

ATTACHMENT F

From: John Rogers <jrogers@synergydr.com>
Sent: March 01, 2023 9:12 AM
To: Blank, Paul
Subject: Double row moorings

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

Paul -

I wanted to let you know I strongly object to any double row Moorings proposed - The entire approach to this debacle has been a disaster!

Please consider my thought when you vote or speak to their commissioners!

Thank you

John Rogers
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San Diego Office
Phone: (858) 999-0070
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Chatten-Brown, Carstens & Minter LLP

2200 Pacific Coast Highway, Suite 318
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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/Official_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 permit holders 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.

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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

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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.

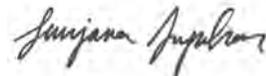
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VI. Conclusion.

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Sincerely,



Douglas P. Carstens
Sunjana Supekar

Hermosa Beach Office
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Chatten-Brown, Carstens & Minter LLP

2200 Pacific Coast Highway, Suite 318
Hermosa Beach, CA 90254
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Douglas P. Carstens
Email Address:
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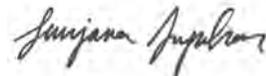
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Sincerely,



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

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Dear Honorable Commissioners,

Please see attached a comment letter from the office of Chatten-Brown, Carstens and Minter 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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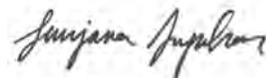
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From: Fred Fourcher <fred@bitcentral.com>
Sent: November 08, 2022 3:53 PM
To: Harbor Feedback
Subject: Document to be entered into the record for tomorrow's Harbor Commission Meeting
Attachments: Dear Chair Scully and Honorable Harbor Commissioners.docx

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



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 12 th	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”.

Hermosa Beach Office
Phone: (310) 798-2400
San Diego Office
Phone: (858) 999-0070
Phone: (619) 940-4522


Chatten-Brown, Carstens & Minter 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/Official_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 permit holders 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,

A handwritten signature in black ink, appearing to read "J. Haley", written in a cursive style.

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 <u>slideshow</u> 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 verify 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" <lbeer@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 <lbeer@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 agendaized 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
lbeer@newportbeachca.gov
(949) 702-6900

From: "Beer, Ira" <lbeer@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'

<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 permittees. 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@\[REDACTED\]](mailto: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 agendaized 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@\[REDACTED\]](mailto: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 health 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.2.1 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, mooring 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 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 bmy 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 whohow 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 thatthey 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.

I. 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 rescission 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-configuration

[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 voice 3 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@YourNewportMooringAssociation.org; Cheryl Nowak, President;
Tom Miller
Subject: Your Proposal Changes

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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 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 with any engineering firms analyzing reconfiguring the mooring layout. You are elected and appointed to be working for us and it seems that we were not 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.

GBF Enterprises, Inc.

2709 Halladay St.

Santa Ana, CA 92705

714-979-7131 Fax 714-979-1815

www.gbfenterprises.com



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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

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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

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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

[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: 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

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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 Vice 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.

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

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 Vice 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



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 12 th	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”.

Hermosa Beach Office
Phone: (310) 798-2400

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



Chatten-Brown, Carstens & Minter 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/Official_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 permit holders 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,

A handwritten signature in black ink, appearing to read "J. Haley", written in a cursive style.

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 <u>slideshow</u> 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 verify 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 agendaized 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'

<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 permittees. 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@\[REDACTED\]](mailto: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 agendaized 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@\[REDACTED\]](mailto: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 health 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.2.1 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, mooring 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 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 bmy 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 whohow 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 thatthey 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.

I. 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 rescission 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: 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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Phone: (858) 999-0070
Phone: (619) 940-4522



Chatten-Brown, Carstens & Minter 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/Official_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 permit holders 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.

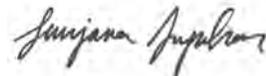
We are also concerned with City staff's questionable assertion that the mooring reconfigurations would greatly improve harbor views. (October 12, 2022 Harbor Commission Agenda Packet, p. 82.) The proposal to push mooring rows together will alter view corridors from the public boardwalk around Balboa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



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 12 th	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".

Hermosa Beach Office
Phone: (310) 798-2400

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



Chatten-Brown, Carstens & Minter 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/Official_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 permit holders 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,

A handwritten signature in black ink, appearing to read "J. Haley", written in a cursive style.

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 <u>slideshow</u> 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 verify 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 agendaized 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'

<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 permittees. 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@\[REDACTED\]](mailto: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 agendaized 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@\[REDACTED\]](mailto: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 health 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.2.1 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, mooring 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 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 bmy 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 whohow 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 thatthey 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.

I. 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 rescission 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-configuration

[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 voice 3 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@YourNewportMooringAssociation.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 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 with any engineering firms analyzing reconfiguring the mooring layout. You are elected and appointed to be working for us and it seems that we were not 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

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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

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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

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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

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

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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

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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 Vice 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.

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.

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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.

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

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: December 01, 2022 4:52 PM
To: Harbor Commission
Cc: NMA Email Board
Subject: The Stakeholder Meeting

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

Dear Honorable Chair Scully,

Thank you for the thoughtful response to the NMA concerns. We appreciate the Sub-Committee's opinions on these matters and look forward to working through the issues with you and other Commissioners. As some of us have discussed, it might be a good idea for representatives of the NMA to meet with some representatives of the Commission prior to a large-scale meeting. It would be nice to discuss the format of Stakeholder meetings to keep them businesslike and informative. For example, it might be helpful to first state the issues to be discussed, followed by presentations by some Commissions, and then presentations by some NMA members, then questions taken that stay relevant to the presentations. In a smaller "get to know each other" meeting, we might also be able to clear up any misunderstandings about the intent behind the proposed language of the Title 17 changes (and if there are misunderstandings, if the intent can be made more clear). We can also see if there have been any items or issues that have already been resolved, so they would not need to take up time at a larger meeting. December 14 would be a good date for a get to know each other meeting, but it currently conflicts with the scheduled Stakeholder meeting.

Coincidentally, many of our members have requested the December 14th stakeholder meeting be rescheduled as it falls on the opening day of the 114th Newport Harbor Boat Parade, and some have stated that attendance and parking when they return to their home might be problematic. Many mooring permittees are residents of Newport Beach and many of them are concerned about traffic, particularly when returning home as people are coming to and leaving places to view the Parade. Some members have also looked at the City Calendar and have expressed confusion after seeing that the Harbor Commission meeting now shows as "cancelled." As an additional note, our members are quite distressed with concerns over safely getting onto and their moorings with a boat within 20 feet of their bow, and concerns about where exactly their boats may end up. In the spirit of the holidays, it would be a nice gesture of grace and a moment of reprieve to allow our members to peacefully enjoy the holidays.

Given the benefits of having a smaller meeting to get to know the NMA leadership, and us getting to know some members of the Committee prior to the large Stakeholder meeting, perhaps a few of us could meet with a few members of the Harbor Commission on December 14 and reschedule the Stakeholder meeting for after the holidays.

In the event you think it wise to reschedule the larger meeting, we will be more than happy to notify all our members.

As a side note, in reviewing prior year agendas, the Harbor Commission has cancelled the December meeting on many occasions. Therefore, we hope the commission will find this request in line with past practice.

Sincerely,

The Board of Directors

Newport Mooring Association

<https://newportmooringassociation.org>

Scott Karlin

Cell: 714-815-8557

ScottKarlin@Yahoo.com

From: Eric <eric.young14@gmail.com>
Sent: November 28, 2022 8:55 AM
To: Blank, Paul
Cc: Harbor Feedback
Subject: Re: Harbor Commission Subcommittee Stakeholder Meeting on Optimizing the Mooring Fields within Newport Harbor

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

Dear Mr. Blank,

Thank you for the email. At your earliest opportunity, please provide a copy of the proposed changes to Title 17. Please also provide a copy of the specific proposed physical changes to the mooring fields, including the proposed new locations of each specific mooring. Thank you.

Best regards,
G. Eric Young
922 W. Balboa Blvd. Apt. A
Newport Beach, CA 92661
818-458-2570

On Mon, Nov 14, 2022 at 3:01 PM Blank, Paul <PBlank@newportbeachca.gov> wrote:

Dear YOUNG, GEORGE ERIC,

The Newport Beach Harbor Commission Ad Hoc Subcommittee on Harbor Commission 2022 Objective 2.3 to Improve Navigation Safety, Allow for Additional Moorings within the Fields and Mooring Size Exchange Requests will be holding a stakeholder meeting to discuss optimizing the mooring fields. All interested parties may appear and present comments regarding this matter. The meeting will be held at the Newport Beach Civic Center at 100 Civic Center Drive, Newport Beach and located in the Civic Center Community Room.

Date: 12/14/2022 at 5:00pm

Location: Newport Beach Civic Center Community Room

100 Civic Center Drive

Newport Beach, CA. 92660

For questions or feedback regarding this stakeholder meeting or topic, please email harborfeedback@newportbeachca.gov.



Paul Blank
Harbormaster
pblank@newportbeachca.gov
949-270-8158

From: Dan Wesley <srs565@aol.com>
Sent: December 05, 2022 1:55 PM
To: Harbor Feedback
Subject: Comments

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

To Whom it may Concern:

Why? That seems to be the question most often asked when discussing the proposed changes to the harbor.

We have been a mooring permittee for 30 years and, in all that time, we have only heard words like "charming", "beautiful", and "magnificent" used to describe the harbor from both permittees and guests alike. It begs the question why is a change even needed when we are already at the top of our game.

We understand there is a need for additional moorings. Surely, an alternative solution could be reached to solve that problem with much less money outlay and disruption.

In addition, the proposed plan to place like boats together in terms of length does not appear to be sustainable. Clearly, there is no way of knowing what lengths will be needed in the future so, once again, we would ask why?

On a very personal note, we have been good stewards of our mooring for a very long time: maintained the mooring ball as required and have always been respectful of others in the harbor. We have purchased necessary items particular to our mooring and distance from the dock etc. Plus, because our boys and grandchildren have enjoyed time on our boat that it now feels like home. To imagine relocating is, truthfully, heartbreaking and, again, we ask why.

We apologize if these questions have been addressed and there is a very important reason that all this disruption, money outlay and upsettingness is required. We were not aware any of this was in the works and still wouldn't if the Harbor Association had not kindly informed us. While we realize it is our responsibility to stay informed by attending the Harbor Commission meetings, we just always felt the best interests of the mooring permittees were being served and didn't feel a need.

Thank you for this opportunity to express our concerns and we hope you weigh all the problems these changes are going to cause and just ask yourself why.

Mr. and Mrs. Wesley

From: Admin <mail@newportmooringassociation.org>
Sent: December 06, 2022 7:36 AM
To: smartpearl1@hotmail.com; fullfender32@aol.com;
georgiefenton@msn.com; abbottedmd@gmail.com;
garyhan@roadrunner.com; hhatcl@outlook.com; Sally Peterson
Cc: NMA Email Board; Harbor Commission
Subject: NMA Response to Balboa Island Stakeholders
Attachments: NMA response for Balboa Island Stakerholders - 12-6-22.pdf

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Hi Lee and all,

Thank you for hosting the Balboa Island Stakeholder meeting last Tuesday. While we were disappointed the Harbor Commission did not allow us to present our perspective, we appreciate your invitation to follow up in writing. On the attached word document, the NMA has responded (in green) to the Harbor Commissions remarks.

Lee, do you have a mailing list and/or email list of all Island homeowners, that you could share with us, or could you pass on information, such as the attached to all the residents of the Island. It could save the cost of having to use a mail service to provide our perspective to people who might be concerned with both the specific plan being proposed, and also with the changes in the Harbor code that might allow such plans in the future to be imposed on homeowners without City Council approval and without prior stakeholder meetings.

To summarize, while we appreciate the original intent of this objective to straighten up some moorings, we object to the wholesale realignment plan and related Harbor Code revisions which we find problematic for the following reasons:

1. Increase in Authority/Uncertainty: The proposed harbor code revision gives the harbormaster the power to relocate boats on both shore moorings and offshore moorings at his discretion for purposes other than immediate necessity. This creates uncertainty for all.
2. Safety for mooring users: An overwhelming majority of mooring permittees are opposed to these changes for safety and other reasons. The new mooring plan pushes mooring rows closer together which will make using mooring more difficult and less safe.
3. Safety for other harbor users: Widening the fairways and moving the mooring boundaries will invite more boat traffic and larger/noisier boats to cruise through the mooring fields and around the bay beaches of Balboa Island. The mooring fields serve as a nice buffer zone for Balboa Island and serve as a refuge for paddleboarders, kayakers and children who wish to avoid boat traffic.
4. Views: We are certain implementing the proposed double row system and adding more moorings will have serious impacts on harbor views. The existing mooring alignment has good spacing between boats. Pushing the mooring rows within 20 feet of each other will have an impact on views

5. Unnecessary Costs: The harbor commission indicated it would cost approximately \$250-350k to implement the plan in the C field. If we extrapolate, that would be an expense of approximately \$1 million throughout the harbor. We have not seen any updated cost estimates, but we believe it is unwise to spend taxpayer money to make the mooring fields less safe for the mooring permittees.

We have elaborated on these points 1-4 in the attached document.

Thank you,

The Board of Directors

Newport Mooring Association

<https://newportmooringassociation.org>



Newport Mooring Association

Concerns with Major Changes in Mooring Fields and Related Harbor Code Revisions

The Newport Mooring Association has enjoyed a great relationship with neighboring homeowners, and we wish to bring to the attention of our wonderful neighbors what may be mutual concerns. While the NMA has additional concerns about the proposals being considered and looks forward to collaborating with the City on voluntary incremental improvements, there are some items that may affect our Balboa Island neighbors:

1. The proposed code changes may allow "Realignment" without homeowners knowing how their views will be affected and may or may not require City Council approval - We are hopeful the City illustrates how all home views may be affected before any boats or moorings are moved in the name of realignment. The NMA also hopes that it is expressly stated that any such plan will require City Council approval. Some people see the proposed new regulations as not requiring this approval, so any ambiguity should be eliminated.

Harbor Commission Response: First off, we would like to thank the Balboa Island residents that provided us their time and attended the presentation on Optimizing the Mooring Fields. We sincerely appreciate your time and your questions. Considering the handout that the Newport Mooring Association provided, we wanted to offer our thoughts on each point.

As was presented in the meeting, this plan will go to City Council for their review, and they will ultimately make the decision on this plan. Additionally, they will need to fund it as this plan calls for no cost to the Mooring Permittee.

NMA's Reply: We understand the plan being proposed will need to be approved by the City Council. However, with the proposed code change as currently written, this might not be the case in the future. If a few years from now the Harbormaster or Harbor Commission comes up with a new plan which moves moorings they may not need Council approval because the proposed change to the City Code would give them the right to move boats for relocation purposes, not just for necessity. The existing harbor code allows the Harbormaster the right to move boats as "necessary" which has always been interpreted to mean a very temporary move for emergencies and for dredging, after which the boats are then returned to their original location. They recognized that re-organizing mooring fields on a permanent basis is not a "necessity" and that is why they want to change the language to indicate they can move boats for re-organization purposes. Nowhere in the proposed revision does it say they will first need to obtain City Council approval for future mooring realignments. Future realignments may obscure homeowner views, and the mere right to do so without City Council approval will create on-going uncertainty. We believe it is extremely important make sure the City Code clearly states that City Council approval shall be required for all such changes in any mooring relocation plan, now or in the future.

In addition, the Commission's response, stated above, does not address the request that the exact location of each new mooring row be shown to all stakeholders in relation to all mooring fields. Including a provision for stakeholder and council review for any mooring realignment will allow input from homeowners and residents that may have their views obscured and will also help insure that "favoritism," or the perception of favoritism, does not play a role in who gains and who may lose part or all of their water views.

2. Dangerous for kayakers, paddleboarders, and swimmers - We believe pushing mooring rows close together will increase the risk of collision when accessing a mooring and will make it much more dangerous for kayakers and paddle boarders to use the protected waters of the mooring fields. Increasing the size of fairways within mooring fields to invite general navigation by powerboats will invite higher speeds, more powerboat traffic, and more wakes, and will therefore place those kayakers, paddleboarders and children at greater risk. Today they frequently seek refuge from boats underway in the harbor by ducking into the mooring fields. The U.S. Federal Code of Regulations specifically discourages general navigation near mooring fields for safety purposes: "The areas ... should be well removed from the fairways and located where general navigation will not endanger or be endangered by unlighted vessels".

Harbor Commission Response: Overall the Mooring Fields today are disorganized and difficult to navigate. The intent of this Optimization of the fields is to provide sufficient space for mooring permittees to navigate to their mooring and to provide more open water for all harbor stakeholders. By providing more space and controlling the mooring equipment better all users of the harbor will have a better experience and safer waterways.

NMA's reply: First, the mooring fields, which were set up to moor boats and not for general navigation, have never been intended to be used for general navigation. Currently, with few exceptions, for the purpose of mooring a boat, the fairways are easily managed for getting on and off moorings. There is no reported history of problems, and boat owners with moorings find the new plan dangerous and unsafe because it would place boats within 20 feet of another boat in front or behind their boat, which will present dangers in getting onto a mooring in many wind and current conditions that exist in Newport Harbor, including occasional Santa Ana winds.

More important for residents is that the proposed plan gives rise to safety concerns for children, swimmers, kayakers, and paddle boarders. At the meeting with homeowners, major concerns were expressed by homeowners who observed that moving the mooring field boundary line away from Balboa Island will create a large fairway and invite more boat traffic (and larger and faster boats) along the bay beaches frequented by children and others. Currently, the mooring fields create a buffer zone that deters larger boats from hugging the island. Narrower fairways both inside a mooring field and at the perimeter of the mooring fields, like small alleyways, keep traffic and speeds down. These concerns are echoed in the Federal Code of Regulations that suggest strongly that it is unsafe to invite general navigation into the mooring field area. Do homeowners really want the Horn Blower or other large loud boats hugging Balboa Island or weaving their way in and out of mooring fields, and now being able to do so at higher speeds made possible because the Harbor Commission has widened the fairways? Widening

fairways inside mooring fields, like widening roadways, will only invite more boat traffic, and at higher speeds, making these areas of refuge and quietude dangerous for swimmers, paddle boarders and kayakers. Children at play should not have to worry about additional boat traffic and turning boat props.

3. Unpleasant aesthetics - We believe the existing distance between mooring rows and boats provides pleasant views for all to enjoy. Pushing boats together will create a "wall of boats" that may impair public views. The "parking lot look" of boats may be far less enjoyable than the picturesque views we now see. As one award-winning local photographer has stated "No one has ever painted a picture of boats in a marina, but there are thousands of paintings of boats swaying naturally at anchor," and the new proposal makes no sense from an aesthetic point of view.

Harbor Commission Response: During the presentation last night, Commissioner Beer provided a slide showing the "B" Field before and after. These slides demonstrated that the views would be improved, not reduced, or create a "wall of boats". The fairways will be significantly wider and the water between the mooring field and the beach will almost double. Multiple homeowners commented that their view would be considerably better than it is today.

NMA's reply: We agree that a few homeowners and public views will be marginally improved at the expense of other homeowners and residents whose harbor views will be obscured, and at the expense of the safety issues as discussed above. Who will be favored and who will not, is unknown. It's basic math. Two 40-foot boats pushed together with a crisscross of buoys and mooring lines between them separated by only 20 feet, in effect, will create a wall of boats now 100 feet wide. Homeowner lots on Balboa Island near the moorings are 30 feet wide. The proposed double row/tandem mooring system will be three times as wide as a home's lot looking out from a patio or boardwalk. Commissioners provided aerial or overhead renderings that do not reflect the actual lateral view perspective from a home, end of street, or boardwalk. The NMA provided an image of the real lateral view at the double row mooring field of America's Cup. In our opinion, this real-life image looking out at an actual double row field proves many views will be impaired relative to the existing appropriately spaced mooring rows. The Commission's response also does not address the aesthetics of looking out at a "parking lot" of boats and eliminating the picturesque view we all enjoy today. Additionally, the pleasant view of smaller boats quietly passing by at very low speeds, will be replaced by additional traffic with larger noisier boats weaving in and out of the proposed wider fairways chasing out swimmers, paddle boarders and kayakers, or endangering these activities for those willing to venture into the new traffic.

4. **Negative impacts of adding more moorings - We believe it is unwise to add new moorings to our busy harbor. Where are these folks going to park their cars and launch their dinghies? Where are the restroom facilities, if any, to be located?**

Harbor Commission Response: As everyone knows, Newport Harbor is currently challenged on having available slips and/or moorings. This Optimization plan came from the Harbor Commission studying ways to provide for more affordable access to Newport Harbor. We are not recommending adding a significant number of new moorings, only working on ways to make the Harbor better and provide for more access.

NMA's reply: The Commission is considering a plan intended to add approximately 100 new moorings to the current 600 moorings in the fields in question. That's hardly insignificant. Adding more moorings will have negative impacts on public views, vehicle parking, dinghy docks, trash collection, and any restroom or lack of restroom facilities, as well as the harbor in general. 100 additional yachts on moorings will also increase the copper in the water, and Newport Harbors has been asked by the local State Water Quality Control Board to reduce the copper in the harbor. What is more, there are plenty of vacant moorings available for rent via the city mooring sublet program. If longer term rentals are needed, the City has created the shortage by not allowing mooring holders the right to rent their moorings, which is allowed in some other harbors in California. Allowing such rentals would provide immediate affordable moorings for the same number of boats, all at no cost to the City. In fact, if the City were to charge a small fee for the right to rent a mooring, the City would raise revenue for harbor improvements, such as beachside harbor racks for paddle boards and kayaks, as well as additional small boat and dinghy docks.

From: Lee Pearl <smartpearl1@hotmail.com>
Sent: December 06, 2022 9:19 AM
To: Admin; fullfender32@aol.com; Ken Yonkers; cynthia shaffer
Cc: NMA Email Board; Harbor Commission
Subject: Re: NMA Response to Balboa Island Stakeholders
Attachments: NMA response for Balboa Island Stakerholders - 12-6-22.pdf

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

Members of the NMA Board: Thank you for your follow-up information. I have modified the distribution list to include the Presidents of the three Associations on the Island. Since we facilitated a meeting and have not taken a formal position on the proposal, we will be unable to distribute the response to our residents.

There is also conflicting information between the Harbor Commission and NMA. We have observed based on comments at the meeting that Balboa Island Bayfront owners may actually have better views with the proposed plan. Also, NMA goals relate to mooring owners and does not take a long-range view of the harbor's future operations and benefits. As a result, we will need to extract the BIIA from this process. We will continue to make sure our residents are informed of meeting dates and actions related to this matter. Thank you for attending our meeting and your efforts.

Lee Pearl BIIA Local Government Representative.

From: Admin <mail@newportmooringassociation.org>
Sent: Tuesday, December 6, 2022 7:35 AM
To: smartpearl1@hotmail.com <smartpearl1@hotmail.com>; fullfender32@aol.com <fullfender32@aol.com>; georgiefenton@msn.com <georgiefenton@msn.com>; abbottedmd@gmail.com <abbottedmd@gmail.com>; garyhan@roadrunner.com <garyhan@roadrunner.com>; hhatcl@outlook.com <hhatcl@outlook.com>; Sally Peterson <spete@att.net>
Cc: NMA Email Board <nmaboard@indigoharbor.com>; harborcommission@newportbeachca.gov <HarborCommission@newportbeachca.gov>
Subject: NMA Response to Balboa Island Stakeholders

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Newport Mooring Association

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From: L. Scott Karlin <scott@karlinlaw.com>
Sent: December 12, 2022 8:12 PM
To: Scully, Steve; Beer, Ira; Blank, Paul
Cc: Jerry LaPointe; John Fradkin; Wade Womack; Megan Delaney; George Hylkema
Subject: Summary of Meeting re Moorings

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

Harbor Commissioner Chair, Scully, Vice-Chair Beer, and Harbormaster Blank,

Thank you for taking the time for the video conference last week with some of the Newport **Mooring Association's Directors John Fradkin, Wade Womack, Jerry LaPointe, and myself,** Scott Karlin. We understand that our discussions were intended only to express some of your, and some of our, personal views and opinions and were not intended to, and did not, necessarily express the views or opinions of other members of the Harbor Commission or of the NMA. I would have liked to get this to you sooner, but I was unable to address this over the weekend.

I would like to summarize some of the ideas discussed, and a few other items that may not have been discussed.

A. Regarding 17.60.040 B 3 and related code change. **As we might have discussed at the time or in earlier discussions, changing around the language regarding transferability in any way appears to be both unnecessary and is causing a great deal of anxiety to permittees.** For example, any reference to the date of issuance of an existing permit will cause a great deal of unnecessary confusion. In part this is because when a family member is added to a permit, or when a second name is added to a permit, or when a permit is reissued to a transferee, or even when filling out the annual information for where it says the permit is "being issued", can make it look like these are new permits or permits issued or reissued after a certain date. Rather than specify that these situations are exempt, it is far better to leave the language regarding transferability as is.

We assume that the language was suggested to cover a situation that does not yet exist, namely, creating new moorings that will be given away by lottery and not rented. Until and unless the City acquires or creates new moorings and then issues permits for these moorings by way of a sale or lottery (vs entering into long term rental agreements for these newly created moorings), there is no need for a harbor code change to reference the non-transferability of these newly created moorings. Therefore, there is no need to change the code regarding transfer rights to such new moorings until there is a plan submitted and approved by the City Council regarding (a) what to do with new moorings which do not currently exist, and (b) if and when they are created if they will be rented by the City or granted by way of a permit. Only if such newly created

moorings were to come into existence and the City decides not to rent them would any language be needed to address transferability of such moorings.

At the meeting it was noted that there might have been a misunderstanding with respect to the proposed Harbor Code revisions in that the commissioners who attended the meeting stated the proposed changes were not intended to change the transferability rights of existing mooring permits, and that there appeared to be an understanding that any existing permit and any revisions, modifications, or re-issuing of the permit, will remain transferable in accordance with the procedures for transfer stated in the code.

As mentioned above, in our view, and in the view of our members, there is really no current need for clarification about transferability of currently non-existent newly created moorings. However, if and when that were to occur, and if and when the City decides not to rent them but instead decides to issue permits for them, and in relation to such issuance of such new permits, the City at that time wants to make them non-transferable, then at that time, we can have a conversation about what language would be appropriate to make sure that concerns set forth above are covered. In the meantime the unnecessary and premature suggested code change distracts from the discussion about the proposed realignment plan.

B. Regarding the conditions under which the Harbormaster may move boats. Again, there may have been some misunderstanding on this issue. We now understand that the intent was not to give the Harbormaster the right to create plans for reorganization of moorings, now or in the future, but rather to make it clearer when the Harbormaster had the right to move boats for different types of necessities. We were also advised that these types of decisions could be subject to appeal, and the procedures for appeal are in the code. We were concerned that the new language, while an improvement, did add a “catch all” that boats could be used for “general welfare” which seemed very overbroad. I suggested just adding other specific language, such as harbor maintenance, dredging, to avoid a very overbroad statement. After all, the code currently allows for moving boats for necessity and has never included the reference to “general welfare” . I have included the proposed language below.

C. Removal of boats smaller than the designated size of the mooring. The commissioners present seemed to agree that any language in the proposed changes that allowed for the removal from a mooring of a vessel which was 5 feet shorter than the designated length of the mooring size shown on the permit, needed to be corrected, and a request has already been made to remove such language. In other words, if you have a mooring permit for a 50 foot mooring, but currently have a 40 foot boat on that mooring, the boat will stay on the 50 foot mooring, and if the 50 foot mooring were to be moved

to a different row, the 40 foot boat would not end up on a mooring that was designated as a 40 foot mooring.

D. Eliminate putting into the Harbor Code, details of decisions that should be made by the Harbormaster. We discussed the disadvantages of including the size, shape, and quality, and size, color, and spacing of spreader line floats in the code itself, and the advantages of allowing the Harbormaster to set up the allowed methods regarding the speaderlines or pick-up lines which might vary somewhat for different sized boats and different methods for securing a boat to a mooring. There appeared to be agreement that a good number of these specifics regarding spreader lines and pick-up lines should be left to the Harbormaster's best judgment, and not be put in the code, and that these changes were already in progress.

While we agreed to disagree about aspects of the plan of reorganization, and/or if additional objective data would be helpful, we all agreed that avoiding misunderstandings was always a good idea and these types of informal discussions can go a long way for open discussions which in the end benefits the boating community and the public at large.

If there is anything above that you believe does not accurately reflect our discussion, please let me know.

Best regards,

Scott Karlin

Cell: 714-815-8557

Work: 714-731-3283

A. Current Recommended 17.60.040 B 3 and 17.60.040 E

This change should only be considered if and when (a) new moorings are created by the City, and (b) the City for some unknown reason decides to issue new permits for these new moorings instead of just renting them out, then and only then should the City decide if it wants to make the newly created and issued

permits transferable. What is more, if that were to occur, given the prohibition on transfer under 17.25.130, the Harbormaster can simply state on the newly created mooring permit form that “This Permit is non-transferable,” and as such no code change would be needed.

Currently, the proposed changes creates a lot of unnecessary anxiety, including concerns that permits considered reissued, amended or otherwise modified because a permittee has added a name to a permit, transferred the permit to another person, or simply filled out the annual information questionnaire with current information on a boat and current contact information, could be considered by some people to be a permit “issued” or “reissued” at some date in the future. Again, there is no current need for any change in the code under either 17.60.040 B3 or under 17.60.040 E

B. Future ability for the Harbor Master or Harbor Commission to execute another realignment plan without the City Council approval.

NMA Modified Language:

Authorize the City, or its designee, to move the vessel on the mooring to another when deemed necessary by the Public Works Director and/or Harbormaster, to address a hazard to safety, public health, harbor maintenance or dredging, for such length of time as is reasonably necessary for such purposes, Following such move, the Permittee may appeal to the Harbor Commission for reinstatement of the vessel to the mooring if such conditions would then allow pursuant 17.65. If moving the vessel was due to a violation by the permittee of his or her obligation under the Harbor Code, then such move shall be at the permittee’s expense.

C. Concerns about having to move to a smaller mooring because an assigned boat is smaller than the size allowed on the mooring.

A permit holder holding a permit for a mooring who has a vessel assigned to the mooring shall not be subject to having the vessel assigned to the mooring, or the mooring itself, reassigned to a smaller mooring, or relocated to a row of smaller moorings, because the vessel assigned to the mooring is shorter than the maximum size vessel designated for that mooring.

From: chris bliss <chrisbliss7777@gmail.com>
Sent: December 12, 2022 8:26 PM
To: Harbor Commission
Subject: Proposed Mooring Field Changes
Attachments: moorings.doc

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

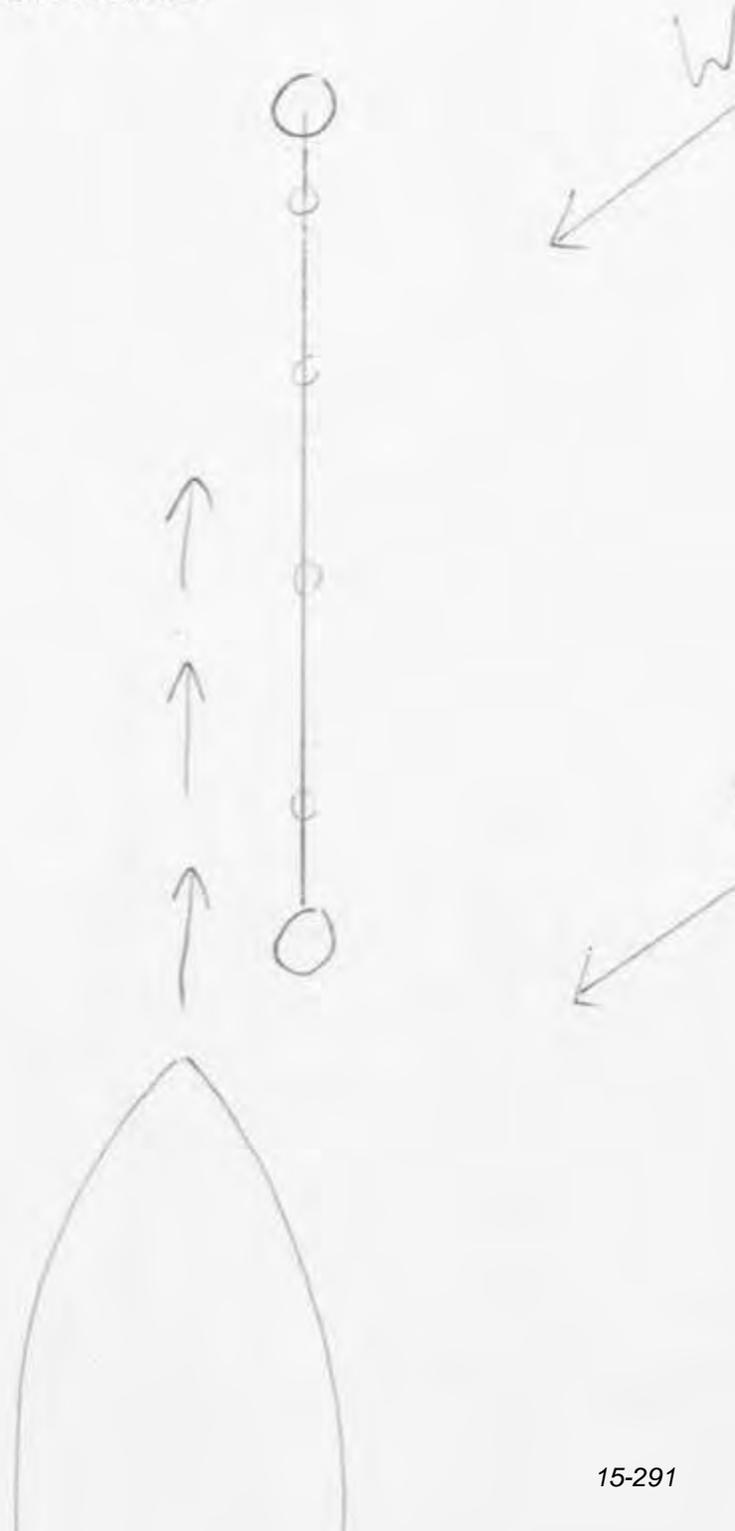
Dear harbor commission,
Please see the Word document and attached diagrams regarding the proposed mooring field changes.

Thank you,

Christopher Bliss

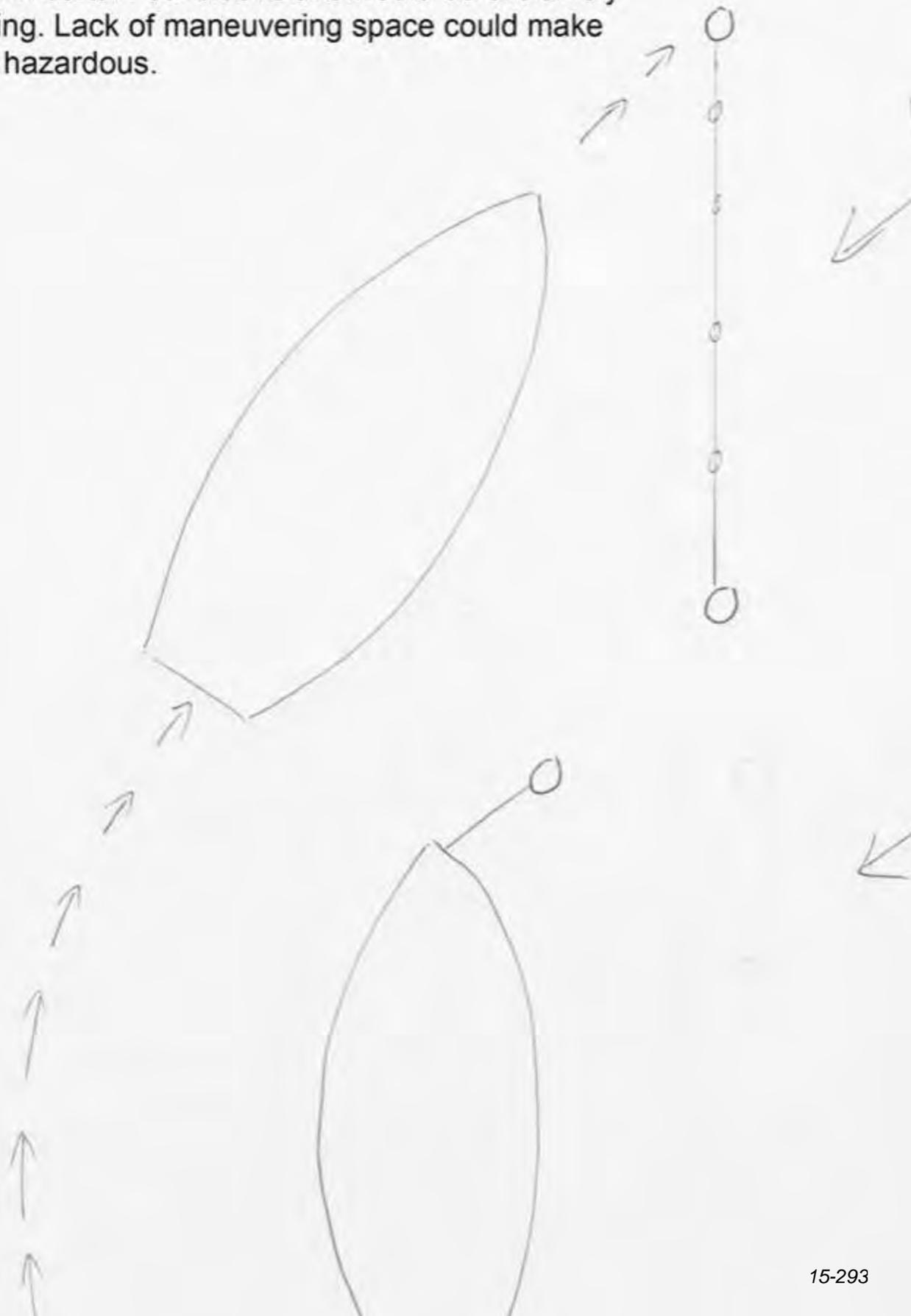
Current approach to mooring

Normal and safest approach to mooring is into wind and current, and straight on, with both mooring bouys to windward. Plenty of manouvering room is needed.



Proposed double mooring arrangement with unsafe approach.

Approaching boat must navigate around moored boat to approach mooring. In certain conditions this would be extremely challenging. Lack of maneuvering space could make this very hazardous.



Christopher Bliss
24101 Gourami Bay
Dana Point CA 92629

Tel 949-887-9737

November 28, 2022

To: Newport Beach City Council Members.
Subject: Moorings.

Dear City Council members,

I would like to share a few of my thoughts pertaining to the mooring discussion at the last City Council meeting on October 12, 2022.

1) I believe that the council is coming up with solutions to problems that do not exist. In my 40+ years as an avid sailor and 30+ years as a mooring owner I have never met another mooring owner who has complained about any safety issues or navigation issues which warrant any of the extreme changes that you are proposing. In fact, the proposal of having boats 20 feet apart bow to bow, or stern to stern will create multiple safety issues if enacted. For example, the other day I was on my boat on my C section mooring. The wind was blowing from the NE in excess of 20 knots AND the tide was running out of the harbor at 4 to 5 knots. These are extremely challenging conditions to approach my mooring, going into the wind AND tide even with plenty of open room both in front of, and behind my mooring. My sailboat is 38 feet long and weighs almost 9 tons. If there was a moored boat within 20 feet either in front or behind me, it would severely limit maneuverability space and could lead to disaster.

2) Conditions in the mooring fields are completely different than in a marina, where everything is stationary. On a mooring, everything is constantly in motion. Boats need room to float fore and aft and sideways. When the tide is low, there is much more slack on the mooring lines and the amount of swing can be extreme. When the tide is high, mooring lines are tighter and the swing of each boat is much less. For the most part, the present mooring configuration works. When there are problems with boats getting too close to each other on their moorings, they are adjusted on an individual basis. The idea that all the moorings should be 20 feet apart, bow to bow, or stern to stern, in nice, neat, regimented rows is not practical, and would be extremely problematic and potentially dangerous in real world conditions.

3) Navigation in the fairways could be easily improved by ensuring that all mooring buoys be attached together by a line which is visible, or with floats. This is an easy remedy which would keep free-floating buoys from drifting into the fairways.

4) Eel grass.....there is no eel grass growing at the depth of the mooring fields. The bottom of the mooring fields is mud. Eel grass grows in 3 to 9 feet of water.

5) If safety on the water is really a major concern in Newport Harbor, I would suggest you should be monitoring the Duffy rentals, not the moorings. My daughter and some friends rented a Duffy in the harbor with some friends last year. They were handed the keys by the person in charge and were told "Have fun!" There were no instructions as to the rules of the road, basic seamanship, rights of way, etc. I have often seen Duffys go directly in front of sailboats, leading to collisions. I have seen people drunk, swimming and diving off Duffys in the main channel on busy weekends with lots of boat traffic.

I don't know if any of the council members are sailors or own moorings, but next time the conditions are like this (wind at 20+ and fast tide running) I invite any of you to go sailing with me to see firsthand how challenging this can be. My only requirement is that you know how to swim.

Thank you.
Respectfully,

Christopher Bliss

From: Beer, Ira
Sent: December 13, 2022 7:18 PM
To: Nick Aliberti
Cc: Blank, Paul
Subject: Re: Mooring Configuration

Hello Mr. Aliberti,

Thank you for your comments and for attending the last two Harbor Commission meetings relating to the subject matter above. Your input is taken very seriously. To your point regarding spacing, when boats are properly moored there is little shifting of mooring weights forward to aft as there is not much area for the wind to catch vs broadside winds that would attempt to push boats laterally. The new configuration provides more average space between boats in the same row. Additionally, there are many instances where boats are currently less than 20' apart laterally. The reconfiguration will improve that distance significantly.

Your input will be made part of the materials for all to review when this matter is next on a Harbor Commission Meeting agenda. Please feel free to continue to participate in future meetings and try to attend the public stakeholder meeting being held as follows:

Date: 12/14/2022 at 5:00pm
Location: Newport Beach Civic Center Community Room
100 Civic Center Drive
Newport Beach, CA. 92660

Best regards,



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

From: Nick Aliberti <nickaliberti@gmail.com>
Date: Tuesday, December 13, 2022 at 5:19 PM
To: "Beer, Ira" <IBeer@newportbeachca.gov>
Subject: Mooring Configuration

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

Hello Ira Beer:

I have attended the last couple of meetings where the new Mooring Configuration has been discussed. The heliacal mooring screws were planed, then eliminated because of cost and difficulty servicing them. Board members criticized the alignment of the moorings in the J section.

Seasoned mooring service people explained how the winds and currents move different sized boats out of alignment.

Now the plan has evolved so we keep our original weights.

The point that seems to be overlooked is that if we move all of the moorings closer together while using the same weights, the boats will still move with the winds and currents, resulting in higher risk of collisions.

I cannot support the plan.

Sincerely, Nick Aliberti J-310

From: chris bliss <chrisbliss7777@gmail.com>
Sent: December 14, 2022 2:26 PM
To: Harbor Commission
Subject: America's Cup Harbor pictures and video

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

To: Newport Beach City Council Members.

Subject: Moorings.

Dear City Council members,

I have tried to keep an open mind as to the mooring field changes that you are proposing for Newport Harbor, So, yesterday I drove to San Diego, rented a boat, and went to America's Cup Harbor to see for myself exactly the kind of mooring system you want to implement in our Harbor.

This is what I found:

Newport Harbor is one of the most picturesque locations in the world. America's Cup Harbor in San Diego looks like the COSTCO parking lot. This system would be extremely detrimental to the beauty of our harbor if adopted. Also, it is a harbor within a harbor, completely protected from currents and strong winds, and has totally different conditions from Newport Beach. This fore and aft arrangement has boats much too close together and there is no maneuvering room with this mooring system, making it incompatible with the conditions in Newport. If this system were implemented in Newport, there would inevitably be collisions, entanglements in mooring lines and possible injuries.

Going onto a mooring is not like parking a car.....conditions must be favorable, and how the boat approaches the mooring is critical. Many times in my 30+ years as a mooring owner I have attempted to go onto my mooring when the wind was blowing hard, I was able to grab the spreader line but the wind, or current, or both, was so strong that even as I tried to secure the line to my boat with all of my strength, it was ripped from my hands, I had to run back to the cockpit and take the helm, go forward and around, and take another attempt at securing to the mooring. If there were other boats in front or behind me, we would have crashed into each other and damage or injuries were likely to occur.

Please see the video and pictures I took yesterday at America's Cup Harbor:

<https://blissphotography.smugmug.com/Americas-Cup-Harbor-Boat-parking-Lot/>

Why are you trying to cram this terrible plan down our throats? It will be detrimental to the views of the homeowners, terrible for the boaters who use the moorings, and will negatively impact the beauty of our harbor.

The places in our harbor where the moorings are misaligned and there are stray buoys in the fairways can be easily fixed without disrupting hundreds of people and waisting millions of tax dollars that could be put to much better use elsewhere.

Thank you.

Respectfully,

Christopher Bliss

From: Jennifer Krestan <jenniferkrestan@yahoo.com>
Sent: December 15, 2022 12:15 PM
To: Harbor Feedback; Beer, Ira; Cunningham, Scott; Yahn, Don; Williams, Gary; Harbor Commission; Marston, Marie; Scully, Steve; Svrcek, Rudy; Blank, Paul
Cc: Newport Mooring Association
Subject: Re: Newport Harbor Mooring Field Reconfiguration - Two questions

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

Dear Commissioners:

1. Why was the mooring field with the least exposure to tides, currents, and wind events chosen for the first test installation of the proposed redesigned mooring field instead of one of the mooring fields that experiences all the negative factors in the extreme?

Normally when one is designing or installing a new product, whether it is a dog collar or a space shuttle, it is tested under worse-case-scenario conditions. The opposite of this tried-and-true method is being implemented with the choice of the test mooring field location.

2. Has anyone on the Newport Beach Harbor Commission reached out to the San Diego Board of Port Commissioners to find out why the America's Cup Harbor design has not been implemented in any other area in San Diego Harbor in the past 40 years?

Thank you,

Jennifer Krestan

From: Tim Lewis <zooterincm@aol.com>
Sent: December 15, 2022 10:20 PM
To: Blank, Paul
Subject: Mooring meeting

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Paul it really seemed unfair or just plain ignorant to have that meeting during the boat parade. What boat event is more important in Newport? It could have been changed.

Tim Lewis

Sent from AOL Mobile Mail

From: Jim Palmer <jimpalmer8088@gmail.com>
Sent: December 20, 2022 1:13 AM
To: Beer, Ira
Cc: Blank, Paul; Harbor Commission
Subject: Comments & Questions ahead of 1/11/2023 Harbor Commission meeting
Attachments: Newport Beach residents weigh in on a p...pdf; Newport Beach to consider trial 4-month...pdf

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Vice Chairman Beer et al
Harbor Commission
City of Newport Beach

Again, thank you for your position on the Harbor Commission and choosing to tackle the important issues impacting our harbor.

This message is to share my views on Commission Objective 2.3 to Improve Navigation Safety, Allow for Additional Moorings Within the Fields and Mooring Size Exchanges Requests ahead of the 1/11/2023 Harbor Commission meeting.

I am a mooring permit holder and attended the 11/9/2022 Harbor Commission meeting, the 12/14/2022 stakeholder meeting and have read everything I can locate on the City's website about the topic. My views are as follows:

- a) Comment: I support the commission proceeding toward testing one or two mooring rows for the proposed mooring reconfiguration
- b) Comment: I strongly oppose any Title 17 changes until after stakeholders can apply the 'learnings' from the test rows and then, and only then, propose relevant and appropriate changes to Title 17
- c) Questions: I spoke at the 12/14/2022 stakeholder meeting and, while discussing the Title 17 redline was not an option as revisions were underway with the city attorney, I suggested the commission approve a test of the mooring reconfigurations prior to changing Title 17. Your reply was that changes to the Title 17 are necessary prior to conducting a test. My time was up and you did not elaborate, however my follow up questions could/should have been:

1. By what authority are changes to Title 17 necessary to become city

ordinance prior to testing the feasibility of the proposed mooring reconfiguration? Harbor Commission? City? County? State? Federal?

2. By what means can the process be changed to approve a test prior to making any changes to Title 17?

For reference, the City has precedent testing concepts prior to making changes. One example is the temporary closure of Tustin Ave at Cliff Dr while the city considers the traffic impact of the Mariners Mile development project. (LA Times articles attached)

d) Comment: I urge the Harbor Commission to hold a stakeholder meeting dedicated specifically to address the Title 17 redline version at least two weeks prior to the Harbor Commission putting such redline version to a vote. Such a stakeholder meeting is appropriate given the strong stakeholder interest and response to the prior redline versions released for the 10/12/2022 and 11/09/2022 Harbor Commission meetings, respectively.

Thank you for taking my views under consideration and thank you again for all you do for the city.

Jim Palmer

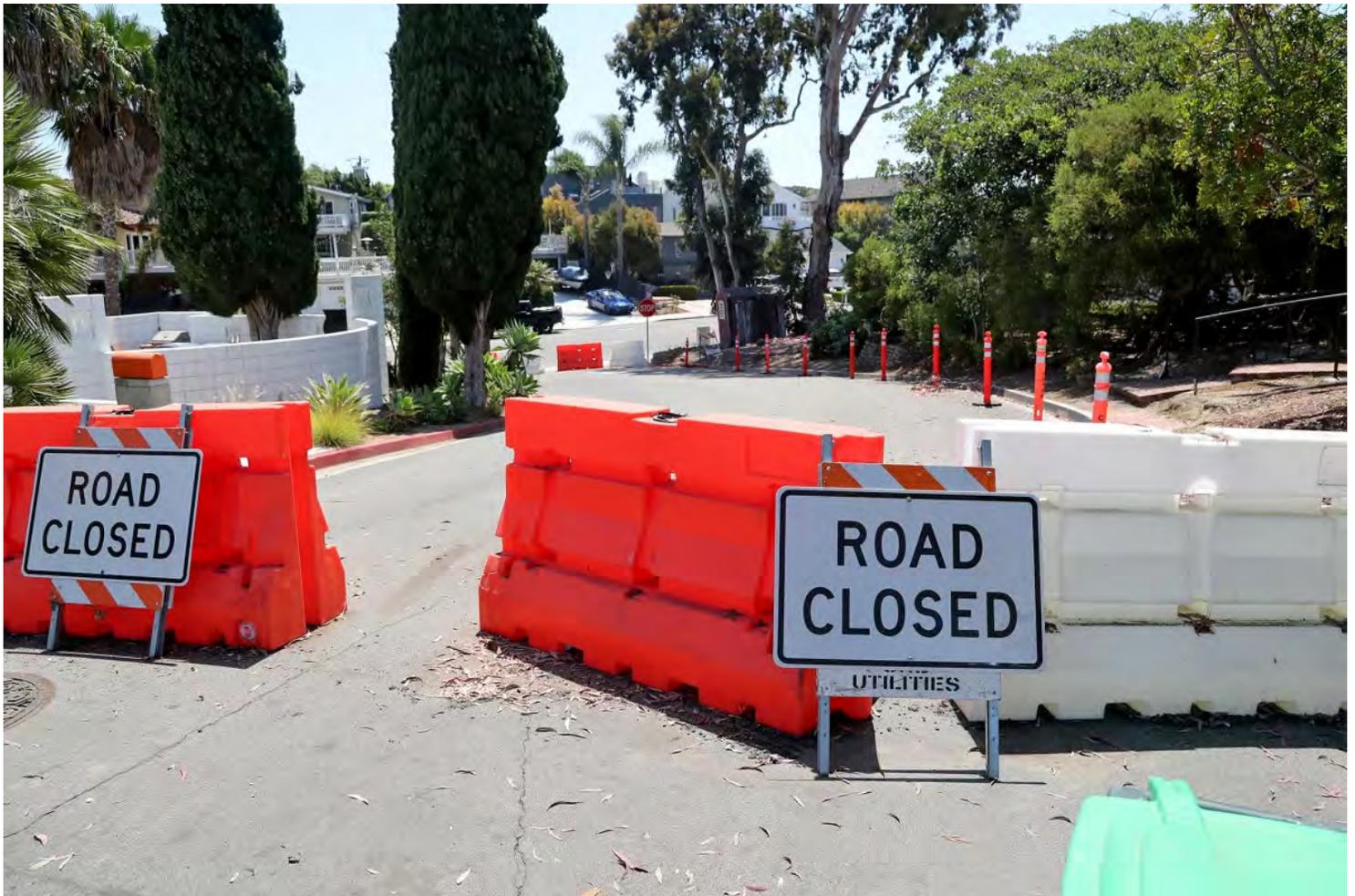
Mooring Permit D10

949-433-6512



NEWS

Newport Beach residents weigh in on a partial permanent closure of Tustin Avenue



Temporary barricades block access along Ocean View Avenue at Tustin Avenue on Wednesday. (Kevin Chang / Staff Photographer)

BY LILLY NGUYEN | STAFF WRITER

JUNE 29, 2022 6 PM PT



The barricades that were part of a traffic experiment on Tustin Avenue at Cliff Drive are getting removed, but residents worried about street safety there will have to wait a little

longer for a resolution to an issue initially brought before the City Council last year.

Barriers were [first placed in November](#) as part of what was to be a four-month-long traffic period study prompted by Newport Beach residents who live on Tustin and Ocean View avenues. The closure was extended during the spring as the city continued to study the issue.

On Tuesday night, the Newport Beach City Council unanimously moved to remove those barricades but directed staff to return with more options on how to help alleviate traffic in the area.

Both Tustin and Ocean View avenues are relatively narrow, spanning about a width of 28 feet curb to curb. Both streets lack public sidewalks and allow for parking, which forces pedestrians and bikers into the street, residents told the City Council last August.

Residents on Tustin Avenue argue that many of their houses are what they call “front-loaded,” meaning garages and driveways on that street take direct access from the street as opposed to garage access from alleys — common for houses in Newport Heights.

City staff said during the study traffic volume decreased on Tustin Avenue south of where the barricades were installed and that, over time, drivers familiar with the area avoided Tustin Avenue altogether. But staff noted an increase in traffic on adjacent streets like Ocean View Avenue, where daily traffic increased by 51%, and Avon Street, adjacent to businesses where daily traffic increased by 49%.

Residents spoke both in support and against a permanent closure, with a number of others living nearby arguing that the closure would just push traffic onto their streets.

Up for discussion by the City Council Tuesday night were some options: to make the closure permanent, to make Tustin and Ocean View avenues one-way, to establish a full or partial closure at Avon Street, to provide parking restrictions on one side of Tustin

Avenue, to construct a sidewalk on one side of Tustin or to install streetlights on both Tustin and Ocean View.

Mayor Kevin Muldoon did not favor the option of making the closure permanent.



Temporary barricades block access along Ocean View Avenue at Tustin Avenue on Wednesday. (Kevin Chang / Staff Photographer)

“There’s a perception that it’s a zero sum game. It’s either got to be a cul-de-sac at the top or nothing at all and at the same time, I heard people say, ‘Just please do something.’ I don’t support the permanent closure at the top, but I think a lot has to be done — not just something,” said Muldoon.

Councilwoman Diane Dixon acknowledged that Tustin Avenue is one of the city’s most narrow streets and was a thoroughfare from Pacific Coast Highway. She said the easiest, most logical safety enhancement would be to install sidewalks.

Dixon said she knows sidewalks are controversial in Newport Heights, but she considers them a reasonable solution if the No. 1 concern is safety.

“I hear or saw [in the presentation] nobody wants sidewalks. No one wants limited parking. No one supports any other solution other than closing off Tustin up at Cliff. I think there still is a solution there somewhere,” said Dixon, who added that she wanted to see more options. “We have heard from the residents. I think it is unanimous of the residents on Tustin that they’re pleading with their city for help. I would like a little give and take on both sides — the city and the residents. Can we find a solution?”

Councilwoman Joy Brenner said traffic would only continue to get worse in the area. She suggested making it more difficult for people who don’t live in Newport Heights to use the streets there as a thoroughfare.

“I’m afraid ... if we take away this dead end ... that [residents are] all going to be coming back to us at some point in time and saying you’ve got twice as many people coming up Riverside and Tustin to go through Newport Heights as we need,” said Brenner.

Brenner said she felt it would be short-sighted for city officials and residents to attempt to return traffic to the way it was when “we know it’s going to get worse with all that development down there.

“There is no way in the world it’s not going to get worse. Bureaucrats are notorious for if it doesn’t affect them during their election cycle, then they don’t do anything about it, but we need to do something now before those developments get built down there that is going to significantly reduce traffic in Newport Heights.”

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Lilly Nguyen

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Lilly Nguyen covers Newport Beach for the Daily Pilot. Before joining the Pilot, she worked for the Orange County Register as a freelance reporter and general assignment intern. She earned her bachelor's in journalism at Cal State Long Beach. (714) 966-4623.

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NEWS

Newport Beach to consider trial 4-month, partial closure of Tustin Avenue



Up for council consideration is the temporary closure of Tustin Avenue at Cliff Drive for a four-month study period where city staff will analyze the closure's impacts on traffic. (Mark Boster / Los Angeles Times)

BY LILLY NGUYEN | STAFF WRITER

AUG. 21, 2021 1:56 PM PT



After a brief break for the month of August, the Newport Beach City Council will be returning to the dais this upcoming Tuesday to consider the temporary and partial

closure of Tustin Avenue.

The proposed closure would be at the north end of Tustin Avenue at Cliff Drive, where residents between Avon Street and Cliff Drive on Tustin and Ocean View Avenue have raised concerns about existing safety concerns between pedestrians and vehicular traffic in the area.

Both Tustin Avenue and Ocean View Avenue are relatively narrow — about 28 feet in width curb to curb — with parking allowed on both sides and no public sidewalks, meaning that pedestrians often have to walk into the street.

Additionally, due to the width of the streets, opposing traffic typically will need to pull to the side or yield to pass. City staff said the average daily combined traffic on both streets — between April 19 to 25 this year — was 945 trips. Trips associated with the residential homes in that area accounted for about 295, so there were about 650 non-local trips via Tustin and Ocean View avenues combined.

A staff report prepared for the meeting said that a neighborhood petition was submitted to the city, including the signatures of at least 26 property owners of the 31 residential addresses there. Three properties were vacant.

City staff said the closure would be for a temporary four months, during which staff would analyze any potential impacts on traffic and determine whether or not a permanent closure of that street to vehicular traffic should be considered by the City Council.

Council members will also hear several appeals, including one on the denied removal of two lemon-scented gum eucalyptus trees on Ashford Lane.

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Lilly Nguyen covers Newport Beach for the Daily Pilot. Before joining the Pilot, she worked for the Orange County Register as a freelance reporter and general assignment intern. She earned her bachelor's in journalism at Cal State Long Beach. (714) 966-4623.

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From: Peter Giammanco <pjgiammanco@gmail.com>
Sent: December 26, 2022 1:57 PM
To: Harbor Commission
Subject: Proposed City Mooring Plan

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

As a property owner on South Bay Front I am extremely concern over the proposed changes to the mooring plan. Specifically -

1. I paid nearly \$7 million for the property I own and one of the major selling aspects was the fact that my property looks out to the bay right between two moorings. In other words - unobstructed views of the bay. Based in the proposal I've seen my unobstructed view will now become obstructed thereby negatively affecting the value of my property - let alone the view we have of the bay. This will cause us great economic harm and uncomfortableness.
2. The increased traffic and safety of the bay. By increasing the moorings and placing them closer together there will be an increased likelihood of incidents due to tight maneuvering required of boat owners as well as increased traffic throughout the waterways.

We strongly object to the changes.

Thank you for your consideration of these facts.

Pete Giammanco
902 South Bay Front
Newport Beach, CA. 92662

From: Donald Farley <dvfarley@att.net>
Sent: December 26, 2022 2:47 PM
To: Beer, Ira; Harbor Feedback
Cc: mail@yournma.com
Subject: Response following 12/14/22 Stakeholder meeting
Attachments: Ira Beer, Newport Harbor Commissioners, 12-22-22.pdf

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

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

December 22, 2022

COMMENTS REGARDING: Stakeholder meeting on 12/14/2022 regarding proposed plan to reorganize moorings in Newport Harbor

Ira Beer, Newport Beach Harbor Commissioner and Vice Chair, and Newport Beach Harbor Commission

Comments dated November 2, and November 13, 2022 were sent. After attending the December 14, 2022 meeting, the following comments are submitted for your consideration.

SUMMARY:

It seems that at least two goals of proposed changes to the mooring fields in Newport Harbor (Safety and improved utilization) would be compromised by the proposed plan and would be at odds with the best interests of the harbor as a whole.

COMMENTS AND CONCERNS INCLUDE:

The presentation by Mr. Beer addressed several issues, but two of the more consequential seemed to be 1) safety, and 2) open water/improved utilization within the harbor.

Regarding safety:

- a) Everyone wants a safe harbor, so there is no argument, except how to achieve safety.
- b) There has been no data presented that would suggest that the current mooring arrangement is unsafe.
- c) The near unanimous opinion of individuals with a practical knowledge of boating is that proposed changes would create a less safe environment for mooring users and for human-powered craft (e.g., kayaks, paddleboards, fishermen, etc.) using the harbor.
 - i. Mooring users; due to the close proximity of boats (bow to stern) when approaching or departing a mooring due to current and wind conditions common in the harbor.
 - ii Human-powered craft; due to the added open water that would deprive them of the relative protection that they seek in the present mooring fields.
- d) In short, unnecessary motor-powered craft should not be encouraged in mooring fields.

Regarding open water/improved utilization:

- a) The current mooring arrangement actually encourages harbor use by encouraging human-powered activities while discouraging unnecessary motor-powered craft in mooring fields where they shouldn't be in the first place.

OTHER OBSERVATIONS:

Using Americas Cup Harbor in San Diego as a model for proposed changes at Newport Beach Harbor:

- a) For all of its claimed virtues, even after its approximately 40 years of existence, the arrangement there has not been copied significantly elsewhere. There may be a reason why.
- b) Americas Cup Harbor seems a poor match for Newport Harbor
 - i. There is much less public use (Kayaks, paddleboards, etc.) in Americas Cup Harbor
 - ii. Newport Harbor has much different current and wind conditions.

Floats on mooring anchor chains to protect eel grass:

- a) Many, probably most, parts of the harbor do not have eel grass to protect.
 - i. Periodic dredging has a greater impact.
- b) Floats would compromise the holding power of mooring anchors.
- c) Floats could interfere with deep draft boats.

Segregating boats by size:

- a) Segregation (except for the largest boats) is unnecessary and undesirable. Segregation would unnecessarily require the relocation for many boats, take away the character of the harbor, make the harbor look like a parking lot instead of its current magical appearance, and compromise the relative protection of mooring fields for human-powered craft/activities.
 - i. Many (me included) have had their moorings for many years (in my case 30 years) and do not want their mooring location changed.

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
139 Carlin Lane
Riverside, CA 92507
909-228-6970
dvfarley@att.net
Mooring J54

c. Newport Mooring Association (Mail@YourNMA.com)

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

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

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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

c. Newport Mooring Association (Mail@YourNMA.com)

From: Miller, Chris
Sent: January 03, 2023 4:11 PM
To: Mike Fleming
Subject: RE: Posted notice of public hearing

Hi Mike,

Thank you for reaching out and for expressing your concerns to me.

Unfortunately, however, I am not directly involved with this project as mooring responsibility has since been shifted to our capable Harbor Department. I have only been keeping an eye on this project from afar because the engineering work was completed under one of my contracts.

With that said, providing public comments and participating during the various meetings is always a good way to let your thoughts be heard.

Thank you,
Chris

-----Original Message-----

From: Mike Fleming <captmikedef@me.com>
Sent: December 20, 2022 10:13 AM
To: Miller, Chris <CMiller@newportbeachca.gov>
Subject: Posted notice of public hearing

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

Hello Chris: I wanted to make a plea to the city to reprioritize the current boondoggle plan to place all the moored boats in double rows within 20" of each other separated by much wider fairways, to apparently increase the number of revenue generating city owned mooring and encourage an increase in traffic of the unlicensed unqualified primarily less sober less skillfully helmed rental Duffys through our children at play neighborhoods. The inevitable increase of property damage and bodily harm will no doubt cost the the city much more than the shore side viewing pleasure will be worth. I think this hearing to discuss the reconfiguring of the the woefully inadequate public dock space for the current number of mooring permittees is a better solution to a problem that actually exists. Why the current harbor management is not working with permittees that are currently not utilizing their mooring is a mystery to me. Adding dry storage on the dry sand areas adjacent to every street dead ended into the sea walls on the harbor side seems like a missed opportunity. Also at 15th street the addition of a sea wall on the east side attached to and inline with the first house like the one at 19th st would make the shallowest side of the dock actually it usable at high or low tide. This would probably work in many of the current public docks. I really appreciate the work you have been doing these past years. Thank you for having read this far.

Merry Christmas

Mike Fleming

USCG Master 100 tons
3419 Via Lido #295
Newport Beach, Ca. 92663
714-323-9447

From: John Fradkin <john.fradkin@gmail.com>
Sent: January 16, 2023 4:12 PM
To: Harbor Commission
Subject: Comments and video regarding Tidal Currents in Newport Harbor vs Americas Cup Harbor as it relates to Mooring Field Design
Attachments: red arrows tidal current americas cup.png

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

City of Newport Beach Harbor Commissioners,

With regards to the suitability of the proposed double row mooring field layout patterned after the one in Americas Cup Harbor, there has been much discussion regarding how different the conditions are between the two locations. Thanks to the ingenuity of George Hylkema, the Newport Mooring Association has performed an objective test using a Chip Log to show and quantify the differences in tidal currents between the two locations. Here is a link to a YouTube video of the experiment:

<https://www.youtube.com/watch?v=bEiC0z5VFjo&t=2s>

Please watch it. It's quite impactful and it's only 4 minutes and 43 seconds long. The NMA used some footage from this video at the January 11th Harbor Commission meeting, but lighting and sound were not optimized in Council Chambers when the video was played, and the NMA was also forced to break the video into two segments because of the three minute limitation per speaker rule, so it was perhaps less impactful than it should have been. Also Commissioners Yahn and Cunningham were not in attendance that evening and I believe that it is important that all the Harbor Commissioners see this video.

The experiment using the Chip Log produced the expected results. There is a strong tidal current present in Newport Harbor and no tidal current whatsoever in Americas Cup Harbor. Newport Harbor is in fact like a river four times a day. The presence of this strong tidal current in Newport Harbor makes the act of a vessel either hooking up to its mooring, or leaving its mooring, challenging when the current is strong.

We took 15 measurements in Newport Harbor. The average time for the chip log to move 40 feet was in fact 26 seconds. That means it would take 13 seconds to move 20 feet. 20 feet is the amount of space allocated in Commissioner Beer's double row mooring field proposal between paired boats.

I have attached a visual aide to this email showing the easiest example to understand. In the example shown here, if you are the vessel leaving it's mooring (big red arrow), in these common conditions, after you disconnect from your mooring you will have 13 seconds before the tidal current pushes you into contact with the vessel located directly behind you. This 13 second time is from the effect of the current only. If there are headwinds aligned with the current, which are likely because westerly winds are normal in Newport Harbor, it will make it this situation even worse and the time to impact could be less than 13 seconds.

Contact occurs in 13 seconds. That means that you really only have 9 or 10 seconds to safely put the boat in gear and start moving forward. Your propeller will be in the vicinity of your own mooring gear in just a few seconds. Is that enough time? Is that safer than the current mooring field configuration? Is that enough time to make sure your vessel is clear of your own spreader line? Picture a singlehander with a high windage powerboat and with engine controls on the flybridge only.

Commissioner Beer proposes to "test" the double row mooring field layout in the C Field at a cost of about \$400,000. I now feel that expensive test is unnecessary and a waste of \$400,000. We now know the results of that test. It's physics. The results will be the same -- 13 seconds to contact. There is very little else that the test will prove.

Let's save the City \$400,000 and not do the test. The double row mooring field layout does not belong in Newport Harbor. It was an interesting idea, but let's move on and only consider tried and true single row mooring field layouts if we are going to make any changes at all.

In summary, the tidal current is strong in Newport Harbor and non-existent in Americas Cup Harbor. Installing the double row mooring field layout in Newport Harbor would be irresponsible from a safety standpoint.

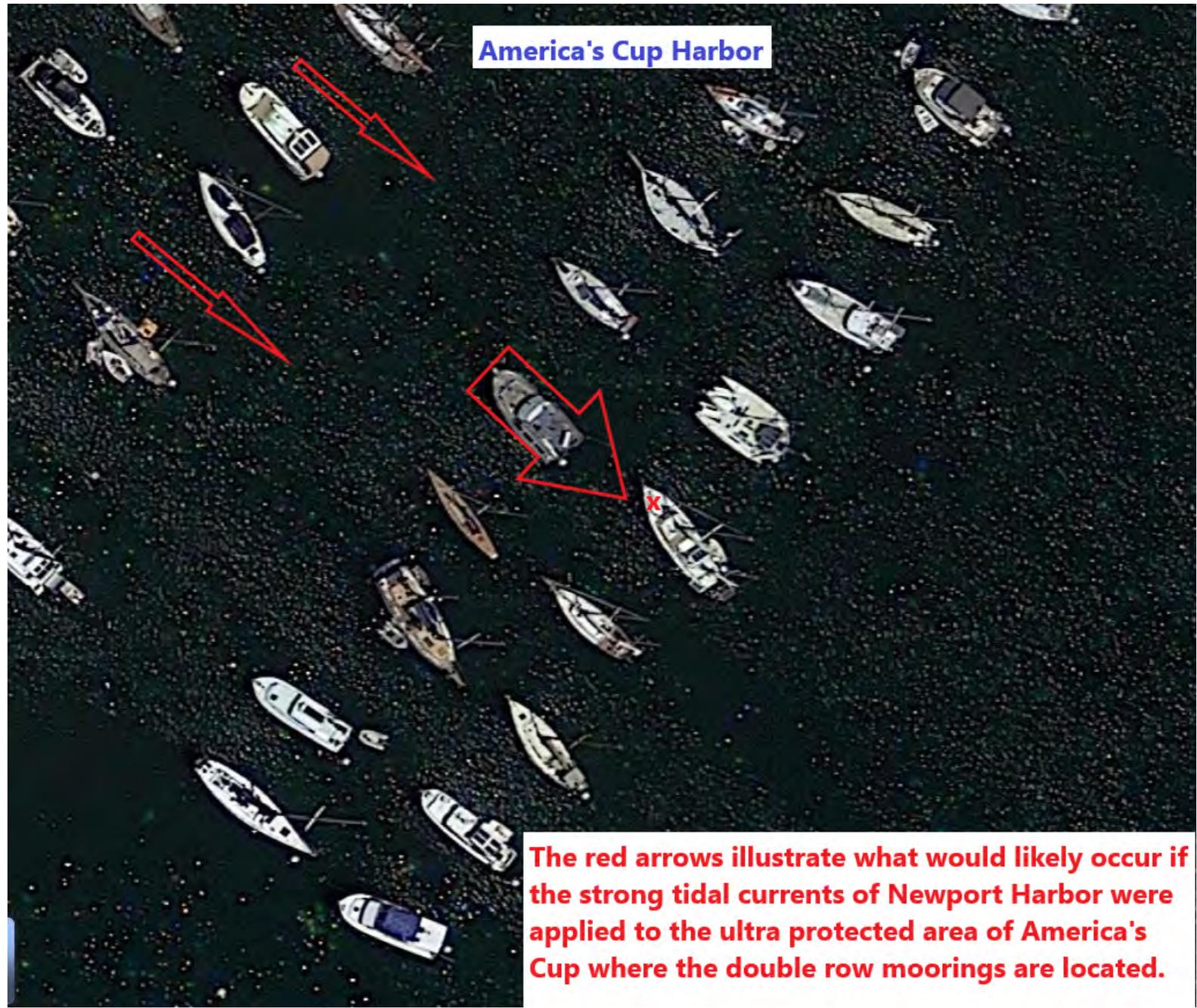
Respectfully,

John Fradkin

Mooring Permittee

NMA Boardmember

America's Cup Harbor



The red arrows illustrate what would likely occur if the strong tidal currents of Newport Harbor were applied to the ultra protected area of America's Cup where the double row moorings are located.

From: Wade Womack <wade@orangecoastla.com>
Sent: February 07, 2023 3:36 PM
To: Harbor Commission; Harbor Feedback
Subject: Follow up from January Harbor Commission meeting
Attachments: special anchorage Coast Guard exclusion determination.pdf; Coast Guard Coordinates for mooring fields.pdf

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

Dear Chair Scully and Harbor Commissioners,

At the January Harbor Commission meeting I commented on the 2012 collaborative effort between that involved the NMA, the City and the Coast Guard in regards to updating the existing mooring boundaries. I referenced a few Coast Guard documents that support the comments and indicated I would provide the documents to the commission.

As promised, please find the two attachments. I highlighted some pertinent areas that support my comments that the existing designated special anchorages do not interfere with general navigation. In my opinion, the goal of widening internal fairways of the mooring fields by pushing mooring rows together is problematic because it will make using the moorings more difficult and will invite unnecessary boat traffic into the mooring fields which runs counter to the intent of these designated special anchorages.

I hope we can all collaborate to find incremental and voluntary methods to enhance the mooring fields.

Thank you for your consideration,

Sincerely,

Wade Womack

USCG CATEGORICAL EXCLUSION DETERMINATION

Modify 33 CFR § 110.95, Expand Anchorages in City of Newport Beach, California

The Coast Guard proposes to enlarge thirteen special anchorage areas (or mooring fields) in the Newport Beach Harbor, City of Newport Beach, California, to accommodate additional vessels. The action will be accomplished by modifying 33 CFR § 110.95, Newport Beach Harbor, California, as described in detail in the attached Environmental Checklist.

The increased mooring areas are nominally larger than the originally charted mooring areas. Figure 1 shows the current anchorage and its 13 mooring areas. The anchorage boundaries were first chartered by the Coast Guard in 1967 and modified in 1986 (CGFR 6746, 32 FR 17728, Dec. 12, 1967, as amended by CGD11802, 51 FR 2882, Jan 22, 1986), but they apparently date much earlier as the lines were originally established by the Army Corps of Engineers and the City of Newport Beach through a letter of agreement in 1941. Over the years, the anchorage mooring fields were gradually over populated with moored boats. As moorings were added or overhauled, the new moorings were often located outside the charted areas of the original anchorages. Over time, harbor users have been accustomed to this *ad hoc* configuration, which has existed for up to 25 years. The Coast Guard desires to realign the boundaries in order to reflect the way the harbor currently is used. The enlargement of the anchorages would not pose any waterway or navigational hazard, or restrict harbor use in any way.

This NEPA documentation is not *after the fact* of the Coast Guard making a decision to expand the Newport Bay anchorages, but it is *after the fact* of the impact of the small boats that have been mooring for many years in the water surface areas around the edges of the authorized anchorage. The Coast Guard's responsibility for assessing the environmental impacts of changing anchorage boundaries is limited to the impacts caused by regulating access over or under navigable waters within the anchorage, and limited to the operation of USCG vessels or aircraft to enforce the anchorage.

This action is not expected to result in any significant adverse environmental impacts as described in the National Environmental Policy Act of 1969 (NEPA). The proposed action has been thoroughly reviewed by the USCG in the attached Environmental Checklist, and the undersigned have determined this action to be categorically excluded under current USCG CE # 34 (g) from further environmental documentation, in accordance with Section 2.B.2 and Figure 2-1 of the National Environmental Policy Act Implementing Procedures and Policy for Considering Environmental Impacts, COMDTINST M16475.1D, since implementation of this action will not result in any:

1. Significant cumulative impacts on the human environment;
2. Substantial controversy or substantial change to existing environmental conditions;
3. Impacts which are more than minimal on properties protected under Section 106 of the National Historic Preservation Act; or,
4. Inconsistencies with any Federal, State, or local laws or administrative determinations relating to the environment.

**SOX.DAVID.
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Date

DAVID G. SOX
Environmental Preparer

Environmental Planning Program Manager
USCG Dep Cdr of Mission Support (DCMS),
Shore Infrastructure Logistics Center (SILC),
Environmental Management Division (EMD)

LE.
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*The USCG preparer signs for NEPA documents prepared in-house. The USCG environmental project manager signs NEPA documents prepared by an applicant, a contractor, or another outside party.

**Signature of the Environmental Reviewer for the Bridge Administration Program may be that of the preparer's.

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DATE

LCDR F. FAZIO
Responsible Official

Chief, Waterways,
USCG Sector Los Angeles/Long Beach
By direction

penalties for failure to timely provide certain notices or other material information. Under the rule, such assessments will be subject to reconsideration in accordance with the provisions of the regulation.

DATES: Effective May 16, 2012 and applicable to determinations made on or after that date.

FOR FURTHER INFORMATION CONTACT: Catherine B. Klion (*klion.catherine@pbgc.gov*), Manager, or Deborah C. Murphy (*murphy.deborah@pbgc.gov*), Attorney, Regulatory and Policy Division, Legislative and Regulatory Department, Pension Benefit Guaranty Corporation, 1200 K Street NW., Washington, DC 20005-4026; 202-326-4024. (TTY/TDD users may call the Federal relay service toll free at 1-800-877-8339 and ask to be connected to 202-326-4024.)

SUPPLEMENTARY INFORMATION: The Pension Benefit Guaranty Corporation (PBGC) administers the pension plan termination insurance program under title IV of the Employee Retirement Income Security Act of 1974 (ERISA). PBGC's regulation on Rules for Administrative Review of Agency Decisions (29 CFR Part 4003) provides rules governing the issuance of initial determinations by PBGC involving the matters set forth in the regulation and procedures for requesting and obtaining PBGC review of those determinations, either by appeal (a more formal proceeding) or by request for reconsideration (a less formal process), depending on the type of matter. A person that fails to exhaust administrative remedies under the regulation with respect to a determination may not be able to raise in court some legal defenses against enforcement of the determination that might otherwise have been available.

Section 4071 of ERISA authorizes PBGC to assess a penalty for failure to timely provide any notice or other material information required under ERISA sections 4001-4071 or 303(k)(4) or regulations thereunder. PBGC published policy guidance on its assessment and review of section 4071 penalties on March 3, 1992 (at 57 FR 7605), and July 18, 1995 (at 60 FR 36837).¹ On January 12, 2001 (at 66 FR 2857), PBGC published a proposed rule on Assessment of and Relief from Penalties under both ERISA section 4007 (dealing with payment of premiums) and ERISA section 4071.²

¹ The 1995 policy statement generally replaced the 1992 statement.

² Although it was published as a proposal with an invitation for public comment, the 2001 penalty policy proposed rule was (as its preamble stated)

Among the proposed actions was amendment of the administrative review regulation to make determinations with respect to penalties under section 4071 subject to that regulation, in the class of matters reviewable by reconsideration.³ No comments were received on the proposal.⁴

This final rule amends the administrative review regulation consistent with the 2001 proposal. This change will promote uniformity in PBGC's procedures for making and reviewing determinations. The provisions of the administrative review regulation will supersede any inconsistent provisions of the 1992 and 1995 penalty policy statements; in other respects, those policy statements will be unaffected.

Applicability

The amendment made by this rule applies to determinations under section 4071 made on or after May 16, 2012.

Compliance With Rulemaking Guidelines

PBGC has determined that this action is not a "significant regulatory action" under the criteria set forth in Executive Order 12866.

This rule is not subject to notice and comment rulemaking requirements under section 553 of the Administrative Procedure Act because it deals only with PBGC procedural rules. Because no general notice of proposed rulemaking is required, the Regulatory Flexibility Act does not apply. See 5 U.S.C. 601(2), 603, 604.

This action is associated with retrospective review and analysis in PBGC's Plan for Regulatory Review⁵ issued in accordance with Executive Order 13563 on "Improving Regulation and Regulatory Review."

not subject to notice and comment rulemaking requirements under section 553 of the Administrative Procedure Act because it dealt only with general statements of PBGC policy and with PBGC procedural rules. On November 17, 2006 (at 71 FR 66867), PBGC published a final rule adding a penalty policy appendix, drawn from the 2001 proposed rule, to its regulation on Payment of Premiums.

³ Premium penalties under ERISA section 4007 are already covered by the administrative review regulation. Premium penalty determinations are in the class of matters for which reconsideration is provided.

⁴ On May 7, 2004 (at 69 FR 25797), PBGC proposed a new penalty policy for failures to issue Participant Notices as required under ERISA section 4011 and PBGC's regulation on Disclosure to Participants (29 CFR part 4011), the provisions of which are inapplicable to plan years starting after 2006. Comments received on that proposal were relevant to some aspects of the 2001 proposal, but not to the administrative review provisions.

⁵ See www.pbgc.gov/documents/plan-for-regulatory-review.pdf.

List of Subjects in 29 CFR Part 4003

Administrative practice and procedure, Organization and functions (Government agencies), Pension insurance, Pensions.

For the reasons given above, PBGC is amending 29 CFR part 4003 as follows.

PART 4003—RULES FOR ADMINISTRATIVE REVIEW OF AGENCY DECISIONS

■ 1. The authority citation for part 4003 continues to read as follows:

Authority: 29 U.S.C. 1302(b)(3).

■ 2. In § 4003.1, paragraph (a) is amended by removing the words "(b)(1) through (b)(4)" and adding in their place the words "(b)(1) through (b)(5)" and by removing the words "(b)(5) through (b)(10)" and adding in their place the words "(b)(6) through (b)(11)"; paragraphs (b)(5) through (b)(10) are redesignated as paragraphs (b)(6) through (b)(11); and a new paragraph (b)(5) is added to read as follows:

§ 4003.1 Purpose and scope.

* * * * *

(b) *Scope.* * * *

(5) Determinations with respect to penalties under section 4071 of ERISA;

* * * * *

Issued in Washington, DC, this 6th day of April 2012.

Joshua Gotbaum,
 Director, Pension Benefit Guaranty Corporation.

[FR Doc. 2012-9095 Filed 4-13-12; 8:45 am]

BILLING CODE 7709-01-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 110

[Docket No. USCG-2010-0929]

RIN 1625-AA01

Special Anchorage Regulations, Newport Bay Harbor, CA

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is expanding the boundaries of the special anchorage areas in Newport Bay Harbor, California, to encompass and replace temporary anchorage grounds C-1 and C-2, and anchorage ground C-3. This rule realigns anchorage boundaries to reflect the way the harbor currently is used.

DATES: This rule is effective May 16, 2012.

ADDRESSES: Comments and material received from the public, as well as documents mentioned in this preamble as being available in the docket, are part of docket USCG–2010–0929 and are available online by going to <http://www.regulations.gov>, inserting USCG–2010–0929 in the “Keyword” box, and then clicking “Search.” This material is also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Lieutenant Lucas Mancini, Coast Guard District Eleven, telephone 510–437–3801, email

Lucas.W.Mancini@uscg.mil. If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On December 16, 2011 we published a notice of proposed rulemaking (NPRM) entitled “Anchorage Regulations: Subpart A—Special Anchorage Regulations, Newport Bay Harbor, CA” in the *Federal Register* (76 FR 78185). We received no comments on the proposed rule. No request for public meeting was made.

Basis and Purpose

The legal basis for this rule is: 33 U.S.C. 471, 1221 through 1236, 2030, 2035, 2071; 33 CFR 1.05–1; and Department of Homeland Security Delegation No. 0170.1, which collectively authorize the Coast Guard to define anchorage grounds.

This rule expands the designated special anchorage areas in Newport Bay Harbor, and removes other anchorage grounds, to align with the actual placement of existing mooring areas and reflect the way the harbor is currently used.

Background

Due to enhanced anchorage population over the years, the mooring areas being used in Newport Bay Harbor are nominally larger than the special anchorage areas originally charted in 33 CFR 110.95. As moorings were added or overhauled, the new moorings would fall outside the existing boundaries, resulting in moorings lying outside the charted areas. Similarly, the anchorage grounds designated in 33 CFR 110.212 were originally used as temporary

overflow anchorages, but are now used regularly. Harbor users have been accustomed to this placement for the last 10 years.

The Mooring Master Plan Subcommittee of the City of Newport Harbor Commission led an outreach campaign involving a series of public meetings about aligning the anchorage regulations with actual harbor use patterns, and we understand that it did not receive any opposition from the waterway users. After these public meetings, the City of Newport asked the Coast Guard to amend its anchorage regulations. The Coast Guard therefore solicited public comment on proposed changes in the NPRM mentioned above. We received no comment on the proposal.

Discussion of Changes

The Coast Guard is finalizing the proposal without changes and realigning the anchorage boundaries in order to reflect the way the harbor currently is used. This rule removes § 110.212 and the three anchorage grounds found therein (anchorages C–1, C–2, C–3). The area covered by those anchorages is incorporated into the special anchorage area regulations at § 110.95. Anchorage C–1 is incorporated into area B–1 under revised § 110.95(m), and anchorages C–2 and C–3 is incorporated into area A–11 under revised § 110.95(k). An image of the anchorage areas is available in the docket.

The enlargement of the special anchorage areas does not pose any waterway or navigational hazard, or restrict harbor use in any way. The Army Corps of Engineers has been consulted and did not have any opposition. We anticipate that this rule would have no impact on fishing or boating because the amendment adjusts the lines to fit the current layout of moorings in Newport Harbor. Small craft are not restricted in the harbor. Berthing and anchoring in Newport Harbor also is regulated by Orange County ordinance and the City of Newport’s municipal code. The enlargement of the special anchorages does not impact these laws; for the convenience of the reader we have included references pertaining to local municipal codes in the rule.

Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on 13 of these statutes or executive orders.

Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. The Coast Guard is realigning anchorage boundaries in order to reflect the way the harbor currently is used. The enlargement of the anchorages does not restrict harbor use in any way.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule will have a significant economic impact on a substantial number of small entities. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

(1) This rule may affect the following entities, some of which might be small entities: The owners or operators of commercial and recreational vessels intending to transit or anchor in the affected area.

(2) The impact to these entities will not, however, be significant since this area will encompass only a small portion of the waterway and vessels can safely navigate around the anchored vessels.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), in the NPRM we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency’s responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132. Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule would not result in such expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule does not cause a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it will not have a substantial

direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a “significant energy action” under that order because it is not a “significant regulatory action” under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.ID, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. An “Environmental Analysis Check List” and a categorical exclusion determination supporting this determination are available in the docket where indicated under

ADDRESSES. This rule involves changing the size of special anchorage areas.

List of Subjects in 33 CFR Part 110

Anchorage grounds.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 110 as follows:

PART 110—ANCHORAGE REGULATIONS

■ 1. The authority citation for part 110 continues to read as follows:

Authority: 33 U.S.C. 471, 1221 through 1236, 2030, 2035, 2071; 33 CFR 1.05–1(g); Department of Homeland Security Delegation No. 0170.1.

■ 2. Revise § 110.95 to read as follows:

§ 110.95 Newport Bay Harbor, Calif.

(a) *Area A–1.* The entire water area within beginning at latitude 33°36′09.3″ N., longitude 117°53′52.6″ W.; thence to latitude 33°36′11.4″ N., longitude 117°53′51.2″ W.; thence to latitude 33°36′04.0″ N., longitude 117°53′33.4″ W.; thence to latitude 33°36′03.9″ N., longitude 117°53′20.4″ W.; thence to 33°36′01.1″ N., longitude 117°53′09.9″ W.; thence to 33°36′01.1″ N., longitude 117°53′32.7″ W.; thence to 33°36′03.9″ N., longitude 117°53′41.9″ W.; returning to latitude 33°36′09.3″ N., longitude 117°53′52.6″ W.

(b) *Area A–2.* The entire water area within beginning at latitude 33°36′12.9″ N., longitude 117°53′44.2″ W.; thence to latitude 33°36′14.2″ N., longitude 117°53′44.3″ W.; thence to latitude 33°36′14.2″ N., longitude 117°53′20.6″ W.; thence to latitude 33°36′10.8″ N., longitude 117°53′20.5″ W.; thence to latitude 33°36′12.7″ N., longitude 117°53′29.9″ W.; thence to latitude 33°36′12.7″ N., longitude 117°53′35.4″ W.; thence to latitude 33°36′12.9″ N., longitude 117°53′37.0″ W.; returning to latitude 33°36′12.9″ N., longitude 117°53′44.2″ W.

(c) *Area A–3.* The entire water area within beginning at latitude 33°36′22.7″ N., longitude 117°54′12.6″ W.; thence to latitude 33°36′24.9″ N., longitude 117°54′12.6″ W.; thence to latitude 33°36′26.2″ N., longitude 117°54′11.3″ W.; thence to latitude 33°36′18.7″ N., longitude 117°54′00.5″ W.; thence to latitude 33°36′16.2″ N., longitude 117°54′02.9″ W.; returning to latitude 33°36′22.7″ N., longitude 117°54′12.6″ W.

(d) *Area A–4.* The entire water area within beginning at latitude 33°36′32.7″ N., longitude 117°53′56.6″ W.; thence to latitude 33°36′33.6″ N., longitude 117°53′56.6″ W.; thence to latitude 33°36′33.5″ N., longitude 117°53′26.2″ W.; thence to latitude 33°36′32.9″ N.,

longitude 117°53'26.2" W.; thence to latitude 33°36'32.6" N., longitude 117°53'33.8" W.; thence to latitude 33°36'32.4" N., longitude 117°53'36.7" W.; thence to latitude 33°36'31.7" N., longitude 117°53'40.9" W.; thence to 33°36'31.7" N., longitude 117°53'46.3" W.; thence to latitude 33°36'32.6" N., longitude 117°53'50.9" W.; returning to latitude 33°36'32.7" N., longitude 117°53'56.6" W.

(e) *Area A-5*. The entire water area within beginning at latitude 33°36'29.1" N., longitude 117°54'55.3" W.; thence to latitude 33°36'27.8" N., longitude 117°54'55.8" W.; thence to latitude 33°36'24.1" N., longitude 117°54'41.8" W.; thence to latitude 33°36'26.7" N., longitude 117°54'40.8" W.; thence to latitude 33°36'26.7" N., longitude 117°54'46.3" W.; returning to latitude 33°36'29.1" N., longitude 117°54'55.3" W.

(f) *Area A-6*. The entire water area within beginning at latitude 33°36'43.3" N., longitude 117°54'26.4" W.; thence to latitude 33°36'51.7" N., longitude 117°54'22.8" W.; thence to latitude 33°36'51.4" N., longitude 117°54'21.5" W.; thence to latitude 33°36'42.9" N., longitude 117°54'25.2" W.; returning to latitude 33°36'43.3" N., longitude 117°54'26.4" W.

(g) *Area A-7*. The entire water area within beginning at latitude 33°36'32.1" N., longitude 117°55'12.5" W.; thence to latitude 33°36'37.7" N., longitude 117°55'11.0" W.; thence to latitude 33°36'35.1" N., longitude 117°55'01.3" W.; thence to latitude 33°36'30.4" N., longitude 117°55'02.6" W.; thence to latitude 33°36'31.2" N., longitude 117°55'06.7" W.; returning to latitude 33°36'32.1" N., longitude 117°55'12.5" W.

(h) *Area A-8*. The entire water area within beginning at latitude 33°36'34.2" N., longitude 117°55'27.3" W.; thence to latitude 33°36'36.2" N., longitude 117°55'26.7" W.; thence to latitude 33°36'39.5" N., longitude 117°55'20.9" W.; thence to latitude 33°36'38.9" N., longitude 117°55'15.4" W.; thence to latitude 33°36'37.9" N., longitude 117°55'11.7" W.; thence to latitude 33°36'32.1" N., longitude 117°55'13.3" W.; returning to latitude 33°36'34.2" N., longitude 117°55'27.3" W.

(i) *Area A-9*. The entire water area within beginning at latitude 33°36'53.5" N., longitude 117°55'28.2" W.; thence to latitude 33°36'54.0" N., longitude 117°55'27.0" W.; thence to latitude 33°36'43.4" N., longitude 117°55'20.4" W.; thence to latitude 33°36'42.9" N., longitude 117°55'21.6" W.; returning to latitude 33°36'53.5" N., longitude 117°55'28.2" W.

(j) *Area A-10*. The entire water area within beginning at latitude 33°36'07.4" N., longitude 117°53'19.2" W.; thence to latitude 33°36'14.2" N., longitude 117°53'19.4" W.; thence to latitude 33°36'14.2" N., longitude 117°53'06.9" W.; thence to latitude 33°36'08.1" N., longitude 117°53'04.9" W.; thence to latitude 33°36'06.5" N., longitude 117°53'08.9" W.; thence to latitude 33°36'06.5" N., longitude 117°53'16.3" W.; returning to latitude 33°36'07.4" N., longitude 117°53'19.2" W.

(k) *Area A-11*. The entire water area within beginning at latitude 33°36'04.7" N., longitude 117°53'01.9" W.; thence to latitude 33°36'06.1" N., longitude 117°53'00.5" W.; thence to latitude 33°36'06.2" N., longitude 117°52'59.0" W.; thence to latitude 33°35'59.4" N., longitude 117°52'51.1" W.; thence to latitude 33°35'57.5" N., longitude 117°52'50.9" W.; thence to latitude 33°36'01.9" N., longitude 117°52'57.3" W.; thence to latitude 33°36'03.0" N., longitude 117°53'00.4" W.; returning to latitude 33°36'04.7" N., longitude 117°53'01.9" W.

(l) *Area A-12*. The entire water area within beginning at latitude 33°36'27.9" N., longitude 117°54'40.4" W.; thence to latitude 33°36'23.9" N., longitude 117°54'41.8" W.; thence to latitude 33°36'20.8" N., longitude 117°54'29.9" W.; thence to latitude 33°36'28.5" N., longitude 117°54'20.2" W.; returning to latitude 33°36'27.9" N., longitude 117°54'40.4" W.

(m) *Area B-1*. The entire water area within beginning at latitude 33°36'35.1" N., longitude 117°54'28.8" W.; thence to latitude 33°36'32.1" N., longitude 117°54'22.1" W.; thence to latitude 33°36'30.6" N., longitude 117°54'22.8" W.; thence to latitude 33°36'30.5" N., longitude 117°54'30.9" W.; returning to latitude 33°36'35.1" N., longitude 117°54'28.8" W.

Note to § 110.95: These anchorage areas are reserved for recreational and other small craft. Local law, including the City of Newport Beach Municipal Code 17.25.020, may provide for fore and aft moorings for recreational and small craft of such size and alignment as permitted by the harbor master.

■ 3. Remove § 110.212.

Dated: April 1, 2012.

J.R. Castillo,

Rear Admiral, U.S. Coast Guard, District Eleven Commander.

[FR Doc. 2012-9006 Filed 4-13-12; 8:45 am]

BILLING CODE 9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG-2012-0144]

RIN 1625-AA09

Drawbridge Operation Regulations; Long Island, New York Inland Waterway from East Rockaway Inlet to Shinnecock Canal, NY

AGENCY: Coast Guard, DHS.

ACTION: Interim rule with request for comments.

SUMMARY: The Coast Guard is temporarily changing the drawbridge operating regulations governing the operation of the Atlantic Beach Bridge, mile 0.4, across Reynolds Channel at Lawrence, New York. The owner of the bridge has requested a temporary change to the regulations to facilitate major rehabilitation at the bridge. It is expected that this temporary change to the regulations will help facilitate the bridge rehabilitation. This interim rule is intended to better meet the present needs of navigation by allowing the bridge rehabilitation repairs to continue on schedule while providing the public the opportunity to submit comments.

DATES: This interim rule is effective from April 23, 2012 through May 15, 2013. Comments and related material must reach the Coast Guard on or before May 15, 2012.

ADDRESSES: You may submit comments identified by docket number USCG-2012-0144 using any one of the following methods:

(1) *Federal eRulemaking Portal:* <http://www.regulations.gov>.

(2) *Fax:* 202-493-2251.

(3) *Mail:* Docket Management Facility (M-30), U.S. Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE., Washington, DC 20590-0001.

(4) *Hand delivery:* Same as mail address above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202-366-9329.

To avoid duplication, please use only one of these four methods. See the "Public Participation and Request for Comments" portion of the **SUPPLEMENTARY INFORMATION** section below for instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions on this interim rule,

From: Admin <mail@newportmooringassociation.org>
Sent: February 15, 2023 10:10 AM
To: Harbor Commission
Cc: NMA Email Board
Subject: NMA Follow Up to the Harbor Commission
Attachments: NMA's Examples and Benefits of Medium to Long Term Mooring Rentals--sk-v2.docx; NMAs Proposals being Studied .docx

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

To: Newport Beach Harbor Commission,

Recently the Harbor Commission asked the Newport Mooring Association to offer recommendations to help improve the mooring fields and address certain concerns raised by some members of the Commission regarding navigation inside some mooring fields and related matters.

In separate studies the NMA has documented that no real concerns existed and that the proposed ideas of moving massive amounts of moorings and boats was not a good idea and created major safety problems. Nonetheless, at the request of some members of the Commission, the NMA engaged in a study of ways to address some of these concerns, regardless of whether the concerns were well founded. The ideas under study by the NMA were presented at a workshop on January 30th for the benefit of the mooring permittees. At the meeting some fresh ideas were also suggested for future study.

Chairman Scully requested that the NMA provide the entire Harbor Commission with a summary of what the NMA presented at the meeting,

The following is a summary of what was presented by the NMA's subcommittee on Mooring Field Safety and Access.

At the workshop the questions that had been raised by some members of the commission were first outlined to put in perspective what the NMA was studying. Again, by presenting ways to address these questions, the NMA is not in any way suggesting there are any significant problems with the current configuration that need to be addressed.

The topics addressed were:

- a few fairways with obstacles or that have shifted over time
- the desire for more "Open Water"
- additional public use of moorings

- large boat placement
- mooring extension requests

The NMA then presented an outline of ideas it had been studying to address these topics. The presentation was based on the following handout made available to everyone at the meeting. The text of the handout follows (and is also attached):

Summary of Ideas being Studied to Address Questions Raised by the Harbor

Commission

The following ideas are being reviewed and studied by the NMA's Subcommittee on Mooring Field Safety and Access.

1. Addressing a Few Narrow Fairways and Obstructions

The NMA believes that there are very few situations that have created any difficulties in getting on and off moorings, and there have been no reported incidents of any significance, so it is inappropriate to state there are safety issues. For the minor issues that arise from time to time, there are simple adjustments that can be made. The following are historical tried and true methods:

a. Require spreader lines when vessels are off moorings under certain conditions. For example, if a vessel is off the mooring for a long term, if without a spreader line, the buoy extends too far into a fairway on a regular basis. The details and methods should be discussed and studied as there are many different methods for using spreader lines, pick up lines, and related methods of keeping stray buoys from going too far into a fairway. In cases where the buoys were set up for a larger boat, but where there is no boat or a smaller boat, the buoys and weights can be moved closer together.

b. Easy Fix. If a permittee refuses to keep his or her buoy out of the fairway following notice, the City can attach a spreader line and bill the mooring holder for the cost.

c. Make minor adjustments to widen a very narrow fairway. Using the B field as an example, the average mooring size is approximately 42 feet. In the B field, there are approximately two fairways that are half that width. A few minor adjustments can resolve the issue for one or two rows.

Cost to the City: Zero

No Need for Change in Harbor Code

2. Addressing the Desire for More “Open Water”

Open water for shoreline views or for areas of recreation. The NMA does not believe that any need for open water should focus on the mooring fields, in part, because increasing open water inside mooring fields will generally result in crowding boats together resulting in major safety issues. Also, increasing fairways for general navigation runs counter to mooring fields being dedicated anchorages which are not open to general navigation. Nonetheless, here are some ideas of ways to increase open water without resulting in safety concerns or violating the mooring fields as quiet anchorages.

a. Provide Incentives for Smaller Vessels. Over time, the current system encourages larger vessels to be assigned to moorings. This decreases open water areas. Currently, there are no incentives for reducing the size of a vessel on a mooring or size of a mooring (except for a reduction in the yearly fee, which many people are not aware of, or people are fearful that they would not be able to increase the size back at a later time).

Here are some ideas that over time would help contribute to some voluntary reduction in mooring or boat size.

1. Voluntary Reduction in Mooring Size. Educate permit holders that they can save money on their yearly fees by reducing the size of their moorings. For those people concerned that

“some day” they may want a bigger boat, the City should offer the mooring holder the option to increase the size of the mooring back to the pre-reduction size, by changing a small reinstatement fee.

2. Charge by Boat Size, not Mooring Size. Yearly fees could be charged by the size of a vessel on a mooring, not by the size of the mooring. This is worth studying and this system has been used in the past.

b. Voluntary Non-Use. Mooring holders may agree not to place a vessel on the mooring for a period of time, for example, 4 months, 9 months or longer, and thereby open up space on the water (or alternatively allow long term rental by the City as discussed later, or a combination of both). In exchange, if the mooring holder agrees to not place a vessel on the mooring for four months to a year, would pay only half the yearly fee, and if the permittee agreed to not put a vessel on the mooring for a year or more, he or she would pay no yearly fee, but would still need to maintain the buoy, weights and chain.

Cost to the City: Zero

Any reduction of average fees from increase in open water can be recaptured by revenue from the long-term rental of some of the moorings which are not being used.

No Need for Change in Harbor Code

3. Addressing Additional Public Use of Moorings.

It should first be noted that in the NMA’s view, this no more a problem than the fact that there are only so many slips, so many homes, so many parking spaces in the City. Moorings like any other property are limited. While the NMA believes that affordable boating does need to be kept affordable, adding additional moorings would be a mistake, since this would only further crowd a very crowded harbor and increase boat traffic. However, there is a way of increasing the

availability of moorings without increasing the impact on the dinghy docks, and all at no cost to the City. Here's an approach:

a. Creating Long-Term Rental Moorings.

As noted above, ask permit holders if they would voluntarily agree to take their moorings out of use for 9 months or more. In exchange, they would be relieved of having to pay some or all of the annual fee based on the amount of time they agreed to leave the mooring empty. For example, between four months and one year would result in a 50% savings, a year or more a 100% savings, (but they would still need to maintain the weights, buoys and chain). The City can then rent the mooring and will receive revenue at a reasonable rate. The revenue will more than offset any potential loss from the mooring holders who have agreed to this program.

Cost to the City: Zero

No Need for Change in Harbor Code

b. No impact on Dinghy Docks by Conditioning Rentals on Having Access.

Adding new moorings has a major impact on the public dinghy docks, which in turn has an adverse effect on current mooring permit holders. To offset this problem the City could require that a person renting a long-term mooring would need to make arrangements for a way to access the long-term rental, such as dock space at a marina, or rental of a dinghy rack, or dock space at a private home, or an organization that has a shuttle service like the two yacht clubs currently have.

Cost to the City: Zero

No Need for Change in Harbor Code

4. Addressing Large Boat Placement

The NMA does not believe that an occasional large boat in a row of smaller boats has been a problem in the past, and there have been no reported accidents, incidents, or complaints that we are aware of, and since getting on and off a mooring are not approached from the fairway closest to a mooring but by navigating parallel to the mooring. Nonetheless, there may be a few situations where a large vessel would be better placed in a row nearby. Here are some ways to address this situation without massive movements of boats and moorings:

a. First Identify an Actual Problem. If a complaint has been received or if the Harbor Master determines that there may be a significant problem, then conduct a survey of the adjacent moorings to ascertain if the larger mooring size in the row of smaller moorings is presenting significant difficulties or safety issues for the adjacent moorings. The survey can also include any homes with docks, or a nearby marina, which might need to use the fairway as the best way to access the home dock, or a marina finger. If there appears to be significant complaint(s) that affect safety or creates difficulties for other boats getting on or off moorings or adjacent slips, only then contact the boat owner to discuss the situation.

b. Voluntary Request to Move. Ask the owner of the mooring permit holder if they would be willing to move the mooring a few rows over or ask if they would agree to reduce the size of the mooring which would result in a lower yearly mooring fee.

c. Rental Priority or Move. If the owner would agree to decrease the size of the mooring but needs a place for the larger vessel at least for a period of time, give the person a priority on the rental of one of the larger moorings that might become available via the new long-term rental program.

d. Only for Major Size Issues. In relation to the above, no vessel which is less than 150% larger than the average size of the other moorings in the same row, shall be subject to requests for voluntary relocation.

Cost to the City: Zero

No Need for Change in Harbor Code

5. Addressing Extension Requests.

Historically the NMA has not taken a position on any particular mooring extension request or reduction request. In the past these matters were generally left to the discretion of the Harbor Master under conditions set by the City. The existing code provides for the process but has not been used for three years. The procedures should be reinstated. In addition, to further the need for some mooring holders to obtain a larger mooring (or smaller mooring) for their boating needs, the following would assist, to some degree:

a. Allow minor adjustments. Almost all marinas allow boats to be slightly larger than the size of the slip. A 3-foot allowance would resolve many cases for the need for an extension. The slight increase in size would be offset by the reductions in size utilizing the ideas previously discussed. The City could also charge for the additional length, and require that no part of the vessel extend into the fairway.

b. Priority to Mooring Holders Needing a Larger Mooring.

Currently one of the problems with a person acquiring a mooring is that there is no advanced notice of the availability of a mooring for sale. Some moorings are advertised, some not. If advertised, it may be on a number of different media, such as Craigslist, The Log, or Facebook. Persons interested in acquiring a mooring (or a larger or smaller mooring) are not necessarily looking at all of these media sources every day.

1. Place the Listing of a Mooring for Sale on a Single Website.

The person selling a mooring should be asked to provide notice on a website list that will show the mooring being available for sale and the asking price. This is similar to the way it is done with Avalon moorings. Then anyone looking for a larger mooring can monitor the website

to see the information. That would allow a person needing a larger mooring to acquire a larger mooring that comes up for sale. The website can be maintained by either the City or the NMA.

2. Priority to Persons Needing a Larger Mooring. Being on the email list and receiving early information about mooring for sale will allow a person needing a larger mooring to acquire the larger mooring much sooner than otherwise. If two persons are offering the same amount for the mooring, priority would be given to the person who was on the wait list for a larger mooring. Again, this process is in addition to the process in the existing code and is not meant to replace it.

Cost to the City: Zero

No Need for Change in Harbor Code

End of Text of Handout

The ideas presented were very well received by the mooring permit holders. This was a working meeting where people were free to express fresh ideas off the top of their head, some of which the NMA will be studying in the future. To keep the meeting focused on these topics, the NMA reminded everyone that the NMA's review, study, and concerns over the double row system, had been presented, and will continue to be presented at other meetings. This meeting was only to look at possible ways to improve mooring fields in a safe manner that takes into account questions that have been raised regardless of the validity or lack of validity of these questions. The NMA also noted that prior to this meeting, the NMA conducted a simple poll to its membership on whether the current Harbor Commission plan to reconfigure the mooring fields into a double row layout was favored or not. During the meeting the NMA released the results of that poll which were 148 to 6 against the new proposed configuration. At the meeting, those present were asked if anyone liked the double row idea better than NMA's ideas under study. No one wanted the double row system.

In addition to the well-received ideas under study and presented by the NMA, a some new fresh ideas where thrown out for the first time, most of which came from mooring permittees and have not been studied or endorsed by the NMA, but may be considered by the NMA in what is hoped to be a future presentation to the Commission. These not-yet-studied ideas included:

- a. Instead of requiring spreader lines in every mooring field when a boat is off its mooring for a long period of time, only using spreader lines in the fields or areas where buoys are presenting problems. Therefore, first conduct a study of which fields and which fairways are in need of this requirement.
- b. Appoint mooring field “Port Captains” in each mooring field to keep an eye on things, such as stray buoys and recommend changes when necessary. It will be each Mooring Field Port Captain’s responsibility to contact those mooring permittees in his or her field to get them to make any perceived changes before the Harbormaster is asked to follow up. The appointments can be done by the NMA with no need for City administration of these voluntary appointments.
- c. Make minor adjustments to mooring weight placement where appropriate to get moorings aligned properly. Require actual site plan coordinates for mooring placement and encourage higher tech tools (i.e. Hypack software) to be used for mooring weight placement by all mooring field contractors. Adjust the placement of weights on each inspection, so the cost is minimal to the permittee, with no cost to the City.
- d. Under the topic of large boat placement and voluntary reassignment, one person said he had personally conducted his own study and noted that there were less than 5 boats that fell into that category (“I can count them on one hand”), so the issue could be easily managed and should not be exaggerated.
- e. A totally new idea, which has not been considered or studied by the NMA, was thrown out by one person (who was not speaking as part of the NMA), as follows: - Study how much area a single point mooring would need and see if there are some areas in current double row mooring fields where single point moorings could replace double point moorings. In particular, the A field and the B field might be looked at with this idea in mind. The idea was presented in part with the thought that a single point mooring area might be preferred by some residents who would see different views of boats as boats shift with the wind and tide. Again, this is not an idea that has been looked at by the NMA, and was put out by the person for possible future study in the “brainstorming” part of the meeting.

Attached is also an outline of more detail under study regarding the medium term and/or long-term rental program, which was discussed at the meeting.

Respectfully submitted,

Newport Mooring Association

NEWPORT MOORING ASSOCIATION – STUDY SESSION

EXHIBIT

TO SUMMARY OF MOORING FIELD IMPROVEMENTS UNDER STUDY

Examples and Benefits of Longer-Term Mooring Rentals in Newport Beach

In addition to the short-term mooring rental program currently used by the City, the following are examples of how longer term mooring rentals could be implemented.

Example 1. Medium Term Rentals

- There could be much better optimization of the current Subpermittee system to effect medium term rentals of underutilized moorings in the harbor. The Subpermit language is already in Title 17. It's just a rules, rates, and management issue. At any given time there appears to be about 120 moorings not in use in addition to moorings that are vacant for a few days. That is approximately 20% of the current off-shore moorings that are not part of the Yacht Club's mooring fields. A boat may be off of its mooring for an extended time for many reasons. The boat may be on extended cruise south to Mexico, north to the San Juan Islands, the boat may be out for extended repairs, or the boat may have been sold and the permittee is considering a different boat.
- Current mooring permittees can place their moorings in a "Medium Term Rental Pool" if they choose to do so. By placing their mooring in this pool, it means that they are generally willing to give up their mooring for a period of 6 months, but they retain the ability to retrieve their mooring with 60 days' notice.
- If their mooring is selected by the Harbor Department to be sublet for a 6-month term, their mooring fees for that period go to zero. If and when they choose to give 60 days' notice to retrieve their mooring from the "Pool", at a time earlier than the 6 month end date, they must pay a \$200 fee and they start paying their regular monthly mooring permit fees effective on the date when the notice is filed.
- A suggested rental rate for the 6-month rental rate is \$10.00/foot/month. This would be \$450/month for a 45 foot boat. The current short term subpermittee rate is calculated at \$1.33/foot/night and results in a monthly rate of approximately \$1800/month and is restricted to 15 days maximum although it can be renewed indefinitely. The longer-term rental rate would not conflict with the rates paid by existing mooring permittees since the two types of uses are different. The person renting would have no right of transfer, would need to obtain (and pay for a means of access to the mooring – see below), and, unlike a permit holder would not have a

major capital expense of the acquisition of a mooring permit, or have to maintain the mooring equipment, except perhaps for the mooring pennant lines tied to his or her boat.

- This would likely appeal to both some mooring permittees and some potential medium-term renters.
- It is likely that once this system became known to both permit holders and the public there would be many moorings placed in the pool and that supply of moorings in the pool would exceed demand.
- If a 60-day notice was given, then the sub-permittee would have to be moved to a different mooring in the Pool, but this should not be a problem since it is not likely to occur that often and there is reason to believe there will be plenty of moorings in the pool. Also, City owned moorings can be used as a buffer.
- This system would offer only upside in revenue. For every medium term rental done in this way, the revenue from that specific mooring would approximately triple. It would be a win/win for everyone.
- In order to lessen the impacts on public dinghy docks, the City could require that medium term rental tenants prove that they have a way to access their rented mooring other than the public dinghy docks. The cost for insuring access also justifies a lower rate to be paid, while at the same time providing additional revenue to the City.

Example 2. Medium-Term and Long-Term Rentals

This is the same as Example 1, but might be called “Long Term Rental and Open Space Incentives”.

Encouraging a permit holder who is not using his or her mooring would serve two purposes, not just one. If not rented it would create more open water, and if rented it would increase use of moorings by persons who are not able to acquire a mooring. Since both purposes would be served, the City can offer incentives regardless of whether or not the mooring is actually rented. The Harbor Commission, in consultation with the Harbormaster, can then decide the best utilization of the moorings now committed to be vacant for a certain period of time, and what areas of the harbor are best served for these different purposes.

There could be different incentives depending on the length of time a permittee commits to the vacancy, and should not be conditioned on the City’s rental of the moorings, since the incentive serves both purposes and the permit holder should not be at a disadvantage if the City decides not to rent his or her mooring following the commitment to leave the mooring vacant for a period of time. For example, if the commitment were for a year or more, the permit holder would pay no fee during that time – although the person would still need to maintain the mooring. In the case of a commitment for less than a year, perhaps a sixty percent fee reduction would be appropriate.

Again, with the idea of promoting both purposes, the incentives should be provided regardless of whether or not the City rents the mooring. For example, if half of these moorings were rented and half were left vacant, and if rented for \$400 to \$450 per month, the City should end up with extra revenue even after deducting the loss from the incentives and the cost to administer the program. This is truly a win/win voluntary approach, with benefits to the permit holder, benefits to the person wanting a mooring for his or her boat, benefits to shoreline views, and added revenue to the City.

NEWPORT MOORING ASSOCIATION

Summary of Ideas being Studied to Address Questions Raised by the Harbor

Commission

The following ideas are being reviewed and studied by the NMA's Subcommittee on Mooring Field Safety and Access.

1. Addressing a Few Narrow Fairways and Obstructions

The NMA believes that there are very few situations that have created any difficulties in getting on and off moorings, and there have been no reported incidents of any significance, so it is inappropriate to state there are safety issues. For the minor issues that arise from time to time, there are simple adjustments that can be made. The following are historical tried and true methods:

a. Require spreader lines when vessels are off moorings under certain conditions. For example, if a vessel is off the mooring for a long term, if without a spreader line, the buoy extends too far into a fairway on a regular basis. The details and methods should be discussed and studied as there are many different methods for using spreader lines, pick up lines, and related methods of keeping stray buoys from going too far into a fairway. In cases where the buoys were set up for a larger boat, but where there is no boat or a smaller boat, the buoys and weights can be moved closer together.

b. Easy Fix. If a permittee refuses to keep his or her buoy out of the fairway following notice, the City can attach a spreader line and bill the mooring holder for the cost.

c. Make minor adjustments to widen a very narrow fairway. Using the B field as an example, the average mooring size is approximately 42 feet. In the B field, there are approximately two fairways that are half that width. A few minor adjustments can resolve the issue for one or two rows.

Cost to the City: Zero

No Need for Change in Harbor Code

2. Addressing the Desire for More “Open Water”

Open water for shoreline views or for areas of recreation. The NMA does not believe that any need for open water should focus on the mooring fields, in part, because increasing open water inside mooring fields will generally result in crowding boats together resulting in major safety issues. Also, increasing fairways for general navigation runs counter to mooring fields being dedicated anchorages which are not open to general navigation. Nonetheless, here are some ideas of ways to increase open water without resulting in safety concerns or violating the mooring fields as quiet anchorages.

a. Provide Incentives for Smaller Vessels. Over time, the current system encourages larger vessels to be assigned to moorings. This decreases open water areas. Currently, there are no incentives for reducing the size of a vessel on a mooring or size of a mooring (except for a reduction in the yearly fee, which many people are not aware of, or people are fearful that they would not be able to increase the size back at a later time).

Here are some ideas that over time would help contribute to some voluntary reduction in mooring or boat size.

1. Voluntary Reduction in Mooring Size. Educate permit holders that they can save money on their yearly fees by reducing the size of their moorings. For those people concerned that “some day” they may want a bigger boat, the City should offer the mooring holder the option to increase the size of the mooring back to the pre-reduction size, by changing a small reinstatement fee.

2. Charge by Boat Size, not Mooring Size. Yearly fees could be charged by the size of a vessel on a mooring, not by the size of the mooring. This is worth studying and this system has been used in the past.

b. Voluntary Non-Use. Mooring holders may agree not to place a vessel on the mooring for a period of time, for example, 4 months, 9 months or longer, and thereby open up space on the water (or alternatively allow long term rental by the City as discussed later, or a combination of both). In exchange, if the mooring holder agrees to not place a vessel on the mooring for four months to a year, would pay only half the yearly fee, and if the permittee agreed to not put a vessel on the mooring for a year or more, he or she would pay no yearly fee, but would still need to maintain the buoy, weights and chain.

Cost to the City: Zero

Any reduction of average fees from increase in open water can be recaptured by revenue from the long-term rental of some of the moorings which are not being used.

No Need for Change in Harbor Code

3. Addressing Additional Public Use of Moorings.

It should first be noted that in the NMA's view, this no more a problem than the fact that there are only so many slips, so many homes, so many parking spaces in the City. Moorings like any other property are limited. While the NMA believes that affordable boating does need to be kept affordable, adding additional moorings would be a mistake, since this would only further crowd a very crowded harbor and increase boat traffic. However, there is a way of increasing the availability of moorings without increasing the impact on the dinghy docks, and all at no cost to the City. Here's an approach:

a. Creating Long-Term Rental Moorings.

As noted above, ask permit holders if they would voluntarily agree to take their moorings out of use for 9 months or more. In exchange, they would be relieved of having to pay some or all of the annual fee based on the amount of time they agreed to leave the mooring empty. For example, between four months and one year would result in a 50% savings, a year or more a 100% savings, (but they would still need to maintain the weights, buoys and chain). The City can then rent the mooring and will receive revenue at a reasonable rate. The revenue will more than offset any potential loss from the mooring holders who have agreed to this program.

Cost to the City: Zero

No Need for Change in Harbor Code

b. No impact on Dinghy Docks by Conditioning Rentals on Having Access.

Adding new moorings has a major impact on the public dinghy docks, which in turn has an adverse effect on current mooring permit holders. To offset this problem the City could require that a person renting a long-term mooring would need to make arrangements for a way to access the long-term rental, such as dock space at a marina, or rental of a dinghy rack, or dock space at a private home, or an organization that has a shuttle service like the two yacht clubs currently have.

Cost to the City: Zero

No Need for Change in Harbor Code

4. Addressing Large Boat Placement

The NMA does not believe that an occasional large boat in a row of smaller boats has been a problem in the past, and there have been no reported accidents, incidents, or complaints that we are aware of, and since getting on and off a mooring are not approached from the fairway closest to a mooring but by navigating parallel to the mooring. Nonetheless, there may be a few situations where a large vessel would be better placed in a row nearby. Here are some ways to address this situation without massive movements of boats and moorings:

a. First Identify an Actual Problem. If a complaint has been received or if the Harbor Master determines that there may be a significant problem, then conduct a survey of the adjacent moorings to ascertain if the larger mooring size in the row of smaller moorings is presenting significant difficulties or safety issues for the adjacent moorings. The survey can also include any homes with docks, or a nearby marina, which might need to use the fairway as the best way to access the home dock, or a marina finger. If there appears to be significant complaint(s) that affect safety or creates difficulties for other boats getting on or off moorings or adjacent slips, only then contact the boat owner to discuss the situation.

b. Voluntary Request to Move. Ask the owner of the mooring permit holder if they would be willing to move the mooring a few rows over or ask if they would agree to reduce the size of the mooring which would result in a lower yearly mooring fee.

c. Rental Priority or Move. If the owner would agree to decrease the size of the mooring but needs a place for the larger vessel at least for a period of time, give the person a priority on the rental of one of the larger moorings that might become available via the new long-term rental program.

d. Only for Major Size Issues. In relation to the above, no vessel which is less than 150% larger than the average size of the other moorings in the same row, shall be subject to requests for voluntary relocation.

Cost to the City: Zero

No Need for Change in Harbor Code

5. Addressing Extension Requests.

Historically the NMA has not taken a position on any particular mooring extension request or reduction request. In the past these matters were generally left to the discretion of the Harbor Master under conditions set by the City. The existing code provides for the process but has not been used for three years. The procedures should be reinstated. In addition, to further the need for some mooring holders to obtain a larger mooring (or smaller mooring) for their boating needs, the following would assist, to some degree:

a. Allow minor adjustments. Almost all marinas allow boats to be slightly larger than the size of the slip. A 3-foot allowance would resolve many cases for the need for an extension. The slight increase in size would be offset by the reductions in size utilizing the ideas previously discussed. The City could also charge for the additional length, and require that no part of the vessel extend into the fairway.

b. Priority to Mooring Holders Needing a Larger Mooring.

Currently one of the problems with a person acquiring a mooring is that there is no advanced notice of the availability of a mooring for sale. Some moorings are advertised, some not. If advertised, it may be on a number of different media, such as Craigslist, The Log, or Facebook. Persons interested in acquiring a mooring (or a larger or smaller mooring) are not necessarily looking at all of these media sources every day.

1. Place the Listing of a Mooring for Sale on a Single Website.

The person selling a mooring should be asked to provide notice on a website list that will show the mooring being available for sale and the asking price. This is similar to the way it is done with Avalon moorings. Then anyone looking for a larger mooring can monitor the website to see the information. That would allow a person needing a larger mooring to acquire a larger mooring that comes up for sale. The website can be maintained by either the City or the NMA.

2. Priority to Persons Needing a Larger Mooring. Being on the email list and receiving early information about mooring for sale will allow a person needing a larger mooring to acquire the larger mooring much sooner than otherwise. If two persons are offering the same amount for the mooring, priority would be given to the person who was on the wait list for a larger mooring. Again, this process is in addition to the process in the existing code and is not meant to replace it.

Cost to the City: Zero

No Need for Change in Harbor Code

Comments about relaying out of the mooring fields.

I do not agree with this statement:

“This new design is expected to greatly improve safety and navigation and provide existing mooring permittees with an improved experience when securing lines to and from their mooring.”

This new design will **not greatly** improve safety. It is more likely to cause damage to the boats and possibly injury to the boaters.

How will having more stress of another boat near when approaching the mooring and securing lines improve the mooring permittees experience?

This new design **will not** provide existing mooring permittees with an improved experience when securing lines to and from their mooring

The mooring line will be shorter than I currently use. That will make the angle down to the float steeper. Which will make attaching it to the boat cleat more effort. In no wind, no problem. Wind will make this a problem.

I will agree that the mooring fields need to be organized and the rows aligned.

I have a 27' sailboat on a mooring in the H field that you are using for an example. I have been there for 35 years. Before that, my parents had a sailboat on a mooring for 8 years. I have had a lot of experience leaving and picking up a mooring in a sailboat. Mostly single handed. When there are guests, they are usually left at the dock and a small dingy is used to get to the boat on the mooring and then pick up the guests at the dock. At the end of the day the guests are dropped off at the dock and the boat is taken back to the mooring single handed.

Sail boats typically have a small single two bladed propeller driven by a small motor. Reverse thrust is not as strong as forward. If there is a commonly used folding prop reverse is almost not existent. Arriving at a mooring the boat must have a small amount of speed through the water in order to maintain maneuverability with just the rudder. Just before the boat arrives at the mooring the motor needs to go into reverse to slow the forward movement. Just as the boat slows to a stop the engine is switched to neutral, the stern mooring line is picked up and attached to the boat to help slow the boat. Typically the boat will take 5 to 10 feet to stop. As soon as the stern line is attached, you need to run forward to get the bow line on the cleat before the wind blows the bow out of line or the stern line pulls the boat back.

When the wind gets higher than 16 Kts or is coming from an abnormal direction the approach to the mooring pickup needs to be a little faster to have more directional control and weigh on so the wind does not stop the boat short. The force on the mooring line can be much more difficult to pick up and hold onto. Pulling my 27' boat into the wind by the bow line is close to all I can do.

If the mooring line gets away from you the boat can swing around 180 degrees held by the stern mooring line. If that happens with another boat 20' behind you, there will be damage to the boats.

Landing at a mooring becomes a lot more fun when the sailboat is using just sails.

With the shared mooring plan it is listed to be 20' between the boats. I recall seeing the length of the mooring line will be required to be 10'. If I was to use a 10' long mooring line to the float, the boat will be closer than 10 feet because the angle of the mooring line going up to the deck that is 5' above the waterline. This will result to approximately 7' from the boat to the float. The point the line goes through the chock is about 2 feet back from the bow of the boat. That would make the boat approximately 5' from the float. My 27' boat has a typical sized bow pulpit that may extend past the bow by 1 ½' so now the float is about 4 feet from my boat. And my boat would be about 14 feet from the stern of the next boat if there is no overhang or swim step or dingy hanging at the stern of the next boat. This appears that if it takes 10' to stop my boat when I arrive, my boat will end up striking the mooring float every time I arrive at the mooring and may strike the other boat.

Using a sand line like the moorings in Catalina will be an absolute mess when the sand line is brought up to the deck. The mud in Newport bay is really dirty. Catalina has very good flushing. The dirty muddy silt is washed out.

Also the closer to the surface the sand line is the more growth there will be on the line. After a year there will be this 2' big lump of growth and barnacles at the waterline. The lines will be heavy. Another thing is if the Helix Anchor is used with a sand line configuration there will be a lot of side force on the anchor which is not recommended for the Helix Anchor.

I am concerned about the use of the Helix Anchor from the stand point of maintenance. Moorings are required to be raised from the bottom and visually inspected every two years. This bi-annual inspection requires cleaning the growth from the chain and each chain link is inspected and measured. If a link or links have been worn or rusted enough to reduce the size below the limit, the link or the whole chain will need replacement.

The Helix Anchor will be screwed into the bottom of the bay into the sand layer below the sediment. The mooring chain is then shackled to the post. To inspect the chain will require a diver to locate the post, clean off the growth and remove the shackle from the post to raise the chains for inspection. Then dive and reattach the chain shackles to the post. Or the diver will need to clean the growth from the chains and inspect the chains in the water. I question the quality of a diver inspection of the chains in the silted low visibility Newport Bay. The inspection vessel will need to be smaller to get between the boats on the Helix Anchor end. Also it may require both boats attached to the anchor to have the maintenance done at the same time.

I see the post of the Helix Anchor is thicker than the chains and it may have a longer life than the chain, but the Helix Anchor will need to be removed and inspected at some time or after a period of time the Helix Anchor will just be replaced. I suspect the cost of replacing the Helix Anchor will exceed the cost of the way moorings are maintained today. The mooring holder will still need to have the other end mooring chain and weights inspected bi-annually using the technology used today.

If the Helix Anchor is unscrewed from the bottom to allow the chains to be raised for the bi-annual inspection, I suspect the sand layer will become disturbed with the action of removal and insertion of the Helix Anchor. I also suspect the holding power of the Helix Anchor will be reduced due to the sand will not be packed as tight. Has there been any testing under those circumstances?

The drawing shows the chain going from the Helix Anchor up to the boat. Typical anchors and the present moorings use the weight of the chain and the centenary of it on

the bottom to adsorb the pressure of the wind gusts so the anchor does not pull out or drag the weight and the gust does not pull the cleat from the boat. The excess chain also compensates for the 8' variation in the tide. How well will the Helix Anchor handle the 8' tide variation with a short chain?

It is interesting that the Helix Anchor has the highest pullout force when the boat will be applying the lowest force, in no wind conditions. And the Helix Anchor pullout force decreases as the wind increases causing pulling to the side.

There have been many mooring weights lost at the bottom of Newport Bay. Installing the Helix Anchor should find a few of those lost weights making it difficult to install.

Sidney Hood
mooring permittee
H-511

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

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



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 12 th	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”.

Hermosa Beach Office
Phone: (310) 798-2400
San Diego Office
Phone: (858) 999-0070
Phone: (619) 940-4522


Chatten-Brown, Carstens & Minter 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/Official_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 permit holders 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,

A handwritten signature in black ink, appearing to read "J. Haley", written in a cursive style.

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 <u>slideshow</u> 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 verify 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" <lBeer@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 <lBeer@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 agendaized 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
lbeer@newportbeachca.gov
(949) 702-6900

From: "Beer, Ira" <lBeer@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'

<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 permittees. 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@\[REDACTED\]](mailto: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 agendaized 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@\[REDACTED\]](mailto: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 health 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.2.1 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, mooring 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 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 bmy 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 whohow 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 thatthey 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.

I. 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 rescission 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**

AMERICAS CUP HARBOR

LOW WIND EXPOSURE

1. This is a small protected body of water at the foot of Point Loma Heights.
2. Americas Cup Harbor is protected against prevailing Westerly Winds from the Ocean.
3. Topographical Maps show that Point Loma Heights and the Point Loma Ridge is between 200-400 ft high. (Twice the height of Hoag Hospital at most places)
4. The limited winds that blow through that mooring field are no match for the prevailing winds that blow through the open waters of Newport Harbor.

LOW CURRENT EXPOSURE

1. Americas Cup Harbor is almost fully encircled by Marinas with slips, and with one entrance.
2. Most water movement is vertical, instead of lateral.
3. Swell and current exposure is limited due to the size of the entrance. Currents flow past the entrance.
4. The Americas Cup Model is not in use anywhere else in San Diego Bay, where there are open and exposed mooring fields, like all mooring fields here in Newport Harbor.

Most boats in Newport Harbor need a large safe zone for when the forces of nature bare down on them. Chipping away at those safe zones makes for unsafe mooring fields.

Please reconsider efforts to take away safe zones around boats in mooring fields.



Hi guys, just a thought are any of you sailors? No one approaches a mooring downwind. Your stern will get pushed over your moorage line or drift into another boat.

Boats are not like cars you have no brakes. If you grab a line with only 20 ft to spare in front of you it is very very easy to ride up on the forward boat and cause damage.

With a one engine boat it's harder to adjust on a line up maneuver in a tight space. You can't just move sideways.

Boats are all different and don't work like cars regarding parking. Please I beg of you give this a test run before you commit. Try different vessels. See how experienced yachts people respond.

Sincerely
Meridee Thompson

Main Office Phone:
310 - 798-2400

Direct Dial:
310-798-2400 Ext. 3

CBM

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March 7, 2023

VIA E-MAIL (HarborCommission@newportbeachca.gov)

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

Re: Wed. March 8, 2023 Agenda Item 6-2; Objection to Harbor
Code Amendments to Mooring Procedures that Require
Coastal Development Permit and Environmental Review

Dear Honorable Commissioners,

On behalf of the Newport Mooring Association - a Non Profit Corporation, we wrote to you on November 8, 2022 to inform you that a Coastal Development Permit application is required in order for the City of Newport Beach ("City") and the Harbor Commission 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. A copy of that letter is attached.

The City's proposal to conduct a pilot test involving the relocation of existing mooring tackle and/or construction of new moorings constitutes development under the Coastal Act, for which a Coastal Development Permit is required. Additionally, the proposed revisions include new restrictions regarding designated mooring row lengths, which are undefined and will require certain permittees to relocate, making it more difficult for those permittees to access moorings, and thereby impeding coastal access. Thus, the City and Harbor Commission may not proceed without obtaining a Coastal Development Permit from the California Coastal Commission. Furthermore, the project is not exempt from the California Environmental Quality Act because it will have environmental impacts related to public access to water, aesthetics, and construction of new moorings or relocation of existing mooring tackle in the submerged mooring field as detailed here and in our November 8, 2022 letter.

City of Newport Beach Harbor Commission

March 7, 2023

Page 2

We ask that you withhold your approval of this proposed project until proper environmental review is conducted, including the preparation of an initial study and circulation of a negative declaration or environmental impact report for public comment.

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. Accordingly, they constitute development under the Coastal Act and as such, must be reviewed for approval by the Coastal Commission.

Sincerely,

A handwritten signature in blue ink that reads "Douglas P. Carstens".

Douglas P. Carstens
Sunjana Supekar

Enclosure

Enclosure

Hermosa Beach Office
Phone: (310) 798-2400

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



Chatten-Brown, Carstens & Minter 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/Official_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 permit holders 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.

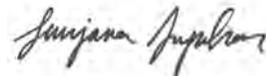
We are also concerned with City staff's questionable assertion that the mooring reconfigurations would greatly improve harbor views. (October 12, 2022 Harbor Commission Agenda Packet, p. 82.) The proposal to push mooring rows together will alter view corridors from the public boardwalk around Balboa 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: Tim Lewis <zooterincm@aol.com>
Sent: March 04, 2023 1:49 PM
To: Harbor Commission
Subject: mooring changes

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

I am concerned with the use of helical anchors. While the city has agreed to pay for their maintenance there could be a major increase in the cost to replace the gear attached to them. When we maintain the current weighted gear, it is done with a barge on the surface at a fair cost. To make any changes to the gear attached to a helical anchor, that can't be lifted, it would require diving at a cost far exceeding the current cost.

You are doing a great job of working out the issues, please discuss this issue with a contractor before planning helical anchors.

I would propose another option. Simply increase the gross weight of the common mooring anchor and attach two boats to a common weighted anchor. And servicing all three anchors for two boats at the same time, there would be no increase in cost saving the city and everyone money.

Thanks for all you do.

Tim Lewis

From: natalie fogarty <nataliefogarty5@gmail.com>
Sent: March 04, 2023 10:39 AM
To: Harbor Commission
Subject: Mooring Changes

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

Harbor commission,

I object to the planned double mooring proposal and possible removal of my vessel .. The current system has been in place for years and we have had access to the harbor without banging into other boats on the buoys. The idea of moving my boat to another location is not right. I have a home on the street that my boat is located.

PLEASE do not do this to the many boat owners that have on shore moorings !!

Natalie Fogarty

BUY S-3

From: Meridee Thompson <merideethompson@gmail.com>
Sent: March 05, 2023 6:53 AM
To: Harbor Commission
Subject: mooring fields

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

Hello,

I am writing to express my dismay at the proposed changes to our bayfront in the way of mooring movement and reassignment.

Pluses: Making a few larger boats move to allow for passage between moorings.

There have been times when a problem boat was placed on an empty mooring adjacent to us by the Harbor Department where the boat was abandoned and two generations (at our count) of seagulls nested and procreated on its deck and under the dingy sitting facedown on the bow. These birds rested on our boat and neighboring boats and pooped on everything, which drew kelp flies. It took two years (maybe more) for someone to respond to the complaints about this derelict. It would be nice to have a faster response on these types of problems.

Minuses: No one who has ever tried to put a boat on a mooring seems to be on the City Council these days. We have had our mooring for almost 50 years and have had about 19 boats on it over the years as we love to experience all types of boats, have a passion for them. We see lots of boat damages in the future as boaters try to maneuver to and from moorings that are positioned in the way the proposed dual boat system works. We feel that the "C" field is not a good test area as it is in a spot not as affected by winds and tides as is the entire H group on a typical windy afternoon on the bay.

It's just wrong. The entire concept of neat and tidy rows is antithesis to the interesting culture we have in the mooring fields. It's as if the council thinks boats respond like cars when "parking" them. Don't they have better things to spend public funds on than experimenting with our mooring system? I believe their future plans are basically an attempt to lure bigger and bigger and BIGGER boats into our harbor. It's not enough that they have pimped out what used to be a fun boat parade to the sewer cruisers at Christmas. Now they just want to prostrate themselves in the face of the rich and famous. Those very few visitors from that uber class will cause them to do this? Move us all so allow them to pass by?

It seems this is a farce, that they say public accessibility. It's more a public shakedown and no middle class boaters will be able to enter into the very now accessible mooring field boat storage system with the future as it is envisioned by this council.

Meridee Thompson

From: Sunjana Supekar <sss@cbcearthlaw.com>
Sent: March 07, 2023 3:03 PM
To: Harbor Commission; Harbor Feedback
Cc: Doug Carstens
Subject: March 8, 2023 Harbor Commission Meeting; Comments re Agenda Item 6-2
Attachments: 2023-03-07 Letter to Harbor Commission final.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 Carstens, Black and Minter on behalf of the Newport Mooring Association regarding Agenda Item 6-2 for the March 8, 2023 City of Newport Beach Harbor Commission Meeting.

Thank you for your consideration of these comments.

Sincerely,
Sunjana Supekar

--

Sunjana Supekar (she/her)

CARSTENS, BLACK & MINTEER LLP

(Please note, our firm name has been updated!)

2200 Pacific Coast Highway, Ste. 318

Hermosa Beach, CA 90254

Tel: 310-798-2400 Ext. 7

Fax: 310-798-2402

Email: sss@cbcearthlaw.com

Website: www.cbcearthlaw.com

From: L. Scott Karlin <scott@karlinlaw.com>
Sent: March 07, 2023 3:54 PM
To: Harbor Commission; Dept - City Council; Blank, Paul; Harbor Feedback; NMA Email Board
Subject: Request that no action on Harbor Code changes without Promised Stakeholder Meeting
Attachments: Letter re Need for Stakeholder Meeting on Title 17 Changes as Promised.docx; Letter re Need for Stakeholder Meeting on Title 17 Changes as Promised.docx

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

To the Harbor Commission and the City Council,

For your consideration, please find below and attached, my request that no action be taken on recommendations on Harbor Code changes without proper notice and the promised stakeholder meeting on this important matter.

This is being sent in relation to the Proposed Mooring Realignment Plan, which is Item #6-2 on the Agenda for the March 8th Harbor Commission Meeting. I am requesting the attached and this email be entered into the official record.

Respectfully,

Scott Karlin

L. Scott Karlin
The Karlin Law Firm, LLP
Main Office:
13522 Newport Ave, Suite 201
Tustin, California 92780

email: Scott@Karlinlaw.com
cell phone 949 -371-8228

Need for Promised Stakeholder Meeting on Changes to Title 17 of the Newport Beach Harbor Code

Newport Beach Harbor Commission

Dear Honorable Commissioners,

It has come to my attention that there will be a possible vote on changes to Title 17 of the Harbor Code. No vote should take place on recommending the proposed code changes without conducting the Stakeholder meeting promised by the Harbor Commission at the meeting on November 9, 2023. In addition, there should be no vote on recommending these changes because they are not needed, as discussed elsewhere by the NMA.

At the November 9th Harbor Commission meeting, the matter on the agenda being considered, and which would have been part of the promised Stakeholder Meeting were (a) realignment of mooring fields into a double row system by putting boats within 20 feet of another boat bow to bow or bow to stern, and (b) various significant changes to Title 17 affecting moorings. This was noted in the minutes as ***“recommendations being included in the proposed draft ordinance amending City of Newport Beach Municipal Code 17.”***

No vote was taken on this matter, instead, all the commissioners (except for one who abstained) stated that prior to taking action there should be a “stakeholder meeting.” Clearly this promise was meant to cover the matter under consideration, namely the particulars of putting boats closer together and the “proposed draft ordinance” of the changes to Title 17.

Following the November 9th meeting, the first available date was obtained to allow for the stakeholder meeting, which was the date that would have otherwise been used for the next harbor code meeting, namely Wednesday, December 14th (the same date as the boat parade). Just prior to the meeting, Chair Scully requested a video meeting to go over the agenda for the stakeholder meeting. It was not a stakeholder meeting, but only for discussion of the process, who would speak first, when questions would be allowed and so forth.

During that discussion I asked if it was possible to clear up two items in the then proposed Title 17 changes for which there might not be controversy. I then asked a few questions about, at most, 5% of the items in the proposed code changes. One item was a reference to the definition of “New Permits,” asking if would not be better to expressly state in the code that if an existing permit is transferred, or a name is added, or put into a trust, or if the yearly questionnaire is filled out, that would not create a “New Permit”. This appeared to be needed in light of the practice of the Harbormaster to use the words “new permit” when re-issuing permits in on transfers etc. Another question was if should not be expressly stated that any moving boats or moorings as part of any realignment plan would require City Council approval to remove any uncertainty about that. Again, these questions related to at most 5% of the language in the proposed harbor code changes and were only a discussion with three mooring

permit holders present. No notice of these discussions had been sent out, given it was just a video conference to discuss how best to conduct the upcoming stakeholder meeting.

A few days later, what turned out to be a “partial” Stakeholder meeting took place. In that meeting, permit holders were prepared to discuss the proposed harbor code changes along the other matters. The commissioners projected on the screen the items that were to be part of the Stakeholder meeting. One of the items was, of course, the changes to Title 17. However, when the first permit holder started to discuss Title 17 and put up the first page of the multiple pages of changes, all the stakeholders were told that there would be **no** discussion of changes to Title 17. This was repeated many times. As a result, there was no stakeholder meeting on any of the Title 17 changes, let alone any of the newly revised proposed changes. The reasons given were that they were “under revision,” suggesting there were significant changes from the prior draft, and they had not yet been approved by the City Attorney, so there was nothing to discuss. While this seemed odd, since prior drafts had been made public in “draft form,” the stakeholders were told not to worry and that they should soon be given a copy and they would have plenty of time to review and discuss.

The new Title 17 changes were first seen a day before posting the agenda for the March 8, 2023, Harbor Commission meeting. As of March 7, the NMA is, at most, only halfway through reviewing these changes, whereas the subcommittee has had months working with and/or seeing various prior drafts which drafts have not heretofore been shared with the NMA or permit holder or the public. What is more, as a practical matter, over 99% of mooring permittees have not seen these major code changes. At a very minimum, there needs to be a scheduled stakeholder meeting or study session on these code changes, preferably with the code changes having been mailed and emailed to the permit holders. It would also be helpful if the full harbor commission could hear studied comments by stakeholders on these code changes and attend the shareholder meeting. The stakeholder meeting would complete both the promise made by the Harbor Commission on November 9th, as well as being the right thing to do.

What follows are excerpts regarding the November 9th, promise made by the Harbor Commission. If needed, the NMA could produce a video of statements made by the subcommittee on December 14th that there would be no discussion of Title 17 changes at any time in the meeting.

Respectfully Submitted,

Scott Karlin

Cell 949-371-8228

Email: ScottKarlin@Yahoo.com

Excerpts of Draft Minutes of Newport Beach Harbor Commission follow on next page:

NEWPORT BEACH HARBOR COMMISSION REGULAR MEETING MINUTES

City Council Chambers – 100 Civic Center Drive

Wednesday, November 9, 2022 at 5 p.m.

3. Recommendations Resulting from Commission Objective 2.3 to Improve Navigation Safety, Allow for Additional Moorings Within the Fields and Mooring Size Exchanges Requests

....

This report and presentation will update the Harbor Commission on Commissioner Beer's efforts, process and research. The Commission will be asked to approve recommendations related to optimizing utilization of the mooring fields and allowing mooring permittees to request a permit exchange to mooring of a different size. **The recommendations are included in proposed draft ordinance amending City of Newport Municipal Code, Title 17**

Following Public Comments on the mooring code changes and reconfiguration, the following was stated/promised/decided (comment by NMA):

Vice Chair Beer emphasized that the Harbor Commission is aware of the California Coastal Commission's Coastal Development Permit requirements. He thanked everyone who spoke about the topic for insisting the City look into that and advised they would do so promptly. He agreed there should be more public input and would ***recommend that an NMA stakeholder meeting is held that is opened up to all constituents by the end of the year.*** He advised he looks forward to working on this together with the NMA and looking forward not backward. ***He recommended the Harbor Commission not take action on the item this evening to allow for the stakeholder meeting.***

Secretary Yahn agreed there has been a lot of information offered this evening to consider. He advised this is an evolutionary process 3 years in the making. He advised the Harbor Commission's job is to improve the waterways for everyone who enjoys the harbor, not just the mooring permittees. He defended Vice Chair Beer's motives for the proposal and advised the Harbor Commission serves the public. ***He expressed support for holding a stakeholder meeting with NMA.***

Commissioner Marston thanked everyone from the public who provided public comments and noted they are also reading the emails that are received on the topic. She advised that changes have been made to the proposal based on public input. ***She expressed support for a stakeholder meeting to clarify misconceptions and hear ideas from the mooring permittees. She recommended that a meeting be held soon.***

Commissioner Williams, *(per the draft minutes, did not state one way or the other if he supported a stakeholder meeting on the proposals – comment by the NMA.)*

Chair Scully agreed with holding a stakeholder meeting and noted he has heard the comments from the public before the end of the year. He recommended NMA members provide their concerns to the NMA board before the stakeholder meeting so all concerns can be addressed.

Executive Summary

OPPOSITION TO DANGEROUS DOUBLE ROW MOORING FIELD REALIGNMENT PLAN AND CODE CHANGES

Introduction

The Newport Mooring Association (NMA) is strongly opposed to the Harbor Commission's Mooring Field Realignment Plan, as it is unnecessary and dangerous to both the boats moored in the mooring fields, as well as to all human powered harbor users such as kids, paddleboarders, kayakers, float tube fishermen, etc., who use the mooring fields as a safe area away from boat traffic to practice these activities. The new plan is based to address a non-existent problem and is patterned on a similar layout in a harbor that is very much different than Newport Harbor. The plan will change harbor views significantly and many waterfront homes will have their views impacted in a negative way. Changes to the harbor code are not needed to address the plan, and significant questions have been raised regarding the motivation for the plan. This Opposition primarily addresses the dangerous double row mooring field layout. A full review of the harbor code changes that have been proposed will be addressed separately, if necessary, after the NMA is able to study these in detail.

Summary

1. A Solution Looking for a Problem. The history of accidents or other safety issues in the mooring fields in their current configuration is negligible.

2. The New Plan is Unsafe and Dangerous

A. The New Plan Compromises the Safety of All Human Powered Activities in the Harbor.

In their current configuration the mooring fields serve as quiet and safe park-like areas for kids and adults to paddleboard, kayak, and occasionally swim. A double row system designed to widen fairways through the mooring fields will only invite more small boat traffic, with resulting wakes and propellers which will substantially increase the risk of injury.

B. The Double Row System Creates and Amplifies Danger of Collisions Within the Mooring Fields.

The proposed system will place paired boats within 20 to 30 feet of one another either in front of or behind, which is on average about half the current distance. With the tidal currents and winds present in Newport Harbor this will significantly increase the risk of collision to boats leaving or attempting to get back onto moorings. This will inevitably lead to more property damages and injuries than what has been experienced in the past.

3. The Plan is Based on False and Misleading Information.

A. False Information Has Been Presented about Americas Cup Harbor.

Proponents of this plan are modelling it completely on the fact that it has been successful in a very dissimilar location called Americas Cup Harbor, which is a very protected "harbor within a harbor" located in a small cove inside the greater San Diego Harbor. The primary designer of this plan does not understand the differences between these two harbors and continually insists that conditions are similar. Over the last 40 years San Diego has never attempted to use this model anywhere else in their large harbor and they have many mooring fields that they manage. The NMA has done studies to prove that these significant differences exist and has video evidence to support that there is virtually no tidal current in Americas Cup Harbor and that there is strong tidal current in Newport Harbor. Winds are also greater in Newport Harbor than in America's Cup Harbor, and the

data supports this claim, if you understand how the subtlety of how the data is collected in the San Diego area. A double row mooring field layout will only work in a lake-like environment and should be rejected for consideration to use in Newport Harbor based on the safety concerns alone.

B. False Information Has Been Presented About the Applicability of “Marina Standards.”

Proponents of the plan claim that Standards for Marinas apply and/or should apply to mooring fields. This is simply false, and they were forced to admit this in a letter to the City. Fairways in marinas need to be much wider than those in mooring fields to allow a boat to turn around because each fairway ends in a fixed dock and you cannot move a boat around a fixed dock.

4. A Few Temporary Issues and Concerns About Optics are Easily Managed Without These Changes. From time to time a few visual concerns arise, such as a stray buoy, or a single row becoming out of alignment. These can be managed by use of spreader lines, which keep buoys in place, and by minor adjustments to the row. The use of higher technology tools could help in more exacting placements of mooring weights.

5. Proposed Changes to the Harbor Code are Unnecessary, Confusing, and Take Power Away from the City Council.

Harbor Code Changes Are Not Necessary. The proposed code changes are not needed to run a “test”. 90% of the proposed changes have nothing to do with the test and will need to be separately studied. If the test fails, these code changes will all need to be undone. This is a classic example of putting the cart before the Horse. The NMA has already done a significant study and test and has concluded that safety would be greatly compromised in the new plan. The NMA has offered to find voluntary member moorings for use in any additional tests. If absolutely necessary, the Harbormaster could be authorized to *temporarily* move a few moorings but should ask for volunteers first.

6. The Extensive Harbor Code Changes Go Well Beyond What Is Needed for a Test and Have Not Been the Topic of a Single Stakeholder Meeting Contrary to What the Commission Promised. At the November 9, 2022, meeting, the Commissioners promised to allow at least one stakeholder meeting to go over the agenda item. That would have clearly covered Changes to Title 17. However, at the one Stakeholder meeting, the three Commissioners present would not allow any discussion of Title 17 changes. This makes no sense. The Subcommittee has had 3 months to develop these changes and yet the NMA has seen them for only 3 days.

7. You Cannot Conduct a Test Without Success Criteria. The proponents say they are eager to conduct a “test” but have failed to provide any information, let alone success criteria, on what they are testing, and how to measure the results. The issue is not holding power of anchors. It is the degree of difficulty of getting on and off moorings for everyone - the young, the old, the able and not so able, in many different wind, tide, and current conditions. Before you ask for a test, there must be agreement on how to test, what to test, and how to measure its success or failure.

8. Undisclosed Beneficiaries at the Expense of Others. Make no mistake, the massive movement of moorings will result in winners and losers of shoreline views. There are no controls, and the Harbor Commission will end up being king makers giving away better views to some homeowners at the expense of diminishing the views of other homeowners. This will inevitably give rise to questions of favoritism, and no matter how it plays out, there will be unhappy people and trust in Government will be questioned. Why let this play out so unnecessarily?

9. Additional Moorings Are Unnecessary. The proponents also suggest that more people could use moorings if more moorings existed. Since most people think there are already too many moorings in the harbor, this will be an unpopular thing to advocate for amongst both waterfront homeowners and existing harbor users. Since there are an average of about 100 unused offshore moorings at any time, and since the City already has permission to rent those out to “Subpermittees,” it seems obvious that the City could rent these out on a medium- or long-term basis to accommodate many new users. The NMA has provided the Commission with a model plan to show how this could work. This plan would be easy to implement and would result in immediate increased revenues to the City.

Respectfully Submitted,

The Newport Mooring Association

PO Box 1118
Newport Beach, CA 92659
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For Newport Beach Harbor Commission meeting on March 8, 2023., regarding the Proposed Mooring Realignment Plan, which is Item #6-2 on the Agenda for the March 8th Harbor Commission Meeting. I am requesting this document be entered into the official record.

Need for Promised Stakeholder Meeting on Changes to Title 17 of the Newport Beach Harbor Code

Newport Beach Harbor Commission

Dear Honorable Commissioners,

It has come to my attention that there will be a possible vote on changes to Title 17 of the Harbor Code. No vote should take place on recommending the proposed code changes without conducting the Stakeholder meeting promised by the Harbor Commission at the meeting on November 9, 2023. In addition, there should be no vote on recommending these changes because they are not needed, as discussed elsewhere by the NMA.

At the November 9th Harbor Commission meeting, the matter on the agenda being considered, and which would have been part of the promised Stakeholder Meeting were (a) realignment of mooring fields into a double row system by putting boats within 20 feet of another boat bow to bow or bow to stern, and (b) various significant changes to Title 17 affecting moorings. This was noted in the minutes as ***“recommendations being included in the proposed draft ordinance amending City of Newport Beach Municipal Code 17.”***

No vote was taken on this matter, instead, all the commissioners (except for one who abstained) stated that prior to taking action there should be a “stakeholder meeting.” Clearly this promise was meant to cover the matter under consideration, namely the particulars of putting boats closer together and the “proposed draft ordinance” of the changes to Title 17.

Following the November 9th meeting, the first available date was obtained to allow for the stakeholder meeting, which was the date that would have otherwise been used for the next harbor code meeting, namely Wednesday, December 14th (the same date as the boat parade). Just prior to the meeting, Chair Scully requested a video meeting to go over the agenda for the stakeholder meeting. It was not a stakeholder meeting, but only for discussion of the process, who would speak first, when questions would be allowed and so forth.

During that discussion I asked if it was possible to clear up two items in the then proposed Title 17 changes for which there might not be controversy. I then asked a few questions about, at most, 5% of the items in the proposed code changes. One item was a reference to the definition of “New Permits,” asking if would not be better to expressly state in the code that if an existing permit is transferred, or a

name is added, or put into a trust, or if the yearly questionnaire is filled out, that would not create a "New Permit". This appeared to be needed in light of the practice of the Harbormaster to use the words "new permit" when re-issuing permits in on transfers etc. Another question was if should not be expressly stated that any moving boats or moorings as part of any realignment plan would require City Council approval to remove any uncertainty about that. Again, these questions related to at most 5% of the language in the proposed harbor code changes and were only a discussion with three mooring permit holders present. No notice of these discussions had been sent out, given it was just a video conference to discuss how best to conduct the upcoming stakeholder meeting.

A few days later, what turned out to be a "partial" Stakeholder meeting took place. In that meeting, permit holders were prepared to discuss the proposed harbor code changes along the other matters. The commissioners projected on the screen the items that were to be part of the Stakeholder meeting. One of the items was, of course, the changes to Title 17. However, when the first permit holder started to discuss Title 17 and put up the first page of the multiple pages of changes, all the stakeholders were told that there would be *no* discussion of changes to Title 17. This was repeated many times. As a result, there was no stakeholder meeting on any of the Title 17 changes, let alone any of the newly revised proposed changes. The reasons given were that they were "under revision," suggesting there were significant changes from the prior draft, and they had not yet been approved by the City Attorney, so there was nothing to discuss. While this seemed odd, since prior drafts had been made public in "draft form," the stakeholders were told not to worry and that they should soon be given a copy and they would have plenty of time to review and discuss.

The new Title 17 changes were first seen a day before posting the agenda for the March 8, 2023, Harbor Commission meeting. As of March 7, the NMA is, at most, only halfway through reviewing these changes, whereas the subcommittee has had months working with and/or seeing various prior drafts which drafts have not heretofore been shared with the NMA or permit holder or the public. What is more, as a practical matter, over 99% of mooring permittees have not seen these major code changes. At a very minimum, there needs to be a scheduled stakeholder meeting or study session on these code changes, preferably with the code changes having been mailed and emailed to the permit holders. It would also be helpful if the full harbor commission could hear studied comments by stakeholders on these code changes and attend the shareholder meeting. The stakeholder meeting would complete both the promise made by the Harbor Commission on November 9th, as well as being the right thing to do.

What follows are excerpts regarding the November 9th, promise made by the Harbor Commission. If needed, the NMA could produce a video of statements made by the subcommittee on December 14th that there would be no discussion of Title 17 changes at any time in the meeting.

Respectfully Submitted,

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Excerpts of Draft Minutes of Newport Beach Harbor Commission follow on next page:

NEWPORT BEACH HARBOR COMMISSION REGULAR MEETING MINUTES

City Council Chambers – 100 Civic Center Drive

Wednesday, November 9, 2022 at 5 p.m.

3. Recommendations Resulting from Commission Objective 2.3 to Improve Navigation Safety, Allow for Additional Moorings Within the Fields and Mooring Size Exchanges Requests

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This report and presentation will update the Harbor Commission on Commissioner Beer's efforts, process and research. The Commission will be asked to approve recommendations related to optimizing utilization of the mooring fields and allowing mooring permittees to request a permit exchange to mooring of a different size. **The recommendations are included in proposed draft ordinance amending City of Newport Municipal Code, Title 17**

Following Public Comments on the mooring code changes and reconfiguration, the following was stated/promised/decided (comment by NMA):

Vice Chair Beer emphasized that the Harbor Commission is aware of the California Coastal Commission's Coastal Development Permit requirements. He thanked everyone who spoke about the topic for insisting the City look into that and advised they would do so promptly. He agreed there should be more public input and would **recommend that an NMA stakeholder meeting is held that is opened up to all constituents by the end of the year.** He advised he looks forward to working on this together with the NMA and looking forward not backward. **He recommended the Harbor Commission not take action on the item this evening to allow for the stakeholder meeting.**

Secretary Yahn agreed there has been a lot of information offered this evening to consider. He advised this is an evolutionary process 3 years in the making. He advised the Harbor Commission's job is to improve the waterways for everyone who enjoys the harbor, not just the mooring permittees. He defended Vice Chair Beer's motives for the

proposal and advised the Harbor Commission serves the public. **He expressed support for holding a stakeholder meeting with NMA.**

Commissioner Marston thanked everyone from the public who provided public comments and noted they are also reading the emails that are received on the topic. She advised that changes have been made to the proposal based on public input. **She expressed support for a stakeholder meeting to clarify misconceptions and hear ideas from the mooring permittees. She recommended that a meeting be held soon.**

Commissioner Williams, *(per the draft minutes, did not state one way or the other if he supported a stakeholder meeting on the proposals – comment by the NMA.)*

Chair Scully agreed with holding a stakeholder meeting and noted he has heard the comments from the public before the end of the year. He recommended NMA members provide their concerns to the NMA board before the stakeholder meeting so all concerns can be addressed.

City of Newport Beach Harbor Commission & City of Newport Beach City Council,

The Newport Mooring Association (NMA) is strongly opposed to the Harbor Commission's Mooring Realignment Plan. We find it completely unnecessary and do not understand or agree with the Harbor Commission's objectives as they relate to the mooring fields. Newport Harbor is functioning better than ever, and we are not aware of any current safety issues in the mooring fields.

Summary thoughts:

- This is a plan looking for a problem and there is no problem.
- The plan will create major safety issues for Mooring Permittees.
- The plan decreases safety for all human powered harbor users – kids, paddleboarders, kayakers, float tube fishermen, etc.
- The plan is based on false information about conditions in a different harbor
- The plan is based on false information which compares marinas to moorings
- The plan disregards the USCG definition of Special Anchorages as it encourages vessel traffic through the mooring fields. Fairways through mooring fields are not “navigable water”.
- The plan will compromise many shoreline views. The parking lot look is not a good one.
- The plan will deflate mooring permit values. Is this a goal? If so, why? It does not look good given that the City apparently plans to spend a lot of money acquiring moorings in the future.
- Why conduct a test when we already know the answer to the most important question?
- You cannot conduct a test without success criteria
- There is no need to make changes to Title 17 at this time.
- The extensive code changes go well beyond what is needed for a test and have not been the topic of a single stakeholder meeting contrary to what the Commission promised.
- There is no need for new moorings. The existing subpermittee program can be easily expanded with some simple management tweaks to take advantage of the 100 offshore moorings that are often vacant. This could be an easy win/win situation for everyone.
- The plan creates undisclosed Beneficiaries at the expense of others, giving rise to questions of back-room favoritism.

A Solution Looking for a Problem

The NMA feels that the Harbor Commission's plan is a solution looking for a problem when there really is no problem. The NMA believes any perceived problems are minimal and can be solved simply. To use an analogy -- If your car might need a slight tune up, why rebuild the engine? When the NMA does a list of pros and cons on this new plan, the NMA can identify zero pros and many cons including significant safety issues on the con side of the list.

The NMA respectfully asserts that the three Harbor Commissioners on the Mooring Optimization Subcommittee do not grasp the nuances of safe boat handling within the mooring fields in Newport Harbor and do not understand the safety issues that would result if the new plan were to be implemented. The NMA recently polled its membership on whether its members favored the Harbor Commission's new realignment plan. There were 154 responses, and the results of the poll were 148 to

6 against it. 26 of those responses were from USCG licensed Captains and all 26 voted against it. The NMA's membership tends towards older very experienced boaters with many members having over 50 years of boating experience. We are the experts in Newport Beach mooring field safety and our concerns should be listened to. We have commented extensively on our safety concerns and yet no material changes have been made to the plan.

The Plan is Based on False Information on Conditions in the Harbor

The new Mooring Field Realignment Plan uses a double row system patterned after a similar layout used in America's Cup Harbor in San Diego. This system places paired boats within 20 feet of one another. The NMA feels this design would be very problematic if implemented in Newport Harbor. Newport Harbor experiences strong tidal currents every day and is more like a river than a lake. The double row system has only been used successfully in lake-like environments such as America's Cup Harbor. The NMA has done fundamental research in testing the strength of the tidal current in both locations and has documented our findings in a couple of videos. As was expected, the results were quite conclusive in that there is a strong tidal current present in Newport Harbor and no measurable tidal current whatsoever in America's Cup Harbor. Links to these videos are provided. The wind conditions are also different, not only during typical summer afternoon winds, but also during mild and moderate Santa Ana wind events. The selective wind data used by the proponents of the plan do not measure winds inside Americas Cup Harbor, which is a harbor within a harbor, as the data they display is from a different location in San Diego Harbor, and even that other location does not have anything like our Santa Ana winds.

The NMA respectfully asserts that the primary designer of the new Mooring Realignment Plan does not have a very good understanding of the way vessels are actually operated in the mooring fields of Newport Harbor. He does not understand the nuances and challenges of safely mooring a vessel onto a mooring in a river. To safely moor a vessel onto a mooring in challenging conditions is not an easy thing to do and even skilled operators do not get it right every time. It is common for vessel operators to have to exit a failed approach to a mooring and then start over with a new approach. In a single row mooring field layout, which is what exists now, there are many safe exits to a failed approach and a vessel operator can terminate a failed approach with the only wounds being to his or her pride. In the new proposed double row design, a failed approach is much more likely to result in a collision with a nearby vessel especially the paired vessel moored just 20 feet away.

The Plan is Based on False Information which Compares Marinas to Moorings

The primary designer of the new mooring field layout falsely claims and repeatedly asserts in his slides and presentations that standards established for fixed dock marinas apply and/or should apply to mooring fields. The Chairman of the Harbor Commission in a letter to the City Council was forced to admit that marina standards do not apply to moorings. Even after sending the letter to the Council admitting the false statement, the designer of the plan continues to use the same slides that perpetuate these same false and misleading statements in stakeholder meetings to residents and others. These slides are even part of the materials shown on the March 8, 2023 agenda.

Navigating a boat into a marina with fixed docks can be a bit tricky since there is "no way out." If you miss your slip because of winds or currents, you will often need to make a 360 degree turn inside a fairway. That is why standards were created which required large fairways inside marinas. In a well-

designed mooring field, if you miss in an approach to your mooring because of winds or tidal current, you can exit your failed approach in several ways but a 360-degree turn will never be needed because there are no fixed docks in your way. Experienced operators are familiar with this, and the claims that there should be wider fairways to meet “marina standards” either shows a total lack of understanding of how mooring fields work, or is an intentional distortion of the facts.

Unsafe for Kids, Kayakers, Paddle Boarders, and Many Others

There are many major topics of disagreement where the Harbor Commission and the NMA have completely different perspectives, but one of the largest and most important differences in perspective has to do with the fairways in the mooring fields.

The Harbor Commission thinks it is a good goal to have large fairways through the mooring fields to encourage vessel traffic and has self-proclaimed those fairways to be “navigable water.” The NMA does not think this is a good idea at all. It is the NMA’s opinion that installing very wide fairways that cut through the mooring fields would degrade safety for a majority of harbor users including not only the mooring permittees, but also all of the human powered craft including swimmers, paddleboarders, kayakers, and float tube fisherman that are currently very active within the confines of the very safe and parklike mooring fields where there is less vessel traffic. The NMA believes that vessel traffic should be encouraged to transit the harbor via main channels that go around mooring fields and not through them.

The Newport Beach mooring fields are defined as “Special Anchorage Areas” in the Code of Federal Regulations (CFR). This means that vessels anchored in these areas are not required to carry or exhibit anchorage lights. In the CFR, under Title 33 – Navigation and Navigable Waters, Chapter 1 – Coast Guard, Department of Homeland Security, Subchapter 1 – Anchorages, Part 109 – General, 109.10 Special Anchorage Areas, contained in the very definition of Special Anchorage Areas, the code reads: “The areas so designated should be well removed from the fairways and located where general navigation will not endanger or be endangered by unlighted vessels.” The NMA respectfully asserts that the Harbor Commission is incorrect in their definition of “navigable waters” with respect to the fairways in the mooring fields.

However, the NMA does believe that some fairways in the mooring fields could look better and is very supportive of achieving this. The NMA believes that if spreader lines were required on vacant moorings, this would solve 90 percent of the problems related to the optics of funny looking fairways. A few moorings probably do need to be moved slightly and the NMA supports doing this with the use of higher technology tools than what has been used in the past.

The Plan Will Favor Undisclosed Homeowners at the Expense of Other Homeowners and some End of Street Views

Regarding optics, the proposed plan would definitely result in a different look to the mooring fields. It is a subjective question as to whether the new look would be better or worse. One of our members who recently visited America’s Cup Harbor had the opinion that the mooring field in that harbor had a look that reminded him of a Costco parking lot. Is a parking lot look with boats clumped together a better look than what we now enjoy? A boat at anchor is generally a beautiful thing to look at. Many artists have done paintings of boats at anchor, but boats grouped together in marinas are seldom the subject of artwork. When you put two 45-foot boats within 20 feet of one another, and when you consider the

mooring balls and the criss-cross of mooring lines, a 110-foot wall of boats will be created. Many waterfront homes on Balboa Island are on lots that are 30 feet wide.

There are going to be winners and losers in the view lottery. How is that going to be fair? But we know, it will not be a lottery. At the design stage where the fairways are placed, the size of the rows, and sections can be set out to favor expanded views for some, and at the detriment of others. Whether real or perceived, this will not go well, and there will be future controversy on these decisions.

Extensive Code Changes are Not Needed for A Test, and Need to Be Studied – Forcing Changes Without Study Violates Stakeholder Meetings Promised by the Commission

The Harbor Commission wants to make drastic changes to Title 17, and they seem to want to do it prematurely. In fact, it seems to be their primary goal. There is no need to make changes to Title 17 just to run a test. The new Mooring Realignment Plan adds layers and layers of bureaucracy to Title 17, and most importantly it does away with guaranteed specific locations of mooring permits.

At the November 9 Harbor Commission meeting, the stated proposal was Title 17 changes regarding moorings, locations of moorings and reconfiguration plan. At that meeting the Subcommittee was directed to have stakeholder meetings, in particular a stakeholder meeting with the mooring permit holders. One stakeholder meeting occurred but the NMA and permittees were told they would only allow discussion about the double row plan and not about any Title 17 changes. When a permit holder attempted to display the then current proposed Title 17 changes, he was cut off by a Subcommittee member who stated Title 17 changes would not be discussed at all. The reason stated was that the Subcommittee had not seen the “final” version approved by the City Attorney. Having now just posted the Title 17 changes a few days before the March 8 Commission meeting, the Commission would violate its own promise to allow time to study this and at least have one meaningful stakeholder meeting on these extensive changes, many of which have not been seen before.

If Mooring Locations Are No Longer Specific and Permanent, Mooring Permit Values Will Be Impacted Negatively

A few general observations can be made, without studying the new details. Mooring permits have always been specific to a location. If a mooring permit no longer guarantees a specific location, the value of mooring permits will go down. Is this the primary goal of this whole exercise? The NMA fears that this might be the case given that certain Harbor Commissioners have previously expressed outrage that a mooring permit could be worth thousands of dollars. The NMA does not understand why they feel this way. There are many examples of government permits that have value – airwaves, offshore drilling permits, grazing land, mooring permits in Avalon, etc. In Newport Beach this is the way it has always been done. Why make changes that will hurt the permittees who were only playing by the rules set up and condoned by the City of Newport Beach for decades?

Is there an ulterior motive here? Is the Harbor Commission intentionally trying to drive down mooring permit values so that the City can buy them for less money in the future?

On a staff report dated October 12, 2022, titled Harbor and Beaches Master Plan Projects – Review, it is stated that the Harbor Commission assists in developing the Plan which identifies future larger, capital projects and the funding mechanisms to achieve those goals. It is designed to be a “living document” to provide a roadmap for harbor and beach-based projects, but it also has the flexibility to be adjusted as

needed. It is considered a planning document to assist in the creation of the annual Capital Improvement Program which ultimately becomes part of the City's annual budget. At the July Harbor Commission meeting, a subcommittee was formed to review the Plan and at the October Harbor Commission meeting that subcommittee recommended the following additions to the Plan:

Potential Projects:

- Restrooms (shoreside): Improve existing
- **Mooring Buyback: Potential \$1 million per year for 30 years**
- Fire Safety Boat: \$2 million

The NMA is concerned that there is a long-term master plan being executed already that is not at all fair to existing mooring permittees. Is this a plan put forth by back-room power brokers and political consultants and is the Harbor Commission already acting on it? The NMA would like the new City Council members to be aware of this possibility.

You Cannot Test, Without First Establishing Test Criteria

The Harbor Commission wants to do a test in Mooring Field C yet there has been absolutely no reference to any success criteria for such a "test". You can't conduct a test without knowing what subjects are covered by the test and how the test is to be graded. The issues have nothing to do with "holding power" of mooring systems. It is all about the difficulty and safety of getting on and off a mooring for everyone, which includes the young and the old, the fit and the not so fit, and all in various tide, current and wind conditions, and on different types of vessels. Some vessels may have more "windage" than others and some vessels are configured in a way where it takes a long time to get from the bow to an upper helm station. There should be no vote to allow any "test" until a test or tests are designed and discussed openly. That has not yet happened.

No Need for a Test

The NMA does not think it is necessary to do this test. The NMA has already done the most important part of the test with the chip log measurement of current and we have learned that it will be 13 seconds to impact an adjacent boat in common conditions. That is the most important thing that can be learned from this test. To those with experience there is enough right there to abandon the double row mooring field layout. It's just common sense.

Additional Moorings Not Needed – You Can Increase Mooring Use without New Moorings

The new plan would add new City owned moorings to an already crowded harbor. Why are new moorings necessary when 20 percent of existing offshore moorings are usually vacant and the City already has the right to sublet these moorings? It would just be a matter of making some easy management tweaks to get the existing Subpermittee rules optimized for medium- and longer-term rentals. The NMA has shown a good workable plan to the Harbor Commission that would result in immediate extra revenue to the City. Is the real reason behind the new moorings just another tool to drive down the values of existing mooring permits?

The NMA understands and appreciates that Commissioner Beer has put in a lot of time into this project. It is hard to abandon a project that so much time has been spent on, but that is the correct decision in

this case. The City should not be compelled to make a bad decision just because Mr. Beer has spent a lot of time on a project that he probably wasn't qualified to lead in the first place.

Respectfully Submitted,

The Newport Mooring Association

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