

NEWPORT BEACH HARBOR COMMISSION REGULAR MEETING MINUTES  
City Council Chambers – 100 Civic Center Drive  
Wednesday, March 8, 2023  
5 p.m.

**1) CALL MEETING TO ORDER**

The meeting was called to order at 5 p.m.

**2) ROLL CALL**

Commissioners: Steve Scully Chair  
Ira Beer, Vice Chair  
Don Yahn, Secretary  
Marie Marston, Commissioner  
Rudy Svrcek, Commissioner  
Gary Williams, Commissioner (participated via teleconference)

Excused: Scott Cunningham, Commissioner

Staff Members: Paul Blank, Harbormaster  
Jeremy Jung, Deputy City Attorney  
Chris Miller, Public Works Administrative Manager  
Kyle Aube, Associate Civil Engineer  
Jennifer Biddle, Administrative Support Specialist

**3) PLEDGE OF ALLEGIANCE – Chair Scully**

**4) PUBLIC COMMENTS**

Chair Scully outlined the meeting rules of decorum.

John Fradkin expressed concerns regarding Harbor Commission recommendations and City Council actions which may degrade the value of existing mooring permits, including changes to Title 17. He also expressed concerns regarding actions that would impact the mooring buyback program.

Wade Womack expressed concerns regarding Harbor Commission recommendations and City Council actions which may degrade the value of existing mooring permits. He expressed support for the City's acknowledgment of mooring rights, affordable boating protections and the mooring buyback program.

**5) APPROVAL OF MINUTES**

**1. Draft Minutes of the January 11, 2023 Harbor Commission Regular Meeting**

Chair Scully opened the floor to public comments. Noting there were no individuals who elected to speak, Chair Scully closed the floor to public comments.

Secretary Yahn stated he would abstain from voting on this item as he was not in attendance at the January 11, 2023 meeting.

Commissioner Beer moved to approve the minutes of the January 11, 2023, as amended. Commissioner Marston seconded the motion. The motion carried by the following roll call vote:

**Ayes:** Marston, Svrcek, Williams, Beer, Scully

**Nays:** None  
**Abstain:** Yahn  
**Absent:** Cunningham

## 2. **Draft Minutes of the February 8, 2023 Harbor Commission Regular Meeting**

Consideration of this item was continued to the April meeting as a quorum of Committee Members who were present at the February 8, 2023, meeting were not present to vote on this matter.

### 6) **CURRENT BUSINESS**

#### 1. **Council Policy H-1: Review of Proposed Changes to Pier and Float Extensions Beyond the Pierhead Line**

Council Policy H-1 (H-1) describes the distance that piers and floats may extend beyond the pierhead line throughout the harbor. In 2022, the Harbor Commission formed a subcommittee to evaluate the Policy based on individual areas within the harbor and their unique characteristics versus a broad harbor -wide approach. The proposed revisions to Policy H-1 reflect this change in perspective and describe where staff and the Harbor Commission may make decisions based on a set of parameters. The Harbor Commission is requested to review and provide comments so that staff may return at a future meeting with a final recommendation.

#### **Recommendation:**

- 1) Determine this action is exempt from the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(2) and 15060(c)(3) of the CEQA Guidelines because this action will not result in a physical change to the environment, directly or indirectly; and
- 2) Review Council Policy H-1 and provide direction to staff who will return with a final draft at a future meeting.

Public Works Administrative Manager Miller provided a summary of the agenda report and a PowerPoint Presentation was displayed. He provided historic overview of Council Policy H-1 and the process to review and propose updates to Council Policy H-1. This included the Harbor Commission's direction to staff to review the policy with a goal of simplifying the process and creating better direction to staff and to the Harbor Commission when reviewing dock projects. In general, the most recent direction to staff was to address the process for project approvals at the staff and Harbor Commission levels to create efficiencies while concurrently preserving the harbor's functional and aesthetic characteristics.

Mr. Miller stated the draft version included in the agenda report is still a working product and the purpose of tonight's report was to provide an opportunity for stakeholders, the public, and the Harbor Commission to provide additional input and feedback on proposed changes to Council Policy H-1. It is staff's goal to receive the input from tonight's meeting, incorporate proposed modifications, as applicable, and return to the Harbor Commission for further review at the April meeting, barring any items which would require additional time. Ultimately, any final changes to Council Policy H-1 must be approved by the City Council. Mr. Miller then proceeded to detail the proposed changes to the three sections of Council Policy H-1 as presented in the agenda report.

Mr. Miller then presented additional items which were developed to supplement the proposed changes to Council Policy H-1, including a map book with aerial photographs which would serve to provide clarification and description of the various harbor elements. Mr. Miller inquired if the Harbor Commission had any questions at this time. Seeing none, he continued with his presentation.

Mr. Miller confirmed that all Harbor Commissioners participating in the meeting could see the information provided on the screen. He stated the information shared on the screen illustrates the harbor is not a straightforward set of lines and that Newport Harbor has a unique geographic setting. Therefore, each section of the harbor may need to be addressed in consideration of their unique geographic elements. Mr. Miller stated that staff worked with the Harbor Commission subcommittee members, Chair Scully and Commissioner Marston, to develop recommendations on how to address such unique elements with regard to Council Policy H-1. He displayed various examples where the proposed changes would facilitate the processing of projects in various harbor areas and examples of the type of projects that would require Harbor Commission versus staff approvals. Mr. Miller inquired if the Harbor Commission had any questions at this time and seeing none, he continued with his presentation.

Mr. Miller presented additional slides which illustrated sections and elements of the harbor which are unique and may benefit from separate policy guidance within the final Council Policy H-1. He concluded his presentation and noted that he and City staff were available to answer any questions.

Chair Scully opened the floor to comments from the Harbor Commissioners.

Vice Chair Beer thanked staff for the comprehensive report and efforts made to recommend changes to Council Policy H-1 which would streamline the harbor project approval process for the benefit of applicants, contractors, the Harbor Commission, and staff.

Secretary Yahn congratulated staff for their work and noted the proposed updates to Council Policy H-1 were long overdue. He noted he had worked with staff to develop solutions to the unique harbor challenges and complemented staff on the thoroughness of the report.

Commissioner Marston clarified with Mr. Miller that there are likely at least 10 harbor locations, perhaps more, which will need additional input from the Harbor Commission prior to finalization of the draft Council Policy H-1. Commissioner Marston then noted there is one lone pier which Mr. Miller presented that needs to be addressed, as the other pier is designated as "public" pier which is exempt.

Commissioners Svrcek and Williams indicated they had no questions at this time.

Chair Scully gave accolades to Harbormaster Blank for his years of work on Council Policy H-1 and expressed support to complete the work necessary prior to the policy's submission to the City Council. Chair Scully also congratulated staff for their work and noted the process was helpful to him as it provided an opportunity for a deeper understanding of Newport Harbor. He confirmed with staff that they were seeking further input on the Via Lido Soud section, which was displayed during the PowerPoint presentation, to increase the length from 20 to 30 feet and give approval at the staff level. Mr. Miller confirmed that there are several sections of the draft policy which will require Harbor Commission input before the document is ready to be submitted to the City Council. Chair Scully opened the floor for public comment.

Pete Swift commended staff and Chair Scully for their work on Council Policy H-1 and their goal of achieving efficiency. He mentioned boat size plays a factor in many dock permit approvals. He referenced item 3 on page 141 of the agenda report and requested clarification of the City-issued permit line and suggested the policy allow the beam width or something similar as it would make the process of dock permit approval requests more efficient.

Jim Mosher suggested it would be helpful to allow comments and feedback on the actual draft document included in the agenda report. He requested clarification on two points. The first was related to the areas depicted in the PowerPoint presentation where near 8<sup>th</sup> Street the docks do not currently go beyond the

pierhead line and, if the matter was not clarified, the Harbor Commission would not be able to approve anything beyond the pierhead line. The second matter was related to an item in section 3, as it appears there is a contradiction in that the staff be limited to approve up to “like for like” applications or projects that did not increase the pier or float by 5%, yet the Harbor Commission would have to make certain findings that the float is of substantially the same configuration as the existing pier.

Noting there were no other individuals who elected to speak on this item, Chair Scully closed the floor to public comments.

Chair Scully confirmed there were no further questions from members of the Harbor Commission.

Chair Scully inquired, as related to Mr. Swift’s comments, if in section 3 of the policy, can the dock go past the project line the width of the beam. In response, Mr. Miller stated staff has been contemplating revising their findings related to this matter and expressed his appreciation for Mr. Moser’s comments as well. Staff has received additional feedback and in combination with what was provided this evening, a proposed recommendation would be to eliminate the vessel beam restriction and rely on the Municipal Code which already addresses beam restrictions in the harbor. Chair Scully confirmed this would provide clarity on the issue.

Chair Scully suggested staff address the inconsistency mentioned by Mr. Moser and staff confirmed it was duly noted and would be addressed from a legal perspective with Deputy City Attorney Jeremy Jung, as well. Staff is continuing to work on the 5% rule in section three to allow staff to make a decision in section three, based on a discrete set of parameters, and if not, the matter would then go before the Harbor Commission for approval. Staff requested additional time to address this particular item.

Chair Scully inquired whether the 5% rule was to comply with ADA and the Municipal Code or is it to give staff 5% latitude. Mr. Miller confirmed it is to provide staff latitude and also noted that for safety reasons, longer gangways are preferred. He also stated very seldom are docks built “like for like” but rather to perform improvements. The 5% rule was intended to allow a little bit of flexibility.

Chair Scully inquired if it is in number 1 or number 2 can the homeowner move it to number 3 and also inquired regarding the appeal process. Deputy City Attorney Jung responded it could be added into the policy. Chair Scully requested staff remember to include this item for a more polished version of the policy at the next meeting. Mr. Jung mentioned there could be a provision that the Harbor Commission could approve applications for properties with unusual features automatically rather than go through the appeals process. Chair Scully requested the items be included in the next version of the policy which comes before the Harbor Commission for review. There was no further action taken on this item.

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

At the Harbor Commission meeting of June 12, 2019, the Harbor Commission reviewed proposed amendments regarding offshore mooring extensions in conjunction with their 2018 Goals and Objectives to “Establish policies for modifications to mooring sizes”. At that meeting, Commissioner Beer took responsibility for analyzing the mooring field layouts and drafting policies for review and consideration by the Harbor Commission. Commissioner Beer has conducted significant research with the aid of City staff and documented his findings. He continues to put significant effort into a proposal which will include optimizing the mooring field layouts, perhaps allowing for additional moorings as well as providing a pathway and policies for

those offshore mooring permittees who wish to adjust the length of the mooring for which they are currently permitted.

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 an exchange to a mooring of a different size. The recommendations are included in a draft Proposal with suggested amendments to the City of Newport Municipal Code, Title 17 and specifications for offshore moorings.

**Recommendation:**

- 1) Determine this action is exempt from the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(2) and 15060(c)(3) of the CEQA Guidelines because this action will not result in a physical change to the environment, directly or indirectly; and
- 2) Review, modify and/or approve the Proposal by the Harbor Commission subcommittee on improvements to the mooring fields and process for requesting a mooring size exchange and forward the Proposal to the City Council for consideration.

Deputy City Attorney Jung referenced a letter submitted which raised potential conflict of interest concerns in that any Commissioner that has property within 500 feet to 1000 feet of any of the mooring fields, is presumed to have a conflict of interest and would not be able to participate in review and consideration of this matter. Chair Scully confirmed the distance. Mr. Jung stated the concern was raised in that one of the potential benefits of the optimization under consideration could improve property views in the harbor which is considered a property interest issue as related to conflicts of interest.

Commissioner Svrcek inquired if the conflict was for a specific field to a house or if a property is within the 1000 feet distance does the Commissioner have to abstain from all the fields. Mr. Jung responded since the issue is the reorganization of all the fields, a property in any of those fields would be potentially disqualifying. Commissioner Svrcek confirmed he has property within the 1000 feet distance. Chair Scully confirmed Commissioner Svrcek would have to recuse himself when the matter came up for discussion and vote.

Vice Chair Beer requested clarification to make certain the conflict of interest would be applicable to that distance to all fields in the harbor, or just the C field or relative to the C field. Mr. Jung responded that if it is only the C field, it would not be a conflict. However, if the ultimate recommendation is for optimization of all fields, but starting with the C field, then that still poses a potential conflict. Commissioner Svrcek inquired if he could comment and not vote on the matter. Mr. Jung stated any Commissioner with a conflict could not comment or vote and would have to leave the dais during consideration of the item.

Chair Scully inquired if any Commissioners had any further comments or inquiries regarding the conflict of interest matter. Commissioner Svrcek indicated he would need to recuse himself from participating in this item due to a property conflict of interest within 1000 feet and left his seat on the dais.

Vice Chair Beer commenced his report and a PowerPoint presentation was displayed. He thanked members of the public for attending tonight's meeting and stated he read every letter submitted and carefully considered what was written. He expressed concerns regarding an email he received regarding a message sent by the NMA Board to its members, mooring permittees, the Harbor Commission, and the Newport Beach Mayor and Council members. He wanted to share the facts related to the allegations set forth in the NMA letter, which may be the basis for public comments which may be made during tonight's meeting and which may provide answers to questions.

Vice Chair Beer read the following statement into the record:

The first item in the letter stated that this proposal will move your boat without your consent to an undisclosed location. The location will put your boat dangerously close to boat in front or behind your boat. This statement is false and misleading. Title 17 Civil Code currently provides for boats to be moved by the City or the Harbor department. This initiative has always been put forth with the understanding any relocations will be within the same mooring field to a row properly sized for the vessel, and in most cases will be in a similar orientation. Whether end tie or similar space in the row. The boats will be positioned no closer than current conditions exist for many boats today. The second item is it says the Harbor Commission is planning to implement a new undefined designated mooring row length mandate. And you'll have to pay to move your mooring tackle to a new and undetermined location. This is also false and misleading. Row lengths have been disclosed, communicated and depicted in drawings made available at numerous Harbor Commission meetings, public stakeholder meetings and whenever requested since this initiative has been reviewed. Contrary to what is stated if you are a mooring permittee you will not have to pay to move your mooring if your mooring length is smaller than the designated row. Mooring permittees will be required to move their moorings should they drift outside their designated location or become a safety hazard. Should the mooring permittee fail to do so, the City may do so at the expense of the permittee no different than what exists today. Also falsely stated is that the mooring row lengths are arbitrary and undefined. They are and always have been well defined, as previously mentioned in several presentations over the last couple of years. Third item says again, it emphasizes if your mooring length is smaller than your yet to be determined designated mooring length you can be bumped and you'll be forced to relocate. Again a misleading statement. Roll lengths are not yet to be determined. They have clearly been defined at every meeting pertaining to this matter. And as you'll see in the presentation, additionally, to accommodate an NMA request that permittees seeking larger moorings that mooring holders may be relocated to an adjacent or nearby row if it's deemed appropriate by the Harbormaster to accommodate an exchange request for a larger vessel. So, in lieu of maintaining the current moratorium on mooring extensions, we've found a way to accommodate some of those mooring permittees that wish to maintain their permit and get a larger vessel. Lastly, the proposal attempts to give the City authority to privately owned mooring tackle and City tackle our rates are low, because we own the tackle and so on and so forth. And they're concerned as stated quote, that this will increase your rates. Again, this statement is false. Per Civil Code Title 17 the City of Newport Beach currently has the right to relocate mooring tackle and boats occupying space over public tidelands that is held in trust for the State of California. A mooring permit per Title 17 is only a temporary right to moor a boat over public tide lands and is revocable at any time. Furthermore, nothing in this proposed initiative replaces a mooring permittees tackle with City owned tackle. Nothing in this initiative addresses or references changing current mooring rates charged to existing mooring permittees. And then a letter just received yesterday, March 7 from Scott Karlin on behalf of the NMA asserted that at the Harbor Commission meeting of November 9, that the Harbor Commission promised to conduct a stakeholder meeting specific to propose changes to Title 17. And that no vote on this matter tonight could occur because that promise has not been fulfilled. The allegations set forth in that letter are false. No promises were made by this Commission. As with every Harbor Commission meeting, public comments are appreciated and considered very seriously. As a result, the Harbor Commission discussed and decided a public stakeholder meeting would be beneficial and to postpone the vote for the mooring initiative at the November 9 meeting. Subsequently, a public stakeholder meeting was then held on December 14, and this mooring initiative, and the intent of the proposed changes to Title 17 were discussed and followed with an extensive Q & A session. Unfortunately, this is not the first time the NMA has written letters to its members, our City Council, Commissioners, and others that parses only certain information and contains false and misleading statements. Taking up valuable

time at a public meeting to respond to false statements, frankly, is not productive time spent and doesn't benefit the boating community, or the Harbor Commission's Open Water Initiative for improvements to the mooring fields and navigations within the harbor. And this is something that all NMA members, mooring permittees and the public will benefit from. As I previously stated, in my opinion, the NMA board members should be held accountable and responsible for any misinformation that's been disseminated on their behalf to mooring permittees, the Harbor Commission, the Mayor, City Council, many of whom have taken their valuable time to be here tonight. So accordingly, I'm compelled to provide the detailed account of the truth. So that all of you here tonight can base your individual opinions on actual facts. And perhaps those of you that are NMA members will take a more proactive approach in persuading or finding leadership that does not reflect self-serving interests, and will resemble honesty, integrity, and the willingness to work and participate with this Commission towards achieving great progress for all stakeholders of our beautiful harbor. I do encourage all those present that intend to offer public comment on this matter later tonight to carefully consider the facts just presented, and the information that will be discussed in the following presentation."

Vice Chair Beer continued his presentation and stated the goal of this effort is to have better defined rows and fairways that will improve navigation and safety, improve optimization of space within the fields, and have additional City moorings within the current mooring fields themselves. He provided historic background of this matter, including history of ownership and graphic depictions of various safety and navigation matters within the harbor. In closing, he confirmed and clarified that the anchors on the sea floor are 20-feet apart. He turned the presentation over to Thomas Frechette, Noble Engineering.

Mr. Frechette explained the computation of the location of a boat with respect to the mooring anchors and presented various depictions.

Vice Chair Beer inquired if the Harbor Commission had any questions at this time and seeing none, he continued with his presentation continuing to provide examples of improvements to safety and navigability in the harbor, including increasing the waterway and channel width and the addition of seven moorings. He also addressed the consideration given to preservation of eelgrass and be mindful of environmental and conservation issues. Vice Chair Beer detailed the Title 17 changes required to implement the initiative, including accommodations requested by the NMA. In conclusion, he stated the result of this initiative will be substantially wider fairways for improved public access safer navigation through the mooring fields for both human powered and motor-powered craft, improved aesthetics for shoreline properties of residents, commercial establishments, visitors, and all harbor users. Additional moorings will be more affordable and require no initial investment to use, and generation of additional revenue for the Tidelands Fund and Harbor operations. As a result, this project, which is estimated at around \$250,000, will result in a complete return of the capital invested by the City and will subsequently be a positive impact to the Tidelands Fund.

In response to Chair Scully, Harbormaster Blank confirmed the supplemental materials distributed tonight to the Harbor Commission were not received in time to publish or post with the agenda, however public copies are available in the vestibule. The documents are currently also available online.

Chair Scully opened the floor to questions and comments from the Harbor Commission.

Secretary Yahn noted this item was years in the making with the intent of realizing an increase of open water throughout the Harbor. The information presented relieved his fears and concerns expressed about the spacing issues, which also addressed safety for harbor users. This process will also address the permittees who have been put on hold. Secretary Yahn expressed appreciation the cost objections have been addressed and the decisions are not arbitrary regarding boat location. He noted the importance of no

change to the transferability policy and receiving public comments on this item. He thanked Vice Chair Beer for the thorough presentation.

Commissioner Marston requested Vice Chair Beer provide additional information regarding the process for moving forward with the pilot program, including steps and timing. Vice Chair Beer responded the Harbor Commission would have to vote on the proposal and then it would come before the City Council for their consideration. He could not comment on the timing however, if the City Council approved the proposal, the next step would include going out to bid for construction. He also commented on inspections and testing which may need to take place and other matters involved in the potential process for mooring permittees.

Commissioner Marston inquired whether the design work had been completed. Vice Chair Beer commented the design is completed minus creating the exact GPS coordinates for each anchor weight in that field, which will likely incur additional costs.

Commissioner Marston inquired as to the potential length of the pilot program. Vice Chair Beer responded likely 6 months to 1 year.

Commissioner Williams thanked Vice Chair Beer for the thorough presentation and stated he would reserve his final comments until public comments were received.

Chair Scully opened the floor for public comments and reiterated the rules of decorum for the meeting.

John Fradkin, spoke on behalf of the Newport Mooring Association (NMA) and requested to have the next 5 speakers be from his organization in order to provide their complete comments on the matter. He stated the most significant reason for NMA's opposition to the Harbor Commission's mooring field realignment plan was the significant compromises in boating safety to harbor users. The majority of their membership who participated in their internal survey were against the subject plan. He referenced their suggestions for boat safety were not included in the subject plan, nor does the Harbor Commission subcommittee understand the safety nuances. He commented on the unique features of the harbor, including the importance of safe space between boats. The plan as proposed does not provide for increased space where needed and expressed concerns about the plan's impact on mooring values.

Duffy Duffield, former Council Member, complemented Vice Chair Beer and the staff for their comprehensive work on this matter. He noted he has been involved in this item for 18 years starting with consideration of the boundaries. He acknowledged the work now has to be done on the matters inside the boundaries and expressed his continued appreciation for the work conducted.

Dan Rosen stated the NMA disagrees with the Commission subcommittee's plan to put large fairways cutting through the mooring fields as a method to increase navigability, as the NMA believes it will degrade safety for harbor users who use mooring fields for refuge from harbor traffic. He iterated Newport Beach mooring fields are defined as special anchorage areas in the Code of Federal Regulations. He stated the MMA respectfully asserts that the Commission is incorrect in their definition of the navigable waters and the only navigable waters in the Newport Harbor according to the US Coast Guard is the main channel.

George Hylkema commented on information presented about the Americas Cup Harbor and that the subject plan's proponents are modeling their plan on a dissimilar location, which is a protected harbor within a small cove. He stated the NMA has done studies to prove that significant differences exist and the proposed plan should be rejected for safety considerations.

Jennifer Kresen expressed concerns why the model used by the San Diego has not been replicated and the negative impacts of the proposed subject plan on shoreline views. She asserted the plan would give



the Harbor Commission unlimited authority regarding views and create favoritism and lack of trust in government. She expressed concerns about the future aesthetics of the harbor and crowding. Ms. Kresen expressed the lack of need for additional moorings. The NMA provided a model plan for mooring rentals which would result in increased revenues to the City. She referenced public comments from previous Harbor Commission meetings citing inability to access moorings during inclement weather and strong tides. She inquired whether the City or Harbor Commission will provide safe docking areas for boats during inclement weather or tide conditions and concluded this matter seems to be an issue of safety and accessibility versus aesthetics and revenue.

Matt Still stated he is interested in purchasing a mooring and expressed concerns the proponents of the subject plan support a pilot test, but there has been no information provided regarding metrics or methods for conducting the test. He also expressed concerns regarding safety issues, especially those he has witnessed at the Catalina harbor, which he believes will occur with the implementation of the subject plan. He stated Newport Harbor is a home mooring for many users and not just a temporary destination.

Wade Womack, Newport Mooring Association, expressed concerns with Vice Chair Beer's earlier comments regarding the NMA. He expressed concerns that the proposed Title 17 changes have not been vetted or justified and there has not been adequate time to evaluate the changes posted on Thursday. He expressed concerns regarding potential changes in the Harbor Code for the purpose of conducting tests. He also stated concerns with the authority in the subject plan regarding the movement of boats for navigability reasons which the NMA does not agree with. He cited the costs the permittees will have to bear for the move of boats. He expressed concerns with the unintended consequences of vacant moorings under the subject plan. He requested clarity regarding the number of boats which will have to move.

Scott Karlin thanked the Commission for the work conducted and for being good listeners. He did express objections to Vice Chair Beer's comments regarding the NMA making false claims regarding the subject plan. The NMA has sent documentation refuting elements of the subject plan. He referenced a previous Harbor Commission meeting where NMA members inquired regarding Title 17 implications and alleged Vice Chair Beer stated the Commission would not speak about Title 17. He requested further clean-up of the proposed plan and that a vote on the matter now would break the Commission's promise.

Fred Fourcher, resident, commented on the five-foot extensions' cut off and potential impacts. He stated if mooring permittees had options to go up five feet they would tend to stay in place. He commented on the system developed over the years to access boats on Balboa and Lido Islands as there is not a normal dock there. He requested the Commission consider five-foot extensions. Also, having a "one size fits all" approach regarding weight may have unintended safety consequences. He requested the Harbormaster be granted discretion to consider these matters on a case-by-case basis.

Mike Fitzmorris, 25-year mooring holder, expressed appreciation for the intent to clean up the moorings. He expressed support for having a spreader line permanently tied although having a boat right on the nose of his parking spot would be misguided, citing the lack of engineering study on the matter. Parking is a very particular task in a boat and expressed concerns with lack of analysis or study on the proposed changes which will likely result in collisions between boats.

Don Farley expressed concerns that previous public comments on this matter have not been considered nor reflected in the current subject plan. He expressed concern with the lack of consideration for rearranging the mooring balls and that it is not desirable to have more free space available in the mooring fields or segregate large and small boats, except for the large ones. He stated the subject proposal is a recipe for disaster.

Hein Austin stated a mooring field is a legal definition for a marine parking lot and provided examples of the differences of when he maneuvers his vessels through mooring fields versus fairways for safety reasons. The comparisons for the subject plan to the Americas Cup Harbor at the November 9 stakeholder meeting should not be used for comparison. He stated further clarification is needed to address transferability issues and the future (report page 311). He inquired why Title 17 must be changed if the City has 10 moorings in which they can practice and experiment. He also expressed safety concerns with the point of contact under the subject plan.

Travis Huxman appreciated the work conducted and expressed he share the goals of this process overall for implementing needed changes to the harbor. He states he wants to trust the process will accept the feedback presented and create a better document in the code. He requested the Commission take the time needed to consider all objectives of the trial period to ensure a successful long-term implementation. He requested careful considerations of the elements unique to the harbor including extreme conditions, including winds. He requested a longer time period to conduct the trial to address legitimate weather conditions experienced in the harbor.

Leonard Thompson introduced himself as a professional mariner and permit holder and stated his experience in parking vessels of all sizes. He expressed support of everyone's efforts on this matter and suggested a trial with anchors set up in a few rows in the anchorage to simulate the subject plan changes.

Mathew Taylor stated he is a "liveaboard" and has been on the water since he was a toddler. He expressed concerns with alignment issues within the moorings and noted there are cans scattered everywhere. There is also a secondary issue with winds and safety and other issues under the proposed subject plan, including the loss of revenue. He expressed support for the Harbor Commission to make a good decision.

Roger Gooding, Harbor user for over 50 years, stating he uses his boat more than most people and the proposed subject plan will stop him from sailing off his mooring. With another boat in front of him, this will eliminate his ability to go out by himself or his grandchildren by sailing out as he has done for 50 years. He has no opinion on whether the subject plan overall is good or bad, but noted he will not be able to sail out of his mooring under the new proposal.

Jim Palmer, current mooring permit holder, expressed support for the test of the mooring field configurations, but opposed changes to Title 17 at this time. She cited paragraph 12 of the presentation regarding transferability and that it will not be affected, however the red line of Title 17 modifies the transfer criteria which is a considerable change to current practice. She expressed concern this change will limit her future ability to transfer if necessary.

Barbara Lawler supported the previous speaker's comments about transferability. She expressed concerns that the proposed changes could negatively impact the safe haven for users in the mooring fields. The addition of fairways will compound this safety issue. She also stated the shifting of boat locations will change the lifestyle they spent years working hard to achieve.

John Brito provided an example of the weather conditions in the harbor and how his ability to navigate would be compromised under the proposed changes in the subject plan, even under non-extreme conditions. He also stated there always appears to be plenty of moorings available for rent at any time.

Tim Lewis, mooring owner, stated his concern regarding sailing under inclement weather conditions under the changes in the proposed plan. He expressed Newport Beach residents deserve a pretty harbor and agrees with the cleanup of the moorings. He inquired regarding mandating standards for putting something in or within five feet and to clean up the rows which have not been fixed for 20 years. He inquired whether

there can be a mandate that weights be repositioned where they are supposed to be and also mandate spreader lines.

Ken Hatch provided examples of why putting boats in backwards does not make sense as proposed in the subject plan. He did not believe there has been adequate public comment opportunity provided on this matter and that the input provided has not been adequately addressed. He expressed concerns that the City has not complied with their duty to address disarray in the mooring fields. He commented on the weight impacts related to boats in the moorings relative to winds and the collisions and damage incurred. He suggested a longer time period to conduct tests.

Dan O'Sullivan stated if a mooring buoy is out of place and the permittee does not comply with the requirements the City will move the mooring. He stated he has complained about two difference moorings between the seventh and eighth fairway to the Harbor Department and they state they do not have authority to move the mooring buoy. He also expressed concerns the audience could not see the PowerPoint slides being presented.

Bill Kenney, representing the Newport Harbor Foundation, and stated their purpose of preserving, protecting and enhancing Newport Harbor for the benefit of the city of Newport Beach, the homeowners on or near the bay, the commercial operators in the bay and the recreational users of the bay. He stated he is speaking for the silent majority who supports the work and study conducted by Vice Chair Beer on this matter, including study and analysis of the mooring fields and consultation with those responsible for the management of moorings in other harbors throughout California. Stakeholder meetings were conducted and input from numerous groups received. The subject plan proposes to reconfigure the mooring fields so that the overall footprint is reduced, thus opening up the waters of Newport Harbor, making the mooring fields safer to navigate and use and potentially provide for additional moorings for future boaters of modest means. The subject plan also addressed the issues of mooring extension requests and necessary revisions to Title 17. He expressed support for the Harbor Commission to move forward with the subject proposal and stated the Newport Harbor Foundation is in full support of the recommendations made in the subject plan.

Jazzy, mooring permittee, expressed concerns with the approaches, especially in inclement weather, even with her significant experience and credentials. She expressed concerns with requiring maneuvering through a mooring field which is hazardous to other users. She expressed significant concerns with the proposed changes in the subject plan which she believes will impact user safety, including those who use the harbor to play in the water. She also expressed concern with bumping into neighboring vessels under the proposed plan.

Jim Pecall, resident and mooring permittee, thanked Vice Chair Beer for his work on this matter and gave everyone the benefit of the doubt that they are all working toward an amazing vision for the harbor. His largest concern is regarding property rights, and there has been an effort to explain the intent behind the proposed modifications. He did state he believed the proposed changes are confusing and require further clarification to clean up the language so that the intent of the changes matches the policy.

Seeing no other speakers, Chair Scully closed the floor for public comments.

Vice Chair Beer thanked everyone for their comments and that he memorialized several points. He addressed the concept of a double row is taken from America's Cup but nothing else. All the spacing, anchoring chain lengths, spreader lines and other factors related to winds tides, are a result of existing conditions in Newport Harbor. They have been considered in the new layout by a reputable city hired engineer. He also stated the proposed changes to Title 17 were discussed at length, including an extensive Q & A. The redline version was also distributed to the NMA. He also addressed that fairways are not

navigable channels. The proposed new design will result in fairways between 60 to over 100 feet. These are not main channels. This does not pertain to the United States Coast Guard definition of navigable channels.

Vice Chair Beer also stated the clear intent of the proposed changes was to have more open water, improved navigation, and add new City-owned moorings. He believed the proposed subject plan will achieve those goals. He concluded that the sub-permit, sublease program in place now does not address the need or demand for providing additional long-term moorings at a fair market value for which the public is entitled to have.

Secretary Yahn responded to the request for the Harbor Commission to take more time to evaluate proposed changes, however he stated this matter has been under consideration at the City Council and Harbor Commission levels for quite some time. The Harbor Commission is trying to execute the City Council's vision for the harbor which will require significant and careful consideration and work. He also stated the additional space between moorings provides a safer environment.

Secretary Yahn inquired if Vice Chair Beer could address the perceived confusion regarding the proposed Title 17 language regarding transferability referenced by several public speakers. Deputy City Attorney Jung responded that there is no change from the existing program or process for transferring a permit. The redline changes take existing language and just moves it to a different part. Secretary Yahn confirmed the definition of immediate family was just moved to a different section and the transfer program is intact.

Secretary Yahn expressed support for the proposed plan and to move forward with the pilot study to cover an entire season, a 12-month period, which would take into consideration the various harbor weather elements in the main channel.

Commissioner Marston thanked the public for their participation. She agreed with Secretary Yahn's comments regarding increasing space to address safety. She inquired whether the permittee would bear the cost of moving their vessel related to the proposed changes in Title 1. Vice Chair Beer referred her to the supplemental sheet with the changes that addressed her question. She confirmed that with regard to transferability that it does not have to be a family member. This was confirmed by staff. She did not understand where the other confusion was stemming from with regard to Title 17 other than the two points she just confirmed. She also wanted to confirm a new permit is not a transferred permit but is for new mooring. This was confirmed by staff.

Commissioner Williams apologized for any complications related to his participation by teleconference. He commented that much of the emotionally charged statements made were potentially fueled by misinformation. He requested the NMA membership and public to trust the process which has been conducted publicly and transparently. He would like to move forward with the pilot study and then reassess after its conclusion.

Chair Scully thanked everyone for their participation and comments, including the time and effort taken regarding this matter. He thanked the stakeholders who provided their time to listen and contribute to the effort, including the Newport mooring Association, the Balboa Island Improvement Association, Lido Island Community Association, the commercial vessel operators of Newport Harbor, the harbor department, City staff, the Harbor Commission and Vice Chair Beer. He confirmed his desire to make Newport Harbor better and he has studied open water initiative and mooring optimization to understand what would be best for all stakeholders within the harbor and to be open minded. This objective opens the waterways within the harbor for all boaters, it will provide an opportunity for a handful of long-term moorings with no significant upfront cost. It will improve the views for homeowners on the water and for homes with a view. It will provide proper spacing between boats in the mooring fields.

Chair Scully further stated the changes proposed are not radical and gets serious about drifting, discipline in the size of each boat and permitted size of each mooring permit. The one-time movement is to place them in a row with similar sized boats, keeping them in the same field. He agrees that safety is a primary concern and always starts with the person captaining or driving the boat. He stated the plan's mooring optimization is not unsafe. He supports the proposed plan as a good step for Newport Harbor and supports the proposed optimization plan.

Vice Chair Beer requested Deputy City Attorney Jung comment on the CEQA implications of this item as this is just a recommendation at this point. Mr. Jung referenced a letter saying the City would need to comply with CEQA and require a coastal development permit, however, the Harbor Commission is acting tonight under its Charter duty to provide a recommendation to the City Council and there is no commitment to a project. The City will complete its environmental review and apply for a coastal development permit at the proper time, but there is no obligation that be done prior to the Commission taking action tonight.

Vice Chair Beer moved that the item is exempt from CEQA and recommend the City Council approve this phase consisting of the C field reconfiguration, as presented this evening and set forth in the staff report attached to tonight's agenda packet, and to further include a recommendation to City Council to amend Title 17 per the revisions set forth in the staff report attached to this evening's agenda, along with the modification referenced in the supplement provided as part of tonight's agenda packet and a recommendation to the City Council that the cost of this phase one mooring field reconfiguration, estimated at \$250,000, be paid from the surplus funds generated and retained in the General Fund out of this year's current budget.

Commissioner Yahn requested an amendment to the stated motion to include the length of the pilot program. Deputy City Attorney Jung stated the amendment could be considered by the maker of the motion. Vice Chair Beer stated it may be difficult to accurately estimate the time needed for the pilot study and that the study results will come back regardless with opportunity for comment and discussion. He prefers not setting time limitations. Commissioner Yahn felt comfortable retracting his request for amendment.

The original motion was seconded by Commissioner Williams. The motion carried by the following roll call vote:

**Ayes:** Marston, Williams Yahn, Beer, Scully  
**Nays:** None  
**Abstain:** None  
**Recuse:** Svrcek  
**Absent:** Cunningham

The motion carried 5-0 with Commissioner Svrcek recusing himself.

The Commission meeting recessed at 8:17 p.m. and reconvened at 8:20 p.m.

### **3. Ad Hoc Committee Updates**

Several ad hoc committees have been established to address short term projects outside of the Harbor Commission objectives. This is the time the ad hoc committees will provide an update on their projects.

#### **Recommendation:**

- 1) Find this action exempt from the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(2) (the activity will not result in a direct or reasonably foreseeable indirect

physical change in the environment) and 15060(c)(3) (the activity is not a project as defined in Section 15378) of the CEQA Guidelines, California Code of Regulations, Title 14, Division 6, Chapter 3, because it has no potential for resulting in physical change to the environment, directly or indirectly; and

- 2) Receive and file.

There were no updates to report.

Chair Scully opened the floor to public comments. Noting there were no individuals who elected to speak, Chair Scully closed the floor to public comments.

There was no further action taken on this item.

#### **4. Harbor Commission 2022 Objectives Update**

At the February 8, 2023, Harbor Commission meeting the decision was made by the Commission to continue the 2022 Objectives instead of creating new ones for 2023. The Commission felt there was still much work to be done on the 2022 Objectives and it would allow the new City Council Members to get settled and learn about the Harbor Commission. Each ad hoc committee studying their respective Functional Area within the Commission's 2022 Objectives, will provide a progress update.

##### **Recommendation:**

- 1) Find this action exempt from the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment) and 15060(c)(3) (the activity is not a project as defined in Section 15378) of the CEQA Guidelines, California Code of Regulations, Title 14, Division 6, Chapter 3, because it has no potential for resulting in physical change to the environment, directly or indirectly; and
- 2) Receive and file.

Functional Area 1 (Yahn): Work in this area was submitted to Vice Chair Beer related to Title 17 in regard to the moorings. No further report.

Functional Area 2 (Beer): Preferred to defer until Commission Cunningham was present.

Functional Area 3 (Cunningham): No report - Excused absence

Functional Area 4 (Scully): No reports - Objective 4.1. and Objective 4.2 as it relates to the Lower Castaways will continue into 2023.

Chair Scully reported that with regard to Objective 3.1, he discussed the matter with Commissioner Cunningham and Tuesday, March 28, 2023 was set as the tentative date for the safety committee meeting; work will commence on this process this week. Functional area 3.2 was complete. Chair Scully confirmed with Harbormaster Blank that the subcommittee was confirmed for that functional area to convene a group of people for a research and discussion.

Chair Scully opened the floor to public comments. Seeing no other speakers, Chair Scully closed the floor to public comments.

The item was received and filed.

**5. Harbormaster Update – February 2023 Activities**

The Harbormaster oversees the City Harbor Department and is responsible for the management of the City's mooring fields, enforcement of the municipal code, events permitting, safety and rescue operations, the Marina Park Guest Marina, marine sanitation pump out equipment and public pier maintenance, impound and disposition of abandoned and unclaimed vessels and public relations and information dissemination on and about Newport Harbor.

This report will update the Harbor Commission on the Harbor Department's recent activities.

**Recommendation:**

- 1) Determine this action is exempt from the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(2) and 15060(c)(3) of the CEQA Guidelines because this action will not result in a physical change to the environment, directly or indirectly; and
- 2) Receive and file.

Harbormaster Blank summarized the information presented in the agenda report as it related to Harbor activities and keeping the Harbor clean safe and well enjoyed. A PowerPoint presentation was displayed. He displayed various depictions of the activities including a boat removal and other code enforcement efforts, including going "live" with the new permitting system. He stated his presentation to Finance Committee will occur on March 3, 2023, 3 p.m. and he will present proposed enhancements to the Harbor Department. He displayed the utilization of the harbor map which indicated an increase in use in February. There is no update on permits due to the permit technician being out at a training on marina management.

In response to Secretary Yahn, Harbormaster Blank provided detail on the upcoming Harbor Summer Summit, which is a convention of the summer juniors programs, for which there is tremendous demand.

Chair Scully inquired as to who was receiving the Marine Activity Permits (MAPs) each month to see who is coming and doing business on the water. Mr. Blank confirmed he would provide the information to the Commissioners, but believes there have been 3 in the last 60 days.

Chair Scully opened the floor to public comments. Seeing no speakers, Chair Scully closed the floor to public comments.

The item was received and filed.

**7. MOTION FOR RECONSIDERATION**

None

**8. COMMISSIONER ANNOUNCEMENTS (NON-DISCUSSION ITEM)**

Chair Scully attended the Water Quality and Coastal Tidelands Committee meeting where they reviewed their objectives and he expressed interest in collaboration with their Committee and the Harbor Commission.

**9. MATTERS WHICH COMMISSIONERS WOULD LIKE PLACED ON A FUTURE AGENDA FOR DISCUSSION, ACTION, OR REPORT (NON-DISCUSSION ITEM)**

Chair Scully requested adding Council Policy H-1 to the agenda for the April meeting.

10. **DATE AND TIME FOR NEXT MEETING: Wednesday, April 12, 2023 at 5 p.m.**

11) **ADJOURNMENT**

There being no further business to come before the Harbor Commission, the meeting was adjourned at 8:33 p.m.

DRAFT