

Commentary/Opinions on last version of proposed harbor code changes:

#1a. Relocate Your Boat to a different mooring if you put a smaller boat on your Mooring. For example, if you have a 50-foot mooring, with a 40-foot boat currently on the mooring, you can be relocated to a 40-foot mooring (in a row of 40-foot moorings). If you have a 50-foot boat on your 50-foot mooring, but later “downsize” and put a 40-foot boat on your mooring, you can be moved to a 40-foot mooring. When you decide to sell the smaller boat and are ready to return with a new 50-foot boat to your old 50-foot mooring, you will not have the right to return to your 50-foot mooring – the harbormaster will have placed some other boat on your old 50-foot mooring. The commission has “verbally” said they do not intend this to happen, but they have not changed language in the proposal, so it can and likely will happen. **Read the last sentence of #1 in the referenced material carefully.**

NMA Comment: The NMA has had a recent meeting with some of the members of the Harbor Commission subcommittee and they say they are attempting to eliminate this concern. Until we see this corrected, we feel everyone should keep a close watch on this issue.

#1b. Creation of Mooring Permit Lottery system (without substantial justification): The revisions to 17.60.040 (B) creates a lottery system for mooring permits. For some odd reason, the Harbor Commission is proposing to create a lottery system for hypothetical new rental moorings even though the city has successfully rented “City owned” moorings for years without the need to change this code section. This is concerning as this language can be interpreted to eliminate transfers for downstream or secondary transfers of existing permits. If intent is to address the rental of city owned moorings, they should not alter the existing code section that relates to existing private mooring permittees. Rather than altering the existing city should simply add one simple sentence such as: **“The City has an inventory of city moorings with city owned tackle in which the city is the permittee. These moorings may be rented out and are not transferable”**. This would avoid confusion.

NMA Comment: The NMA has had a recent meeting with some of the members of the Harbor Commission subcommittee and they say they say they will see if the City Attorney can change the proposed language to make it clear that current permits, as well as any, modifications, or reissue of these permits stay transferable. Until we see this corrected, we feel everyone should keep a close watch on this issue.

#2. Harbormaster authority to move our boats AT OUR EXPENSE: The revision to 17.60.040 (B)(2)(j) gives the harbormaster broader authority to relocate boats at our expense. The original language indicates the harbormaster can relocate boats only when necessary. Now, the harbormaster will have broader authority to relocate boats (with no limit on distance) for the purpose of realigning moorings at any time in the future at our expense. It seems any permanent relocation of boats should require stakeholder and city council review, which we believe to be the case today. **This code section will create uncertainty of mooring locations. They say this proposed plan is at no cost to mooring holders, yet they are adding language to make us pay in this revision. This revision appears to conflict with what we have been told.**

The proposed language does not say moving boats for reorganization will require City Council approval. So, while the initial plan of organization may or may not require City Council approval, it does not say that any future proposal for reorganization will require City Council approval. As written, your mooring and boat can be moved again and again, at the whim of unelected persons. Read #2 in the referenced material carefully.

NMA Comment: The NMA has had a recent meeting with some of the members of the Harbor Commission subcommittee and they say they are attempting to eliminate this concern, and change the language so it does not reference moving boats for “realignment”, however they may use alternative language such as “general welfare” which might be even more concerning, we hope to see this restricted to the temporary moving of boats for emergencies, harbor maintenance and things of that nature, with a specific reference to allowing an appeal to the Harbor Commission if the moving a boat was unreasonable. Until see this corrected, we feel everyone should keep a close watch on this issue.

#3. No more taking title to permit in name of trust: This code section seems to limit the method in which down stream or secondary permittees can take title to the permit. **NMA – see our comment to item 1b.**

#4. Elimination of downstream/secondary transferability: This revision appears to eliminate downstream/secondary transferability. It is common knowledge that a person acquiring a mooring is issued a new permit.

Therefore, with this revision it can easily be interpreted the new permit will not be transferable. While the commissioners have verbally expressed otherwise, this revision is easily interpreted to eliminate downstream or secondary transfers of mooring permits. Verbal remarks or slide show presentations by harbor commissioners are not law. This code section revision will become law once implemented and it will override any verbal remarks by harbor commissioners. It appears to be a new one-and-done transfer policy. **NMA – see our comment to item 1b.**

#5. Elimination of extensions/must fit in “designated” mooring row length: This revision to M(1) eliminates minor mooring extensions. Existing code allows the harbormaster to grant extensions of up to 5 feet if there is adequate space. This will be eliminated in favor of a “relocation” to hypothetical new moorings that may never be added. Additionally, this revision indicates no extension past designated mooring row length.

“Designated row lengths” are not in the harbor code so it is impossible to know what this really means. Our mooring permits were issued by length for individual location, not by row. **NMA – we have similar concerns.**

#6, #7 and #8. Permanent elimination of extensions in favor of hypothetical “relocations”. Starting at 2(a) the next several revisions language strip all references to mooring extensions in favor of “relocation” to new hypothetical moorings. If no new mooring are added, there will be nowhere to “relocate” to the possibility of even the smallest mooring extension will be gone forever. **NMA – we have similar concerns.**

#9 City (Harbormaster, Harbor Commission) can mandate a shared anchor system at any time now, in the future. Harbor Commissioners have recently stated they plan move our existing mooring anchors to create the double row system with no shared anchor system. Why is this revision, that allows city staff to mandate a shared anchor or helix anchor system, being included when we are told the shared anchor concept is being abandoned? **ds**

#10 City will force you to use (and keep clean) a specific spreader line that may be too thick for your boat cleat: While we are not opposed to spreader lines, we believe should be optional and some flexibility in what kind of line can be used. It is not a one size fits all. **NMA: the NMA has had a recent meeting with some of the members of the Harbor Commission subcommittee and they say they are attempting to eliminate this concern to allow the Harbor master to determine the details on the size and shape of spreader lines etc. Until we see the this corrected, we feel everyone should keep a close watch on this issue.**

#11 LOA based on unidentified designated mooring row length: In the second half of this section, they are creating vague language regarding “designated mooring row lengths”. Nobody knows what these mooring row lengths are so that mean this will forever be a moving target at the whim of the harbormaster and harbor commission. Allowable LOA has always been established by individual mooring, not by hypothetical mooring row lengths. This will conflict with our existing mooring permit lengths which is not good policy or code.

NMA: We are looking into understanding this better, and feel it may need to be clarified – i.e. who determines Mooring Row lengths, and will this require City Council approval.

#12 Moving mooring equipment decisions from City Council to Harbor Commission: The revisions for subsection (J) give the authority to change mooring specifications to the Harbor Commission. This authority has always been with our elected City officials. Now, these decisions will be made at sparsely attended Harbor Commission meetings

Can anyone tell me what a “designated mooring row length” is? Who picks the mooring row lengths? Where are they identified in the harbor code? Geesh, I sure hope a future harbor commission or harbormaster doesn’t shrink all the mooring rows down to nothing. I guess the mooring holders will really be at the mercy of any harbormaster and his/her next draft of mooring row lengths even though our existing and historical permits allow us to moor our boats in their existing dedicated locations. Allowable boat lengths have always been set by each individual permit, not by undefined and easily changed “designated row lengths”. NMA: See our comments to 11, above.

Changes proposed by Harbor Commission Nov 9th

STRIKEOUT VERSION

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Black ink is original text and the red ink are the changes being proposed by the Harbor Commission

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). 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. Mooring permits shall be issued according to a lottery, followed by a waiting list.

Vessels that are shorter than the length of their designated mooring rows by five feet or are subject to relocation to a mooring that is appropriate for the vessel's length within the same mooring field, or in the case of moorings within the H and J fields to an adjacent mooring field.

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.

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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. ~~To the satisfaction of the Harbormaster, the mooring permittee(s) shall:~~ Mooring permittee(s) shall fully comply with the following conditions and requirements of the mooring permit:

- 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 at the permittee’s expense 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
- 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.

3. Permittee/Transferee Qualifications. A mooring permit may be held only by a natural person(s) holding title to an assigned vessel. A mooring permit~~Mooring permits that were issued before <<date of adoption of ordinance>>~~ 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

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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. ~~Mooring permits are non-transferable. The sole exception are those mooring permits that were issued before <<date of adoption of ordinance>> 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~~

~~2. 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.~~

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

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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 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.

M. Request to Relocate to Larger Mooring (Extend Mooring Length).

1. Review Authority. ~~If a~~An offshore mooring permittee wishes ~~to moor a vessel other than the assigned vessel that is or will be longer than the assigned vessel that is longer than the length specified on their mooring permit must submit to the Harbormaster a request for relocation to a larger mooring. Mooring lengths shall not be extended beyond the designated mooring lengths for the mooring rows.~~ the Harbormaster may amend the existing offshore mooring permit to extend the vessel occupancy length to accommodate a longer vessel up to a maximum of five additional feet in accordance with this subsection; provided, however, that the Harbormaster may refer such applications to the Harbor Commission for consideration and final action. Applications for the extension of vessel

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~~occupancy 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). If the relocation is approved, the offshore mooring permit(s) shall be amended to reflect the new mooring assignments and the increased mooring lengths. The permittee requesting the relocation shall pay all transfer fees and costs to move both vessels.~~

2. Application.

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

b. Application Requirements. An application for ~~an extension of the vessel occupancy length~~ a mooring 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~~ 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 ~~such mooring to accommodate~~ the proposed longer vessel to be accommodated at the new 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 Extension-Relocation Request. ~~Upon receipt of a completed application for an extension of the assigned vessel occupancy length,~~ Within seven (7) days from the receipt of a valid application, the Harbormaster will notify in writing the respective mooring permittees that a request for relocation has been submitted and any objection must be submitted in writing with specific reason(s) within ten (10) days from the date notification

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~~was sent out. The Harbormaster or the Harbor Commission, as applicable, may approve or conditionally approve 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) the relocation request only if the request is for no greater than 5', if an appropriate-sized mooring is vacant, the mooring assignment can be exchanged with a mooring in the same mooring field (or in the case of the H and J fields an adjacent field) that is occupied by a vessel that is at least 5' shorter than the maximum length of its mooring row, and~~ 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) encroaching into the fairway or ~~E~~xtending beyond the outer boundaries of the mooring area or row; or

iv. ~~Exceed the intended vessel LOA established by Council policy for~~ Violate the designated maximum vessel LOA for the row or mooring area in which the vessel will be moored; ~~or~~

v. ~~Exceed the maximum length of the other vessels in the same row;~~

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

d. The applicant agrees to cover all costs associated with ~~modifying the length of the relocating to the longer mooring and relocating the vessel displaced by the applicant to its new mooring location~~, 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).

Example: Permittee A will require a larger mooring in order to replace Atlantis (40' LOA), which is in a 40' row, with Atlantis II (42' LOA). 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. Conditions of Approval. If the Harbormaster ~~or the Harbor Commission, as applicable,~~ approves an application for an amendment to the offshore mooring permit under this section, such approval shall be conditional and contingent upon the following requirements:

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- a. The mooring permittee must ~~occupy-relocate to~~ the new mooring ~~with the new-vessel~~ within twelve (12) months following the date of approval; and
- b. For mooring permits that are transferable, they shall not be sold or transferred until ~~The mooring permittee's rights pursuant to a valid mooring permit, as amended, shall not be sold or otherwise transferred for~~ a period of twelve (12) months have elapsed following the date of occupancy of the new 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 subsection (M)(4)(a) or (b) of this section ~~will constitute grounds for the Harbormaster to shall result in rescission of the relocation approval. 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, it shall be the duty of the mooring permittee to remove the moored vessel to return the mooring area where vessel was assigned to its original length at the mooring permittee's expense within thirty (30) days of written notification to do so. Rather than reverting back to the City upon such termination, 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. Within thirty (30) days of such rescission, the permittee who requested relocation shall at its sole expense return their vessel and the displaced vessel to their prior assigned mooring locations or other mooring locations as deemed appropriate by the Harbormaster. Violation of subsection (M)(4)(b) of this section shall also be grounds for revocation of the mooring permit.~~

#8

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.

#9 F. Mooring System Chains and Fastenings. Offshore moorings in the City's mooring fields may, at the direction of the City, consist of one anchor weight for every two vessels or two separate anchor weights for each vessel. Mooring permittees shall be responsible for maintaining, repairing, and replacing all anchor system components, including but not limited to, all chains, shackles, weights, lines, buoys, and all other gear and equipment used in securing their vessels to the mooring. The City shall be responsible for maintenance, repair, and replacement at its cost of any helical anchor installed for use as a shared anchor mooring system.

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.

#10 2. All mooring lines on buoys, except for a Spreader Line as described below, 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. 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 secured and connected to both the bow and stern buoys (the "Spreader Line"). The Spreader Line shall be no longer than the length of the mooring plus five feet and equipped with 9" long two-color buoys affixed in-place to the line and no less than ten feet apart, 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 ensure it remains easily visible.

3. 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 and shall be properly weighted to immediately sink when dropped. The mooring 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 not result in any safety or navigational concerns.

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 1

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 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.~~

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

- a. Commence repairs within thirty (30) calendar days upon service of the written notice of such determination and complete repairs within ninety (90) calendar days of the commencement unless the Harbormaster, upon written request from the permittee specifying the reasons therefor, approves an extension of time to complete the repairs; or
- b. Remove the vessel within thirty (30) calendar days of service of the written notice of such determination and request assignment of a different vessel that is safe, seaworthy and operable to the mooring within sixty (60) calendar days after the removal of the vessel. This section is not intended to apply to any brief period of repair common to most vessels. The Harbormaster may repeat his or her request to test operability and seaworthiness as needed.

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

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

- c. Accumulation or storage of rubbish, trash, debris, rubble, containers, or boxes that are visible aboard the vessel or stored inside the vessel in such a way as to make the vessel inoperable for its intended use;
- d. Storage or securing a vessel in such a way that it impedes pedestrian travel on City beaches and tidelands;
- e. Contribution to hazards to public safety or health, such as, but not limited to: propagation of vermin, rats, insects, or unsanitary conditions from the accumulation of fecal materials;
- f. Maintenance in such nonseaworthy condition that the vessel is unsafe, unsightly or poorly maintained, including, but not limited to: broken windows, unsecured doors or hatches, excessive marine growth attached to the vessel, being inoperable for the vessel's intended use, partially destroyed or partially repaired for more than three continuous months, providing access to marine mammals, actively seeping hazardous or toxic material into the surrounding waters, or would present a physical danger to public safety personnel during emergency access;
- g. Operation of its mechanical or electrical systems creates excessive noise, odors, vibrations, fumes, discharges or emissions that constitute an impact on public health or safety;
- h. Violation of the terms and conditions of other use or rental permits as granted by the City;
- 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.