mechanical or electrical systems creates excessive noise, odors, vibrations, fumes, discharges or emissions that constitute an impact on public health or safety;

i. Allowance of repetitive, boisterous or unruly conduct by the vessel operator or occupants when that conduct:

i. Is offensive to a person of ordinary sensibility, and

ii. Continues after a written or oral request to terminate the conduct, or

iii. Is offensive to a considerable number of people;

j. Anchorage in an area controlled by the City without adequate anchor(s) rope or chain appropriate for the wind and sea conditions encountered in Newport Bay;

k. Inability of a vessel on a shore mooring to be self-righting on an incoming tide without flooding the vessel;

l. Attachment to a mooring in such a way that the vessel regularly drifts or impedes safe navigation in Newport Bay; or

m. Installation of a marine sanitation device that is not connected directly to an internal holding tank at all times while in Newport Bay.

Violation of this subsection (H) is hereby declared to be a public nuisance. In the event that the City determines that a vessel is a public nuisance, the City may commence public

nuisance abatement as provided in this title.

4. If, based upon the appearance of the vessel, inspection by the City or Harbormaster or other facts, the Harbormaster determines that a sea lion has boarded a moored vessel, the Harbormaster shall issue and serve a notice of violation in accordance with Section 1.05.030 and the permittee shall take any and all necessary action to employ and maintain appropriate measures to deter sea lions from boarding the vessel within seven calendar days of the notice of violation. If the Harbormaster determines that appropriate deterrent measures have not been taken within seven calendar days of the notice of violation, the Harbormaster may issue an administrative citation or take any other enforcement action authorized by this Code. In the event the Harbormaster issues an administrative citation, the permittee shall:

a. Take any and all necessary action to employ and maintain appropriate sea lion deterrent measures; or

b. Remove the vessel from Newport Harbor.

"Appropriate deterrent measures" shall be defined as the latest methodology permitted by National Marine Fisheries Service to minimize sea lion boarding of vessels assigned to a mooring. If the City is unable to reach the permittee within the seven calendar days, the Harbormaster may install temporary deterrent measures as needed and recover the City's cost of compliance.

I. Maintenance. All moorings shall be kept in good and serviceable condition in the location assigned by the Harbormaster.

J. Specifications. Specifications for the size of chains required on moorings, and weights of moorings, and all other mooring equipment shall be as adopted by resolution of the ~~City Council~~ Harbor Commission. No person shall erect, construct or maintain any mooring in Newport Harbor unless all chains and fastenings are of sufficient size to stand a breaking strain of at least six times the weight of the mooring. All mooring lines on buoys shall be so arranged that, when dropped, they will immediately

sink. With a double mooring, however, it shall be permissible to connect two mooring lines with a spreader line having floats attached thereto to keep such line afloat when the mooring is unoccupied.

K. Inspection of Moorings. Each mooring shall be lifted by the owner for inspection by the Harbormaster at least once every two years and shall be repaired, as necessary, so as to be in good condition before being replaced; provided, that the Harbormaster may require any mooring to be lifted at any time when deemed necessary to assure it is in good condition. If the permittee has such lifting performed by a marine contractor, then the Harbormaster may authorize such contractor to inspect the mooring on behalf of the Harbormaster and certify the results to the Harbormaster in writing. The permittee shall pay the costs of any inspection performed by a contractor on behalf of the Harbormaster.

L. Rental Not Permitted. Except as authorized in Section 17.60.040(B)(1)(a), no mooring may be leased or rented by the permittee to another person except with the written permission of the Harbormaster.

M. Administration. The Harbormaster shall administer all provisions in this section.

N. Reconfiguration of Moorings.

1. No plan, and no amended or modified plain, of reconfiguration of moorings within a mooring field shall be adopted or enacted without advanced notice first sent b~~m~~y mail, and if the City has email addresses, by emails to all stakeholders who may be affected by said plan followed by an opportunity for comments and two or more stakeholder meetings allowing for open and reasonable comments and discussions with the persons or agency who~~how~~ have the authority to adopt, or advise on the adoption or enactment of the plan. Stakeholders would include mooring permittees, residences located within 1,000 feet of the high tide line of any part of the mooring field(s) subject to the proposal, and other stakeholders that~~ey~~ might be impacted by the proposals, including homeowner associations and other organizations whose members include other stakeholders such as the Lido Island Homeowner's Association, the Balboa Homeowner's Association, Newport Harbor Yacht Club, Balboa Yacht Club, and the other Yacht Clubs in Newport Harbor, If the plan is not adopted or enacted within 9 months of said stakeholder meeting, then any resubmission of the plan or similar plan, shall be subject to the same required stakeholder meetings before adoption or enactment.

2. Following said stakeholder meetings, any plan of reconfiguration of moorings within a mooring field that is advised by, adopted by, or enacted by the Harbor Commission or by the Harbormaster or any of its agents or committees shall be first subject to the approval of the City Council after first being placed on the regular agenda of the City Council that allows for public comment (not on the City Council's consent calendar).

3. Plan of reconfiguration of ~~a~~ moorings as referred to above, shall include moving moorings to different areas within a mooring field or to a different mooring field, moving moorings closer together either to the side or in front or to the back, moving moorings which would have an affect (negatively or positively) on views from homes, residences, or street ends, within 1,000 feet

of the high tide mark where moorings may be moved or relocated.

Second Attachment:

17.60.040 Mooring Permits.

A. Permit Required. No person shall place, erect, construct, maintain, use or tie to a mooring in the waters of Newport Harbor over City-owned or controlled tidelands (i.e., an offshore mooring) or in the nearshore perimeter of Newport Harbor perpendicular to the shoreline (i.e., an onshore mooring) without first having obtained a mooring permit from the Harbormaster or having otherwise complied with this section. A mooring permit is in the nature of license for the temporary use of a specific location within Newport Harbor.

B. Issuance of Permit—Conditions. The Harbormaster, in furtherance of the tideland grants to the City, may issue a mooring permit or mooring sub-permit to allow the mooring permittee or mooring sub permittee to temporarily use a portion of the waters of Newport Harbor for the mooring of a vessel if the Harbormaster makes the findings set forth in Section 17.05.140(D)(1). In the event that the City is able to

and does create new Moorings on or **after** January 1, 2022 ***[Error – Should be January 1, 2023***], **then the City may use such new Moorings (referred to herein as "New Moorings" for the purpose of long term rentals for recreational boat use or may issue a permit, similar to existing permits, for such use.** If a Mooring permit is issued or a long term rental is issued each ~~s~~ shall be issued according to a lottery, followed by a waiting list. A mooring permittee may hold up to two mooring permits at any time. A mooring permittee that held or continues to hold more than two mooring permits prior to May 11, 2017, may continue to hold the mooring permits until the permits are sold, revoked, or otherwise transferred under this chapter.

1. Exceptions.

   a. The Balboa Yacht Club and the Newport Harbor Yacht Club (collectively, "yacht clubs") currently hold permits for single point moorings placed within certain mooring area boundaries established by the City, as noted in subsection (B)(3)(h) of this section. In addition, the Lido Isle Community Association ("LICA") has permits for onshore moorings on Lido Isle. These organizations shall hold their respective permits under the yacht club, or respective organization name, for the moorings identified by the City as under their respective control at the time of enactment of the ordinance codified in this section. The yacht clubs and LICA shall be solely responsible for managing moorings under their control and shall be permitted to assign moorings under their control to yacht club members and members of LICA, respectively. The yacht clubs and LICA shall keep accurate records of the name and address of the club members and community association members to which each mooring has been assigned and the corresponding length of each vessel. The yacht clubs and LICA may not sell or otherwise transfer the moorings under their control to a third party that is not a member of the yacht club or LICA. Mooring records and 24/7 emergency contact information shall be provided annually to the

Harbormaster by the yacht clubs and LICA on or before February 1st.

b. Mooring of a Tender. A single vessel no longer than fourteen (14) feet in overall length to serve as access to and from the assigned vessel may be secured to the assigned vessel or may be secured to the offshore mooring in the absence of the assigned vessel. The vessel must be secured in such a manner so as not to intrude into the fairway or obstruct neighboring permittees. Notwithstanding the single vessel restriction, permitted live-aboards may secure up to two vessels no longer than fourteen (14) feet in overall length to the assigned vessel, to serve as access to and from the assigned live-aboard vessel.

c. Multiple Vessel Mooring System Program. The Harbormaster may approve a multiple vessel mooring system in the single anchor mooring areas of Newport Harbor. An application and applicable fee, established by resolution of the City Council, for a multiple vessel mooring system shall be submitted in writing to the Harbormaster, who shall evaluate the application based upon standards established and the application shall be approved if the Harbormaster makes the findings under the applicable standards and those set forth in Section 17.05.140(D)(1).

2. Permit Requirements. Each mooring permit may be issued for up to two persons ("mooring permittee(s)") who shall be individually and collectively responsible for all activities related to the mooring permit. Mooring permits shall be subject to the following conditions and requirements, with which mooring permittee(s) shall fully comply: To the satisfaction of the Harbormaster, the mooring permittee(s) shall:

a. Identify on the permit the full legal name(s), current address(es), current telephone number(s) and current email address(es), if one exists, of the mooring permittee(s);

b. Agree to be responsible for permit rent, fees, maintenance and repair of mooring equipment;

c. The permit for joint ownership moorings shall provide that all parties shall have equal rights under the permit and shall be held jointly responsible for compliance with all rules, regulations, and conditions set forth in the mooring permit;

d. Grant permission to the City to temporarily assign the mooring to another vessel when it is unoccupied through the issuance of a mooring sub-permit;

e. Agree to defend and indemnify the City and any other government entity with jurisdiction against any claims or losses arising out of, or related to the use of, the mooring permit except where the claim or loss arises from the sub-permittee's damage of the mooring, or out of the negligence and/or misconduct of a person assigned the mooring as a mooring sub-permittee under subsections (G) and/or (H) of this section;

f. Provide proof of insurance for the assigned vessel naming the City as an additional insured to the satisfaction of the Risk Manager;

g. Provide registration or other proof of controlling possessory right in the assigned vessel, all to the satisfaction of the Harbormaster;

h. Agree to pay fair market value rent, as established by resolution of the City Council, on a rent schedule established by the Harbormaster, which shall be similar to the schedule used to

collect rent from other tidelands users in Newport Harbor;

i. Agree that the mooring permit does not provide any ownership interest in the underlying tidelands, which are held in trust by the City and owned by the people of the State of California;

j. ~~Authorize the City, or its designee, to move the vessel on the mooring to another location when deemed necessary by the Public Works Director and/or Harbormaster, including but not limited to increasing and improving safety or the utilization and organization of the mooring fields, and agree that such relocation shall be at the permittee's expense; and~~

j. **Authorize the City, or its designee, to move the vessel on the mooring to another location when deemed necessary by the Public Works Director and/or Harbormaster on a temporary basis in the interest of safety, dredging, public works project, or similar necessities at the City's expense, unless the boat owner, or operator, or mooring permittee is in violation of one or more regulations applying to boats or moorings, in which case said move shall be at the expense of both the boat owner and the mooring permittee.**

Authorize the City, or its designee to relocate a mooring to a new location on a one-time basis only, within a mooring field, in accordance with a plan of reconfiguration first approved under the following conditions:

1. The plan of reconfiguration which includes the field has been approved by both the Harbor Commission and the City Council after proven safety of, lack of difficulty of use of, and accessibility of moorings affected by the reconfiguration, and after stakeholder meetings following reasonable notice by mail to the stakeholders both before and after the study and real life testing in different wind, current and tide conditions in representative areas each of the mooring fields.

2. The new location be as close as Possible to the old location, except as may be approved by the permittee,

3. The new location for moorings which historically did not have a permanent mooring assigned to another permittee behind or in front of it shall be a similar type of mooring, and the new location for beginning or end of row moorings shall also be either an end or beginning of row mooring, unless otherwise approved by the permittee, and moorings that are within the service area of shore boat service by a yacht club, such as BYC or NHYC, shall not be moved to a location outside the area of shore boat service.

k. Agree to allow the Harbormaster, or his designee, to board the permittee's vessel at any time to inspect the condition and operability of the marine sanitation device(s) and/or insert dye tablets to determine whether said devices are discharging overboard in accordance with applicable laws.

l. If a single mooring permit holder has requested, or will request, a second name to be added as a permit holder for the mooring, the original permittee who made the request will be the "Primary Permittee" and the second permit holder is the "Second Permittee." The addition of, or creation of, an additional permit holder does not result in a transfer of the mooring permit. The Primary Permittee, or his or her successor in interest, such as a person obtaining the permit by inheritance, shall have the right to remove the Second Permittee as a permittee. Following such removal, the Second Permittee shall remain liable for any violations of any City Code or regulations during the time the Second Permittee was a permittee.

3. Permittee/Transferee Qualifications. A mooring permit may be held only by a natural person(s) holding title to an assigned vessel. Mooring permits that were issued before <<specific date or date of adoption of ordinance>>, including the subsequent transfer of such permit to another natural person(s), may be held by, or transferred to, only the following persons:

a. A natural person(s) holding title to an assigned vessel;

b. An executor or administrator carrying out the terms of a will or administering a probated estate that holds a mooring permit, but only for the period of time prior to distribution of the estate;

c. An inter vivos trust, family trust, or other similar type of trust estate holding a mooring permit, so long as all trustors are natural persons and the primary mooring permittee shall be the trustee of the trust;

d. An approved transferee whose vessel and/or mooring permit are subject to any of the

terms and conditions stated in subsection (E) of this section;"Immediate family," which shall mean the mooring permittee's spouse and heirs at law to the second degree of consanguinity;

e. A marine contractor, or marine support service provider, holding a mooring permit used to provide current or ongoing harbor infrastructure and marine or fishing services (such as maintenance or dredging);

f. Balboa Island Yacht Club for the purposes of youth education in boating and marine activities; Kerckhoff Marine Laboratories for the purpose of marine and oceanographic research; and American Legion Post 291 for the purpose of serving veterans and their families and supplying them with affordable access to boating and harbor activities; or similar marine educational entities; or

g. The Balboa Yacht Club, Newport Harbor Yacht Club (collectively "yacht clubs") and the Lido Isle Community Association—only for those moorings assigned by the City within certain established mooring areas or locations, prior to January 13, 2011. These designated mooring areas may not be expanded. The boundaries of all mooring areas in Newport Harbor are graphically depicted by National Oceanographic and Atmospheric Administration (NOAA) Chart Number 18754. Yacht clubs shall be entitled to a maximum number of moorings identified in NOAA Chart Number 18754 that are located within the yacht club's established mooring fields and at a minimum the current number of moorings assigned to them as of January 13, 2011.

C. Plans and Specifications Required. No mooring permit shall be issued for placing, erecting, constructing or maintaining a mooring or buoy unless such mooring or buoy is constructed:

1. In accordance with standard plans and specifications approved by the Harbormaster and at a location approved by the Harbormaster; or

2. In accordance with other plans and specifications for such mooring or buoy which have been submitted by the applicant, showing the construction of such proposed mooring or buoy together with the location thereof, and which meet the requirements established in this chapter and which have been approved by the Harbormaster.

D. Late Fees. A late charge shall be added to all payments due but not received by the City by the due date in accordance with Section 17.05.120.

E. Transfer of Permit**. New Mooring Permits (permits for the use of a New Mooring as defined issued or in existence with the sole exception of mooring permits that were issued on or before January 1, 2022 [Error should be January 1, 2023) are transferable in accordance with the regulations set forth herein. above, (Moorings issued for the first time on or after January 1, 2022 [Error should say January 1, 2023]) to a new permit holder "New Permit") Mooring permits are shall be non-transferable. Existing Permits, which are mooring permits to an existing permit holder or the holder's transferee, which permits were In the event an additional name is added to an Existing Permit does not change the**

character of the permit which shall still be considered an Existing Permit under these regulations, and the periodic return and signing of a questionnaire or similar request for updated information regarding a mooring or vessel on the mooring, which may ask for an acknowledgement that the permittee has read the mooring regulations, is not, and does not result in the issuance of a New Permit.

~~before <<specific date or date of adoption of ordinance>>. including the subsequent transfer of such permit to another natural person(s), which may be transferred only to the persons specified in subsection (B)(3) of this section.~~

No mooring permittee shall transfer a permit for a mooring or buoy granted under the provisions of this chapter, except:

~~1. When transferred from a natural person to another member of his or her immediate family, which shall be defined for the purposes of this section as the mooring permittee's spouse and heirs at law to the second degree of consanguinity; or~~

1. Except when transferred to immediate family, a mooring permit may only be transferred ~~under this subsection up to one time~~ once in any twelve (12) month period, but additional transfers shall be allowed after that, but only once, in any twelve (12) month period..

F. Procedures for Transfers. Permits shall not be transferred without the prior written approval of the Harbormaster. The Harbormaster may approve the transfer of a mooring permit under the procedures set out below:

1. The mooring permittee(s) (or, if the permittee is deceased or incapacitated, the transferee) shall submit to the Harbormaster:

    a. A completed mooring transfer form (on the form provided by the Harbormaster); and

    b. Documentation that the proposed new mooring permittee (transferee) qualifies as a mooring permittee under subsection (B)(3) of this section.

2. If transferee intends to purchase an assigned vessel but does not have title on the assigned vessel owned by the mooring permittee and transferor at the time of transfer, then:

    a. Within sixty (60) days of a transfer, transferee shall submit to the Harbormaster a copy of a California Department of Motor Vehicles registration or other current registration (or, in lieu thereof, U.S. Coast Guard documentation of ownership) documenting transferee's ownership of the assigned vessel or, in the case of an onshore mooring, a photograph of the assigned vessel if it is not subject to vessel registration laws. The Harbormaster shall inspect the vessel at its office for compliance with Section 17.25.020(H) before the assignment is approved; or

    b. If such documentation is not received by the Harbormaster within the sixty (60) day period, then the vessel or the mooring may be impounded, and the mooring may be deemed vacant and assigned pursuant to subsections (G) and (H) of this section.

3. If transferee intends to moor a vessel other than the assigned vessel and does not have title to

the vessel that will be moored at the time of transfer, then:

a. Within sixty (60) days of an approved transfer, the transferee shall notify the Harbormaster that the assigned vessel has been removed from the mooring and before a new vessel may be placed on the mooring shall submit to the Harbormaster a copy of a California Department of Motor Vehicles registration or other current registration (or, in lieu thereof, U.S. Coast Guard documentation of ownership) documenting transferee's ownership of the new assigned vessel, or in the case of an onshore mooring, a photograph of the new assigned vessel if it is not subject to vessel registration laws. The Harbormaster shall inspect the vessel at its office for compliance with Section 17.25.020(H) before the assignment is approved; or

b. If the documentation is not received within sixty (60) days of a transfer, the mooring may be deemed vacant by the Harbormaster and the mooring may be assigned pursuant to subsections (G) and (H) of this section. The mooring may remain vacant until such time the permittee notifies the Harbormaster of their intent to assign their vessel to the mooring.

4. The transfer request shall be denied unless mooring permit rent, including late payment fees, is paid current; required mooring inspections are current; registration or documentation and insurance are provided; required maintenance and repairs are complete and there are no derelict

or unauthorized vessel(s) on the mooring; and the vessel is of appropriate length with the appropriate weights and chains.

5. The mooring permittee and transferee shall provide a written agreement to defend and indemnify the City of Newport Beach in any dispute with a third party over transferee's right to be the mooring permittee or in any dispute with a third party over the mooring permittee's right to transfer the permit.

6. Transfer Approval. Upon confirmation of compliance with this subsection, the Harbormaster must find all of the following conditions to approve the transfer of a mooring permit:

a. The mooring permittee no longer owns the assigned vessel or has retained ownership of the assigned vessel and has permanently vacated the mooring;

b. The transferee has met all the qualifications and conditions for issuance of a permit in subsection (B) of this section;

c. The transferor or transferee has reported to the Harbormaster the price paid for the mooring permit, and has paid to the City the required transfer fee; and

d. The transferor represents that the person did not discriminate against any transferee or prospective transferee because of race, religious creed, color, national origin, ancestry, physical handicap, medical condition, marital status, sex, sexual orientation, age or any other impermissible basis under law.

7. The Harbormaster may approve a one-for-one exchange of moorings between two mooring permittees, subject to compliance with this subsection without any transfer fee imposed by the City.

8. The Harbormaster may approve the changing of an assigned vessel on the permit, subject to

the requirements of subsection (B) of this section, without any transfer fee imposed by the City.

9. Following an approved transfer, the Harbormaster shall list the transfer price of the mooring permit on a publicly available website hosted by the City, or on a third party's website under contract with the City to host information regarding mooring permit transfers.

G. City's Authority to Assign Moorings through Use of Sub-Permits. With the exception of the Balboa Yacht Club, the Newport Harbor Yacht Club, and the Lido Isle Community Association's designated moorings, mooring permittee may not rent, assign, or transfer the use of the mooring to any other person. With the exception of moorings issued to mooring permittees described in subsection (B)(3)(g) of this section, the Harbormaster shall have the authority to assign vacant moorings to sub-permittees pursuant to the following provisions:

1. Deemed Vacant Moorings. The Harbormaster may assign deemed vacant moorings through the issuance of sub-permits at his or her own discretion. Sub-permits may be renewed upon availability. The mooring permittee may reclaim its mooring upon three days' prior written notice to the Harbormaster of its intent to return the assigned vessel to the mooring.

A "deemed vacant mooring" shall be defined as a mooring upon which:

a. An assigned vessel has not been attached for thirty (30) consecutive days or more; or

b. A vessel, other than an assigned vessel or approved sub-permittee vessel approved in accordance with subsection (H) of this section, has been attached for thirty (30) days or more; or

c. Required documentation for an assigned vessel has not been provided for a transfer request pursuant to subsection (F) of this section.

2. Noticed Vacant Moorings. The Harbormaster may assign noticed vacant moorings through the issuance of a mooring sub-permit for any period of time, up to the reoccupation date on the mooring permittee's written notice, or the twenty-four (24) hour written notice per subsection (G)(2)(b) of this section. If the mooring continues to be vacant for thirty (30) days past the reoccupation date indicated on mooring permittee's notice, and there is no further written notice from mooring permittee, the mooring shall become a deemed vacant mooring.

a. Mooring permittee may provide written notice to the Harbormaster of its intent to vacate its mooring for fifteen (15) days or more. These moorings shall be "noticed vacant moorings." Written notice shall include the date the mooring permittee intends to vacate his/her mooring, and the date he/she intends to reoccupy the mooring with the assigned vessel.

b. If a mooring permittee provides written notice, the mooring permittee may reclaim the assigned mooring on the reoccupation date indicated in his/her written notice or, if the mooring permittee returns prior to or after the reoccupation date, upon twenty-four (24) hours' written notice to the Harbormaster.

H. Procedures for Mooring Sub-Permit Issuance. Issuance of a mooring sub-permit shall be subject to the following conditions:

1. Provision of a written representation of the mooring sub-permittee's vessel length which shall be satisfactory to the Harbormaster;

2. The mooring sub-permittee agrees to be responsible for any damage to mooring equipment; to defend and indemnify the City of Newport Beach and the mooring permittee against any claims or losses arising out of, or related to, the mooring rental; to provide proof of insurance as may be determined by the City's Risk Manager; to provide registration or other proof of ownership; to provide an equipment damage deposit, all to the satisfaction of the Harbormaster; and authorize the City, or its designee, to move the vessel on the mooring to another location when deemed necessary by the Public Works Director and/or Harbormaster;

3. The repair of any damage to the mooring equipment shall be paid by the mooring sub permittee. If the mooring is damaged by a vessel assigned by the City, or the City's agent, the City shall arrange for the repair of the mooring with a qualified vendor and provide notice to the permittee of the occurrence and the arranged repair date. Should the sub-permittee fail to pay for the damage for any reason, the City will pay for the required repairs to the mooring, and then seek reimbursement from the sub-permittee. Also, the City shall make available a mooring without charge for the returning vessel of the mooring permittee until such time as their permitted mooring is repaired;

4. The mooring sub-permittee shall provide approved mooring lines which shall be removed at the end of the rental period;

5. A mooring sub-permit may be up to fifteen (15) days and may terminate at any time for any reason, and may be renewed based on availability. Upon return of the assigned vessel to the mooring, the Harbormaster will attempt to reassign the sub-permittee to another mooring. Mooring sub-permittees have no right of renewal or substitute moorings upon return of the assigned vessel, or upon termination of a mooring sub-permit for any reason. Mooring sub-permittees accept an indefinite term at their own risk. The decision by the Harbormaster to terminate a sub-permit shall be final and nonappealable;

6. The mooring sub-permit rent will be based on a rate established by resolution of the City Council; and

7. Mooring sub-permits are offered to the public on a first-come, first-served basis. City owned and operated moorings may be reserved in advance.

l. Mooring Permit Transfer Nonrefundable Fee. The City shall charge the mooring permittee for the right to transfer a mooring permit under subsection (E) of this section in an amount equal to seventy-five (75) percent of the annual mooring rent as established by City Council resolution. This transfer fee represents a one-time nonrefundable transfer fee for the use of a mooring. A mooring permit transfer fee shall not be required if:

1. The transfer is from the mooring permittee to the same mooring permittee as trustor of an inter vivos trust, living trust or other similar estate planning tool;

2. The transfer is made under subsections (F)(7) and (8) of this section; or

3. The transfer is made pursuant to under subsection (E)(1) (B)(3)(d)) of this section (immediate family).

J. Surrendered Mooring Equipment. If the mooring permittee sells, transfers, or otherwise no longer owns the assigned vessel and does not intend to apply for, or does not receive, approval to transfer the permit to another, the permittee may provide written notice to the Harbormaster of his or her intent to surrender the mooring permit; otherwise the provisions of subsection (G) of this section regarding a vacant mooring shall apply.

Once a mooring permit is surrendered, the mooring permittee shall remove the assigned vessel and/or the mooring equipment thirty (30) days after written notice of surrender of the permit, or, upon failure to remove the mooring equipment, title shall vest in the City and the City shall compensate the mooring permittee the fair value for the mooring equipment, less rent or fees owed, as provided in subsection (L) of this section.

K. Revocation of Permit.

1. The grounds and procedure for revocation of a mooring permit are set forth in Section 17.70.020.

2. Upon revocation of the mooring permit, it shall be the duty of the mooring permittee to immediately remove the mooring equipment and any moored vessel. If not removed within thirty (30) days of revocation of the permit, the mooring equipment shall vest in the City and may be auctioned by the City to another person or may be removed by the Harbormaster and the cost of mooring equipment removal shall be paid by the mooring permittee. Any moored vessel or equipment not removed within thirty (30) days may be impounded by the City and disposed of in the manner provided by law. City-incurred costs of removal of mooring equipment or any vessel moored thereto

may be charged against the permittee and collected in any court of competent jurisdiction or recovered by the City from the proceeds of sale of the vessel or mooring equipment.

3. During any revocation proceeding, if the mooring is unoccupied, it may be temporarily assigned as a mooring for guest vessels by the Harbormaster.

L. Moorings Reverting Back to City. Should a mooring revert back to the City for any reason, whether through abandonment, surrender, failure to provide documents pursuant to subsection (F) of this

section, or for any other reason other than as set forth in subsection (K) of this section, the following shall apply:

1. The mooring permittee shall be entitled to recover all of the mooring permittee's mooring equipment within thirty (30) days of reversion;

2. If the mooring permittee does not recover his or her mooring equipment, the mooring permittee shall be entitled to payment from the City of the fair value of the mooring equipment as depreciated by use in an amount to be determined by the Harbormaster and as set in the City's master fee resolution, after any and all past due rent and fees, if applicable, have been satisfied; and

3. The mooring equipment may be publicly auctioned by the City, or the City's designated representative, or the mooring equipment may be used for other City purposes.

Request to Extend Mooring Length or to Relocate to Larger Mooring.

1. **Review Authority.** **No mooring lengths shall be extended beyond the designated mooring length for any mooring row; or that will result in extending into or impeding upon any portion of the adjacent fairway(s) to the mooring or otherwise create safety concerns.**

2. **If a permittee requests or obtains an assignment of a smaller vessel to the mooring and the smaller vessel has a LOA that is equal to or less than the designated length for the row, neither the mooring or the vessel will not be subject to relocation because it is smaller than the designated length for vessels in its row.**

3. **Handling of Requests.**

a. Move to Different Mooring and Row. If an offshore mooring permittee wishes to moor a vessel that is or will be longer than the assigned vessel and which will extend beyond the designated mooring length for the mooring row, **an application request to relocate the mooring shall be submitted to the Harbormaster for consideration and at his or her discretion**, may approve the request to relocate to a larger mooring if an appropriate-sized mooring to be exchanged with a mooring in the same mooring field with the consent of the permittee of the other mooring. If the relocation is approved, the existing offshore mooring permit(s) shall be amended to reflect (i) the new assigned mooring location(s), **and (ii). the extension** of the vessel occupancy length to accommodate a longer vessel up to a maximum of five additional feet in accordance with this subsection, and up to the maximum length of the new row with the approval of the Harbor Commission.

b. Extension within Conforming Row. If an offshore mooring permittee wishes to moor a vessel that is or will be longer than the assigned vessel and which will not extend beyond the designated mooring length for the mooring row where the mooring is located**, an application request to extend the mooring shall be submitted to the Harbormaster for consideration and at his or her discretion,** may approve the request to extend the mooring, and if approved, the existing offshore mooring permit(s) shall be amended to reflect **the extension of** the mooring length to accommodate a longer vessel up to a maximum of five additional feet in accordance with this subsection, and up to the maximum length of the new row with the approval of the Harbor Commission.

After review by the Harbormaster, applications for the relocation or extension of mooring length in excess of five feet shall be submitted to the Harbor Commission for consideration and rendering of a decision. For applications requiring the approval of the Harbor Commission, the Harbormaster shall present to the Harbor Commission all relevant facts to support the findings included in Section 17.05.140(D)(1).

> *Example:* Permittee A wants to replace *Atlantis* (40' LOA), which is in a 40' row, with *Atlantis II* (42' LOA). A larger mooring is required. Permittee B's *Barnacle* (41' LOA) is in a 45' row. Permittee C's *Calypso* (40' LOA) is in 45' row. All three moorings are in the same mooring field. A's mooring assignment can be switched with C, but not with B.

4. Application.

a. Filing and Review of Request. An offshore mooring permittee shall file a written request for mooring relocation **or extension** with the Harbor Department on a form prescribed by the Harbormaster, together with the filing fee required by the City's fee schedule adopted by resolution of the City Council.

c. Application Requirements. An application for a mooring **extension or** relocation shall include the following information in addition to such other information as may be required by the Harbormaster:

i. The full identification of the applicant and the vessel for which **an amendment to the existing offshore mooring permit or** the mooring relocation is sought, certifying that the applicant and the assigned vessel have complied with (or in the event the vessel identification is unknown, applicant will certify that such unidentified vessel prior to occupying the mooring space will comply with) all of the applicable United States Coast Guard license, inspection, and certification requirements, and certifying that the applicant has read and is otherwise familiar with all of the applicable rules and regulations promulgated by the City, including, but not limited to, the provisions of this title;

ii. Such plans and specifications as may be required by the Harbormaster for the proposed longer vessel **to be accommodated at the new or extended mooring; and**

iii. Detailed information regarding the vessel including make, model, year, LOA, beam, dimension, vessel ID, and if the vessel identification is not known at the time of making an application, the LOA and adjusted LOA (including bowsprits, swim steps, or stern-mounted dinghies) of the proposed vessel for which the applicant seeks approval. The LOA as published by the manufacturer of a particular vessel shall be used to determine the required mooring size of a particular vessel, and the size of the specification for the chains, weights, and tackle necessary to secure a vessel on a particular mooring for a permittee. Adjusted LOA shall be used to determine the maximum vessel length that can fit in any particular slip or side-tie.

3. **Action on Application.** Upon receipt of a completed application , the Harbormaster or the Harbor Commission, as applicable, may approve or conditionally approve the relocation an amendment to the offshore mooring permit to allow the extension of the vessel occupancy length (in the event of an application for an unidentified vessel only a conditional approval may be obtained) only after making the findings set forth in Section 17.05.140(D)(1) and making the following findings:

a. There have been no changes in the conditions or circumstances of the existing offshore mooring permit so that there would have been grounds for denial of the original offshore mooring permit or grounds for revocation thereof at the time an application for extension of the assigned vessel occupancy length is filed;

b. The proposed extension of the assigned vessel occupancy length Relocation will not:

i. Impede or obstruct the fairways or channels or prevent or obstruct the passage of other vessels between the rows;

ii. Impede, obstruct or prevent other mooring permittees from safely navigating in and out of adjacent moorings or moorings in other rows connected by the same fairway to the row of the permittee's vessel;

iii. Result in vessel(s) extending beyond the outer boundaries of the mooring area or row; or

iv. Violate the designated maximum vessel LOA for the row or mooring area in which the vessel will be moored.; or

c. The applicant and the assigned vessel have complied with all of the appropriate United States Coast Guard license, inspection, and certification requirements for the assigned vessel and all of the applicable rules and regulations promulgated by the City, including, but not limited to, the provisions of this title; and

4. The applicant agrees to cover all costs associated with **modifying the length or relocating to the longer** mooring, including, but not limited to, any costs associated with relocating mooring anchors and tackle, and any costs associated with resizing mooring tackle to meet applicable mooring standards (e.g., chain size or anchor weights).

5. Conditions of Approval., **Approval of a request for mooring extension or relocation** shall be conditional and contingent upon the following requirements:

a. The costs of extension and/or relocation shall be borne by the permittees making the request.

b. **The mooring permittee must occupy the new extended mooring or new relocated mooring** with the new vessel within twelve (12) months following the date of approval; and

3. For a mooring permit that is transferable, the mooring permittee may not transfer the permit or the mooring permittee's rights pursuant to a valid mooring permit, as amended, and such mooring permit and rights pursuant thereto shall not be sold or otherwise transferred until a period of twelve (12) months following the date of occupancy of the mooring with the new vessel. The sale or transfer of said permit shall comply with the requirements of subsections (B)(3), (E) and (F) of this section.

5. Noncompliance with this section will constitute grounds for the Harbormaster to rescind the relocation approval and terminate the amendment to the mooring permit. In the event that the Harbormaster terminates the amendment to the mooring permit issued pursuant to this chapter, Within thirty (30) days of written notice of such recission and termination, **if the permittee has moved the new vessel to a different mooring,** the permittee shall at its sole expense return its vessel and the displaced vessel to their respective previously-assigned mooring **locations, if and when available, if it will not become available, to such other mooring locations as become first available and as deemed appropriate by the Harbormaster**, and, the mooring permittee may thereafter continue to use the mooring in accordance with all of the terms and conditions of the original offshore mooring permit and subject to all of the terms and provisions of this title applicable to mooring permits. **The Intentional Violation of subsection (M)(4)(a) of this section shall be**