

**ATTACHMENT B**

**ORDINANCE NO. 2023- 8**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF NEWPORT BEACH, CALIFORNIA, AMENDING SECTIONS 17.25.020 (ANCHORAGE, BERTHING AND MOORING REGULATIONS) AND 17.60.040 (MOORING PERMITS) OF THE NEWPORT BEACH MUNICIPAL CODE**

**WHEREAS**, Section 200 of the City of Newport Beach's ("City") Charter vests the City Council with the authority to make and enforce all laws, rules and regulations with respect to municipal affairs subject only to the restrictions and limitations contained in the Charter and the State Constitution, and the power to exercise, or act pursuant to any and all rights, powers, and privileges, or procedures granted or prescribed by any law of the State of California;

**WHEREAS**, contemporaneous with the consideration of this ordinance, the City Council adopted Resolution No. \_\_\_\_, which approved recommendations of the Harbor Commission as well as a Pilot Project to reconfigure Mooring Field "C" in Newport Harbor, to improve navigation safety and optimize space within the mooring field ("Recommendations");

**WHEREAS**, approval of the Recommendations require amendments to Sections 17.25.020 (Anchorage, Berthing and Mooring Regulations) and 17.60.040 (Mooring Permits) of the Newport Beach Municipal Code ("NBMC"); and

**WHEREAS**, the amendments to Section 17.60.040 (Mooring Permits) are not intended to change or affect the transferability of mooring permits existing as of the effective date of the ordinance.

**NOW THEREFORE**, the City Council of the City of Newport Beach ordains as follows:

**Section 1:** Section 17.25.020 (Anchorage, Berthing and Mooring Regulations) Subsection (A) (Location) of the NBMC is amended to read as follows:

A. Designated Areas. In the designation of mooring areas and anchorage areas, consideration shall be given to the needs of commerce, the utilization of the turning basins, the use of channels for navigation, and the economy of space.

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.
  3. Mooring permittees shall, at their expense, move their vessels or relocate to another mooring when deemed necessary by the Public Works Director and/or Harbormaster to address vessels drifting from their assigned mooring locations or to address safety or navigational concerns. Offshore mooring permittees who are assigned to mooring rows with established lengths that are greater than the permittees' mooring lengths by at least five feet shall be subject to relocation for the purpose of accommodating mooring extension requests under Section 17.60.040(M), with the costs to be borne by the requestor of the extension. The costs of moving the vessels or relocating to the reassigned mooring shall include the costs of moving the mooring equipment.

**Section 2:** Section 17.25.020 (Anchorage, Berthing and Mooring Regulations) Subsection (F) (Chains and Fastenings) of the NBMC is amended to read as follows:

- F. Mooring System Chains and Fastenings.
  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 shall be so arranged that, when dropped, they will immediately sink. It shall not be a violation of this

subsection for a double mooring to connect two mooring anchor lines or buoys with a spreader line having floats attached thereto to keep such spreader line afloat when the mooring is unoccupied.

3. With the approval of the Harbormaster, mooring permittees may use a single buoy system for a two-point mooring by use of a sand line, defined as a line from one anchor line to the opposing anchor line and that is properly weighted to immediately sink when dropped. The mooring permittee shall submit a mooring modification request to the Harbormaster with details of the modification, including diagrams, if requested. The Harbormaster may approve or conditionally approve the request if the Harbormaster determines that the modification will not result in any safety or navigational concerns.

**Section 3:** Section 17.25.020 (Anchorage, Berthing and Mooring Regulations) Subsection (H) (Mooring, Anchoring and Vessel Condition Requirements), Paragraph (1) (Mooring Anchoring) of the NBMC is amended to read as follows:

H. Mooring, Anchoring and Vessel Condition Requirements.

1. Anchoring and Mooring. All vessels anchored on the open waters of the Pacific Ocean or in the designated anchorage area in Newport Harbor shall be anchored in such a manner so that the vessel does not come in contact with another vessel or structure. Vessels anchored in the designated anchorage area in Newport Harbor shall also 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 drifting in a way that interferes with or impedes safe navigation around the moored vessel, except in areas designated by the Harbormaster as single mooring areas. Vessels in single mooring areas shall be tied from the bow. Double or two-point moorings that are equipped with two mooring buoys for mooring to both bow and stern are required to have at all times (a) a vessel properly tied to both mooring buoys or (b) a spreader line secured and connected to both buoys. The spreader line shall be kept clean of algae and other marine growth to ensure it remains easily visible. The maximum permitted mooring lengths shall not exceed the established length of their mooring rows. No portion of a moored vessel or any object attached to the vessel may extend into the mooring field fairways.

**Section 4:** Section 17.25.020 (Anchorage, Berthing and Mooring Regulations) Subsection (I) (Maintenance) of the NBMC is amended to read as follows:

I. Maintenance. All moorings shall be kept in good and serviceable condition in the location assigned by the Harbormaster. Mooring permittees shall be responsible for the maintenance, repair, and replacement of mooring system components including, but not limited to, chains, shackles, anchors, weights, lines, buoys, and all other gear and equipment used in securing the vessel to the mooring. This subsection shall not apply to City-installed anchors for use as shared moorings, which shall be maintained, repaired, and replaced by the City.

**Section 5:** Section 17.25.020 (Anchorage, Berthing and Mooring Regulations) Subsection (J) (Specifications) of the NBMC is amended to read as follows:

J. Specifications. Specifications for the size of chains required on moorings, weights of moorings, and other mooring equipment shall be established by the Harbor Commission.

**Section 6:** Section 17.60.040 (Mooring Permits) Subsection (B) (Issuance of Permit—Conditions), Paragraph (1) (a) (Exceptions) of the NBMC is amended to read as follows:

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). 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)(g) 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.

**Section 7:** Section 17.60.040 (Mooring Permits), Subsection (B) (Issuance of Permit—Conditions), Paragraph (2) (Permit Requirements) of the NBMC is amended to read as follows:

2. Permit Requirements. A mooring permit may be issued to a maximum of two persons (“mooring permittee(s)”) who shall be individually and collectively responsible for all activities related to the mooring permit. The mooring permit shall specify the assigned mooring location, the mooring length, and assigned vessel information. Mooring permittee(s) are subject to and shall fully comply with the following conditions:

- 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. Agree to move the vessel from the mooring to another location when deemed necessary by the Public Works Director and/or Harbormaster because the vessel has drifted from its assigned mooring location or to address safety or navigational concerns, and also to authorize the City or its designee to move the vessel upon the mooring permittee's failure to do so, at the permittee's expense;
- 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; and
- l. Agree that if the permittee's maximum mooring length is shorter than the established length of its mooring row by five feet or more then the

permittee is subject to relocation within the same mooring field for the purpose of accommodating mooring extension requests. The H and J fields shall be considered as one field for the purpose of relocations. The costs of relocation, including the moving of mooring equipment, shall be borne by the mooring permittee who requested the mooring length extension.

*Example: Permittee A has a mooring length of 35', a vessel LOA of 30', and is in a 35' row. Permittee B has a mooring length of 30', a vessel LOA of 30', and is in a 35' row. Permittee C has a mooring length of 36', a vessel LOA of 30', and is in a 40' row. Only Permittee B is subject to relocation.*

**Section 8:** Section 17.60.040 (Mooring Permits) Subsection (B) (Issuance of Permit—Conditions), Paragraph (3) (Permittee/Transferee Qualifications) of the NBMC is amended to read as follows:

3. Permittee/Transferee Qualifications. A mooring permit may be held only by natural persons unless the mooring permit is transferable, in which case it may be held by, or transferred to, only the following:
  - a. A natural person(s);
  - 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. 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.

**Section 9:** Section 17.60.040 (Mooring Permits) Subsection (E) (Transfer of Permit) of the NBMC is amended to read as follows:

E. Transfer of Permit. Mooring permits are non-transferable, with the exception of mooring permits that were issued prior to the effective date of Ordinance No. \_\_\_\_\_, which shall continue to be transferable unless surrendered or revoked. A mooring permit that is transferable may only be transferred one time in any twelve (12) month period, unless transferred to a member of the permittee’s immediate family.

**Section 10:** Section 17.60.040 (Mooring Permits) Subsection (I) (Mooring Permit Transfer Nonrefundable Fee) Paragraph (3) of the NBMC amended to read as follows:

3. The transfer is to immediate family.

**Section 11:** Section 17.60.040 (Mooring Permits), Subsection M (Request to Extend Mooring Length) of the NBMC is amended to read as follows:

M. Request to Extend Mooring Length.

1. General. Mooring permittees shall not moor vessels that exceed their permitted maximum mooring length. If an offshore mooring permittee wishes to moor a vessel that requires an extension in mooring length, they may request an extension up to the established length of their mooring row. A request for an extension that would exceed the established length



of their mooring row shall require the permittee to relocate to a larger mooring row. In no case shall mooring lengths exceed the established mooring row lengths.

2. Application.

a. Filing and Review of Request. An offshore mooring permittee shall file a written request for extension of mooring length 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.

b. Application Requirements. An application for extension of mooring length 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 the extension of mooring length 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 such mooring to accommodate the proposed longer vessel; 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, side-tie, or mooring row.

3. Action on Extension Request. For extension requests that require relocation to a larger mooring, a mooring of appropriate size must be available within the same mooring field. The H and J fields shall be considered as one field for the purpose of relocations. As used herein, an available mooring includes one that is occupied by a permittee whose permitted maximum mooring length is shorter than the established length of its mooring row by five feet or more. The Harbormaster may approve the extension request 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 mooring length is filed;
- b. The proposed extension of mooring length 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) encroaching into the fairway or extending beyond the outer boundaries of the mooring area or row; or
  - iv. Violate the established length of the row or mooring area in which the vessel will be moored;
- 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.

*Example of relocation to an available mooring. Permittee A wishes to upgrade their vessel "Atlantis" (40' LOA), which is in a 40' row, with "Atlantis II" (42' LOA). A will need to relocate to a mooring in a longer row since the mooring length cannot be extended at its current location. Permittee B's vessel "Barnacle" (41' LOA) is in a 45' row. Permittee C's vessel "Calypso" (40' LOA) is in 45' row. Permittee D's vessel "Doldrums" (40' LOA) is in a 45' row. B has a permitted mooring length of 41'; C's permitted mooring length is 40'; and D's permitted mooring length is 41'. All four moorings are in the same mooring field. C's mooring is the only available mooring to which A can relocate.*

4. Conditions of Approval. If the Harbormaster approves a request for extension of mooring length, such approval shall be conditional and contingent upon the following requirements:

a. The mooring permittee must occupy the approved mooring with their vessel within twelve (12) months following the date of approval;

b. Transferable mooring permits shall not be sold or transferred for a period of twelve (12) months following the date of occupancy of the approved mooring. The sale or transfer of said permit shall comply with the requirements of subsections (B)(3), (E) and (F) of this section; and

c. The requestor shall cover all costs associated with modifying the length of their mooring, or in the case of a relocation moving their vessel to the available mooring and moving the displaced vessel from the available mooring. The costs shall include, but not be limited to, the moving of mooring anchors and tackle and resizing of mooring tackle to meet applicable mooring standards (e.g., chain size).

5. Noncompliance with subsection (M)(4)(a) or (b) of this section shall result in rescission of the approval to extend mooring length. Within thirty (30) days of the rescission, the permittee who requested the extension shall

at its sole expense return the mooring to its prior maximum length or in the case of a relocation return their vessel and the displaced vessel to their prior assigned mooring locations or other mooring locations as deemed appropriate by the Harbormaster. Violation of subsection (M)(4)(b) of this section shall be grounds for revocation of the mooring permit.

**Section 12:** The recitals provided in this ordinance are true and correct and are incorporated into the substantive portion of this ordinance.

**Section 13:** If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be invalid or unconstitutional, such decision shall not affect the validity or constitutionality of the remaining portions of this ordinance. The City Council hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause or phrase hereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared invalid or unconstitutional.

**Section 14:** In addition to the findings in Resolution No. 2023-\_\_ Section 7, which applies to the Pilot Project to reconfigure Mooring Field "C," in Newport Harbor, the City Council finds the introduction and adoption of this ordinance is not subject to the California Environmental Quality Act ("CEQA") pursuant to Sections 15060(c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment) and 15060(c)(3) (the activity is not a project as defined in Section 15378) of the CEQA Guidelines, California Code of Regulations, Title 14, Division 6, Chapter 3, because it has no potential for resulting in physical change to the environment, directly or indirectly.

**Section 15:** Except as expressly modified in this ordinance, all other sections, Subsections, terms, clauses and phrases set forth in the Newport Beach Municipal Code shall remain unchanged and shall be in full force and effect.

**Section 16:** The Mayor shall sign and the City Clerk shall attest to the passage of this ordinance. The City Clerk shall cause the ordinance, or a summary thereof, to be published pursuant to City Charter Section 414. This ordinance shall be effective thirty (30) calendar days after its adoption.

This ordinance was introduced at a regular meeting of the City Council of the City of Newport Beach held on the 23rd day of May, 2023, and adopted on the 13th day of June, 2023, by the following vote, to-wit:

AYES: \_\_\_\_\_

NAYS: \_\_\_\_\_

ABSENT: \_\_\_\_\_

\_\_\_\_\_  
NOAH BLOM, MAYOR

**ATTEST:**

\_\_\_\_\_  
LEILANI I. BROWN, CITY CLERK

**APPROVED AS TO FORM:**  
CITY ATTORNEY'S OFFICE

  
\_\_\_\_\_  
AARON C. HARP, CITY ATTORNEY