



# CITY OF NEWPORT BEACH HARBOR COMMISSION AGENDA

City Council Chambers - 100 Civic Center Drive

Wednesday, June 12, 2019 - 6:30 PM

**Harbor Commission Members:**

David Girling, Chair  
Scott Cunningham, Vice Chair  
John Drayton, Secretary  
Ira Beer, Commissioner  
Paul Blank, Commissioner  
William Kenney, Jr., Commissioner  
Don Yahn, Commissioner

**Staff Members:**

Carol Jacobs, Assistant City Manager  
Kurt Borsting, Harbormaster  
Jennifer Biddle, Administrative Support Specialist

The Harbor Commission meeting is subject to the Ralph M. Brown Act. Among other things, the Brown Act requires that the Harbor Commission agenda be posted at least seventy-two (72) hours in advance of each regular meeting and that the public be allowed to comment on agenda items before the Commission and items not on the agenda but are within the subject matter jurisdiction of the Harbor Commission. The Chair may limit public comments to a reasonable amount of time, generally three (3) minutes per person.

The City of Newport Beach's goal is to comply with the Americans with Disabilities Act (ADA) in all respects. If, as an attendee or a participant at this meeting, you will need special assistance beyond what is normally provided, we will attempt to accommodate you in every reasonable manner. Please contact Carol Jacobs, Assistant City Manager, at least forty-eight (48) hours prior to the meeting to inform us of your particular needs and to determine if accommodation is feasible at (949) 644-3001 or [cjacobs@newportbeachca.gov](mailto:cjacobs@newportbeachca.gov).

**NOTICE REGARDING PRESENTATIONS REQUIRING USE OF CITY EQUIPMENT**

Any presentation requiring the use of the City of Newport Beach's equipment must be submitted to the Harbor Department 24 hours prior to the scheduled meeting.

**1) CALL MEETING TO ORDER**

**2) ROLL CALL**

**3) PLEDGE OF ALLEGIANCE**

**4) PUBLIC COMMENTS**

*Public comments are invited on agenda and non-agenda items generally considered to be within the subject matter jurisdiction of the Harbor Commission. Speakers must limit comments to three (3) minutes. Before speaking, we invite, but do not require, you to state your name for the record. The Harbor Commission has the discretion to extend or shorten the speakers' time limit on agenda or non-agenda items, provided the time limit adjustment is applied equally to all speakers. As a courtesy, please turn cell phones off or set them in the silent mode.*

**5) APPROVAL OF MINUTES**

**1. Minutes of May 8, 2019, Regular Meeting**

[Draft Minutes 05-08-2019 Harbor Commission Regular Meeting](#)

6) **CURRENT BUSINESS**

1. **Presentation by Orange County Sheriff's Department on Dock Space at Harbor Patrol Office**

Recently the Orange County Sheriff's Department changed the dock time limits at their facility located on Bayside Drive. The Sheriff's Department will provide a presentation regarding the changes.

**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, Chapter 3, because it has no potential for resulting in physical change to the environment, directly or indirectly.

2) Receive and file.

2. **Proposed Changes to Title 17 - Harbor Code, Sections 17.01 (Definitions), 17.05 (General Provisions), 17.20 (Vessel Launching and Operation), 17.25 (Berthing, Mooring and Storage), 17.30 (Harbor Use Regulations), 17.35 (Harbor Development Regulations)**

The City Council requested that the Harbor Commission Review Title 17- Harbor Code, of the Newport Beach Municipal Code in February of 2018. The Harbor Commission appointed an ad hoc committee comprising Commissioners Kenny, Blank and Yahn. The proposed changes are being recommended to the full Harbor Commission.

**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, Chapter 3, because it has no potential for resulting in physical change to the environment, directly or indirectly.

2) Approve the recommended changes to Title 17 (Attachment A) and forward the recommendations to the City Council for consideration.

[Staff Report](#)

[Attachment A – Proposed Changes to Title 17](#)

[Attachment B – Public Comments at April 8, 2019 public meeting](#)

[Attachment C – Public Comments at May 8, 2019 public meeting](#)

[Attachement D - Public Correspondence](#)

[6.2 Additional Material Received Proposed Changes to Title 17 Staff Memo](#)

[6.2 Additional Material Received Proposed Changes to Title 17 Jim Mosher](#)

**3. Proposed Amendment to Title 17, the Harbor Code, Regarding Offshore Mooring Extensions**

The Harbor Commission established their 2018 Goals and Objectives last year. Goal 3.2 is to “Establish policies for modifications to mooring sizes”. As part of this objective, an analysis of all mooring fields under City management was completed. As a result of that analysis, the Harbor Commission subcommittee is recommending changes to Title 17 to establish maximum lengths of vessels in each row of each mooring field.

**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, Chapter 3, because it has no potential for resulting in physical change to the environment, directly or indirectly.

2) Approve the proposed changes to the Newport Beach Municipal Code and recommend to the City Council for approval.

[Staff Report](#)

[Amended Attachment A – Proposed Ordinance – Title 17](#)

[Attachment A – Proposed Ordinance – Title 17](#)

[Attachment B – Harbor Policy](#)

**4. Consideration of Revision to Title 17 - Live-Aboard Definition**

The City Council requested that the Harbor Commission Review Title 17- Harbor Code, of the Newport Beach Municipal Code in February of 2018. The Harbor Commission appointed an ad hoc subcommittee comprised of Commissioners Kenny, Blank and Yahn. The ad hoc subcommittee is requesting the Harbor Commission review the definition of live-aboard.

**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, Chapter 3, because it has no potential for resulting in physical change to the environment, directly or indirectly.

2) Provide direction to staff on any recommendations to the City Council

[Staff Report](#)

**5. Harbor Commission 2018 Objectives: Ad Hoc Committee Updates**

Each ad hoc committee studying their respective Functional Area within the Commission's 2018 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, Chapter 3, because it has no potential for resulting in physical change to the environment, directly or indirectly.

2) Receive and file.

[Staff Report](#)

[Attachment A – Harbor Commission 2018 Objectives](#)

**6. Harbormaster Update - May 2019**

The Harbormaster is responsible for on-water management of the City's moorings, the Marina Park Marina and code enforcement on the water. This report will update the Commission on the Harbor Department's activities for May, 2019.

**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, Chapter 3, because it has no potential for resulting in physical change to the environment, directly or indirectly.

2) Receive and file.

[Staff Report](#)

[Attachment A – Marina Park Guest Slip Customer Survey Results for May 2019](#)

[Attachment B – Harbor Department Statistics, Fiscal Year through May 2019](#)

**7) COMMISSIONER ANNOUNCEMENTS (NON-DISCUSSION ITEMS)**

**8) QUESTIONS AND ANSWERS WITH STAFF ON HARBOR RELATED ISSUES**

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

**10) DATE AND TIME FOR NEXT MEETING: Wednesday, July 10, 2019**

**11) ADJOURNMENT**

**NEWPORT BEACH HARBOR COMMISSION REGULAR MEETING MINUTES**  
**Council Chambers – 100 Civic Center Drive, Newport Beach CA**  
**Wednesday, May 8, 2019**  
**6:30 PM**

**1) CALL MEETING TO ORDER**

The meeting was called to order at 6:30 p.m.

**2) ROLL CALL**

Commissioners: Dave Girling, Chair  
Scott Cunningham, Vice Chair  
John Drayton, Secretary (excused absence)  
Ira Beer, Commissioner  
Paul Blank, Commissioner  
William Kenney, Jr., Commissioner  
Don Yahn, Commissioner

Staff Members: Carol Jacobs, Assistant City Manager  
Kurt Borsting, Harbormaster  
Chris Miller, Public Works Manager  
Patrick Alford, Planning Manager  
Jennifer Biddle, Administrative Support Specialist

**3) PLEDGE OF ALLEGIANCE – Chair Girling's Father**

**4) PUBLIC COMMENTS**

None

**5) APPROVAL OF MINUTES**

**1. Minutes of March 13, 2019, Regular Meeting**

Commissioner Beer moved to approve the Minutes of the March 13, 2019 meeting as presented. Commissioner Blank seconded the motion. The motion carried by the following roll call vote:

**Ayes:** Vice Chair Cunningham, Commissioner Beer, Commissioner Blank, Commissioner Kenney, Commissioner Yahn

**Nays:** None

**Abstaining:** Chair Girling

**Absent:** Commissioner Drayton

**6) CURRENT BUSINESS**

**1. California Environmental Quality Act (CEQA) Presentation**

The Harbor Commission is tasked with providing recommendations to the City Council on issues related to Newport Harbor. Every staff report received by the Harbor Commission for consideration has language in the recommendation relating to CEQA compliance. This presentation will provide background into the CEQA process and the Harbor Commission's role in approving a CEQA recommendation.

**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, Chapter 3, because it has no potential for resulting in physical change to the environment, directly or indirectly;
- 2) Receive and file.

Planning Manager Patrick Alford reported the California Environmental Quality Act (CEQA) was enacted in 1970. The CEQA Guidelines are administrative regulations that implement the statute. Case law is important in refining and clarifying the CEQA Guidelines. Many communities have adopted local CEQA procedures, but the City of Newport Beach has not. The purpose of CEQA is to prevent avoidable damage to the environment, to foster and inform decision-making, and to ensure transparency in the governmental decision-making process. CEQA requires public agencies to refrain from approving projects with significant effects on the environment if there are feasible alternatives or mitigation measures that can lessen or avoid those effects. CEQA applies to projects, and a project is defined as involving a public agency, having a potential physical effect on the environment, and requiring an agency's discretionary approval. CEQA is not applicable to ministerial actions, a project with no possibility of a significant environmental effect, and a project that will not be approved. CEQA provides exemptions for such things as certification of a Local Coastal Plan (LCP), emergency projects, disapproval of a project, special projects, changes to existing facilities, replacement or reconstruction projects, minor land use division, and infill projects. A lead agency has the primary responsibility for carrying out or approving a project. A responsible agency is any other public agency with discretionary approval power over the project. CEQA documents include an Initial Study, a Negative Declaration, and an Environmental Impact Report (EIR). An Initial Study, which is prepared by the lead agency, determines whether a physical change in the environment will be potentially significant. A Negative Declaration can be issued if a project causes no significant impacts or significant impacts can be mitigated to a level of insignificance, often called a Mitigated Negative Declaration (MND). An EIR is required when an impact cannot be mitigated to a level of insignificance. An Initial Study is subject to a 30-day public review period. A Notice of Determination is filed when a Negative Declaration is approved. When an EIR is required, the lead agency sends a Notice of Preparation to responsible agencies, prepares a Draft EIR, and files a Notice of Completion, which triggers the 45-60-day public review period. The lead agency then prepares a Final EIR that may include responses to comments, a Mitigation Monitoring and Reporting Program, and errata. Once the Final EIR is approved, a Notice of Determination is filed. In determining whether an impact is significant, the lead agency considers context and setting, whether the effects are direct or indirect, and whether the effects are incremental or cumulative. The determination must be based on substantial evidence contained in the public record. The public can comment during several stages of the CEQA process. With a Negative Declaration, the decision-making body must consider public comments but is not required to make formal responses. With an EIR, the decision-making body is required to respond to public comments.

In response to questions from Commissioner Kenney, Planning Manager Alford explained that anyone who has discretionary authority over a project and who is part of a public agency is the public agency. A City body that makes a recommendation to another City body is subject to CEQA requirements. The Harbor Commission can determine whether a project is exempt from CEQA review. The approving body makes the determination whether there are feasible alternatives or mitigation measures, e.g., the Harbor Commission makes the determination when reviewing the environmental document. The Harbor Commission determines whether CEQA applies to a project prior to taking action on a project. The Harbor Commission can review but not take action on a project prior to completion of environmental review. The Harbor Commission can find no potential impact associated with a project or find a project exempt from CEQA and take action on the project. The key point is that the Harbor Commission should make a determination of a project's status under CEQA prior to taking action on the project. If a project has the potential for a significant impact, additional environmental analysis of the project is needed. An environmental analysis may determine there is no significant impact or the impact can be mitigated to a level of insignificance. If a project has the potential for a significant impact, the CEQA exemptions may not apply to the project. If a project clearly falls under an exemption and there is no substantial evidence that the project will have a significant impact, an Initial Study is not needed.

Chair Girling stated Commissioner Kenney is alluding to an appeal presented to the Harbor Commission in January 2019. During the hearing, someone from the audience suggested the project was not exempt from CEQA. The Harbor Commission needs more direction regarding its actions with respect to CEQA. Planning

Manager Alford advised that a proper staff report in recommending a project as exempt from CEQA should provide facts and/or evidence supporting a finding that the project is exempt.

In reply to additional inquiries from Commissioner Kenney, Planning Manager Alford agreed that a public agency can make a finding different from that recommended in the staff report. Testimony from the public should be factored into the decision and should be reflected in facts supporting the public agency's action. At times, staff prepares the Initial Study and Negative Declaration for a project, but usually a consultant to the City prepares them. Typically, staff does not prepare EIRs. If a project has a significant unavoidable impact, the decision-making body can make certain findings and approve a Statement of Overriding Considerations, which indicates the value of the project overrides the identified environmental impact. The Harbor Commission has a duty to determine whether a project may have potential negative environmental impacts that should be analyzed.

In answer to Commissioner Yahn's queries, Planning Manager Alford indicated for a development project that is primarily on land but has a water component, staff will seek the Harbor Commission's counsel on the water aspect of the project. If the Harbor Commission has an interest in a particular project, it can request staff present a study session or discussion of the project so that the Harbor Commission can provide feedback. The Newport Village project has undergone a significant redesign. The applicant is conducting outreach with neighboring communities. Once the applicant formally submits a revised project, staff will begin the process for the EIR.

Commissioner Kenney remarked that the Harbor Commission would like to be more involved with projects that could have an impact on the Harbor.

Commissioner Blank recalled staff presenting two projects with upland components to the Harbor Commission for review. On one occasion, he attended a Planning Commission meeting at staff's request to discuss Newport Village.

Chair Girling commented that the Harbor Commission may decide that a project is not exempt from CEQA, contrary to the staff recommendation.

Assistant City Manager Carol Jacobs clarified that the Harbor Commission has the right to deny staff's CEQA recommendation for a project. In which case, the project will be denied until such time as the applicant provides CEQA information. The Harbor Commission cannot deny the CEQA findings and during the same hearing approve the project. Planning Manager Alford added that the Harbor Commission can deny a project without making a CEQA finding.

Commissioner Kenney related that staff should have advised the Harbor Commission that the review and approval stopped once the Harbor Commission found the project could have negative environmental impacts during the appeal hearing in January.

Jim Mosher seemed to recall that the Harbor Commission reviewed the project for a marina and restaurant. He did not believe the Harbor Commission could have approved the January appeal with a Statement of Overriding Consideration because an analysis of environmental impacts and a public comment period had not been provided.

Commissioner Kenney remarked that the City Council would only make findings for a Statement of Overriding Consideration after all environmental review has been completed. An EIR can identify negative environmental impacts, and the City Council can make findings for a Statement of Overriding Consideration.

An unidentified speaker inquired regarding the threshold for significance and levels of significance for impacts. Planning Manager Alford explained that thresholds vary by agency. For example, in determining the threshold for significance of noise, staff utilizes the City's General Plan and noise control ordinance, which contains standards for noise. If studies indicate a project could exceed those standards, the project has a significant environmental impact.

**2. Eelgrass in Newport Harbor – Status Update**

Staff will present a current status update on eelgrass in Newport Harbor.

**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.
- 2) Receive and file.

Public Works Manager Chris Miller reported at one point, dredging could not occur in the Harbor because of its impact on eelgrass. The City surveyed eelgrass for a number of years in order to obtain information that staff could use to negotiate regulatory agency approval of the Newport Specific Plan. To his knowledge, the City of Newport Beach is the only city with a specific plan. The City's Regional General Permit (RGP) 54 dredging permit allows an annual maximum dredging volume of 75,000 cubic yards (cy); a maximum individual project volume of 8,000 cy; and a maximum dredge depth of -10 feet MLLW plus 2 feet over depth. RGP 54 requires sediment testing every five years and allows temporary impacts to eelgrass as outlined in the City's eelgrass plan. A couple of varieties of eelgrass grow in Newport Harbor. The National Marine Fisheries Service is the lead agency for eelgrass impacts, and Fish and Wildlife and the Coastal Commission provide input. Other cities are subject to regulations contained in the California Eelgrass Mitigation Plan. Under the eelgrass program, the City is required to conduct eelgrass surveys of the Harbor every two years. The surveys provide exact locations of eelgrass. In 2003-2004, 23.5 acres of eelgrass were found in the Harbor. In 2009-2010, eelgrass dropped to 16.2 acres due to dredging and storms. In 2018, eelgrass increased to 30 acres. Dredging is allowed to impact approximately 1 acre of eelgrass per year. The 2016 survey of deep-water eelgrass found 50 acres. In 2016, staff received 43 applications for dredging; 60,000 cy of material was dredged; and a half acre of eelgrass was impacted. In 2017, staff received 32 applications; 54,000 cy of material was dredged; and an acre of eelgrass was impacted. When the impact to eelgrass reached its limit in 2017, staff stopped processing applications. In 2018, the number of dredging applications decreased to ten. For January, February, and March 2019, staff has received five applications. The Coastal Commission and the Water Board have approved an amendment to the RGP 54. U.S. Army Corps of Engineers approval of the amendment should be issued soon. The amendment proposes to replace the requirement for a Caulerpa survey for every project with a requirement for a Caulerpa survey during the biennial eelgrass survey. In the next 60 days, staff will file an application for reauthorization of RGP 54. The application will include an exception for unrestricted beach maintenance dredging by the City.

In answer to Commissioner Kenney's inquiries, Public Works Manager Miller indicated the water in Promontory Bay is not part of the RGP 54 because its sediment test did not go well. His earlier comments did not distinguish among private, County, or City tidelands but between sediment suitability.

Commissioner Yahn noted the diagram does not show deep-water eelgrass through any of the major federal channels. In response to his questions, Public Works Manager Miller clarified that eelgrass is surveyed every two years along the shoreline of the entire Harbor. A deep-water survey is conducted every four years through a side-scan sonar technique. A significant portion of the upcoming federal dredging project will not be affected by deep-water eelgrass; however, the channel entrance will be dredged. Impacts to eelgrass at the channel entrance will be addressed. Mitigations include planting eelgrass in other areas of the Harbor probably at a ratio of 1 to 1.38. The locations of eelgrass as determined by the survey is available to the public on the City website.

Commissioner Cunningham noted the Grand Canal on the south side of Park Street was dredged in 2017. The 2018 survey shows eelgrass is growing back in that area. That is a good indication of the Harbor's health. Good tidal flush is necessary for eelgrass to grow in the upper part of the Harbor.

Public Works Manager Miller advised that he is trying to change the public's attitude toward eelgrass in the Harbor. More eelgrass in the Harbor means more dredging projects can impact eelgrass.

Hein Austin inquired whether the exception for dredging public beaches would include public docks. Public Works Manager Miller indicated the exception does not include public docks, but public docks are included



in RGP 54. Applications to dredge the public docks at 19th Street, 15th Street, and Fernando have been submitted.

Jim Mosher inquired whether the increase in shallow-water eelgrass from 30 acres to 58 acres resulted from the large field of eelgrass north of the Bay Bridge. Public Works Manager Miller related that the field contributed to the increase. Mr. Mosher inquired whether different rules or credits applied to eelgrass north and south of the Bay Bridge. Public Works Manager Miller explained that requirements of RGP 54 are the same for properties north and south of the bridge.

**3. Proposed Maximum Time Limit Zones – 15th Street Public Dock**

Public docks have been provided by the City at various locations throughout the Harbor, for the purpose of loading and unloading passengers, supplies, boating gear, short-term mooring and similar purposes. It is the policy of the City to maintain such facilities in a manner that will permit the greatest public use and avoid continuous occupancy, congestion or blocking thereof. Where necessary to achieve this objective, the Harbormaster is authorized and directed to post dock markings or signs limiting the time during which a vessel may be tied up or secured.

To advance this objective, the Harbor Department is recommending reassignment of approximately twenty-seven feet of linear dock space at the 15<sup>th</sup> Street Public Dock, currently designated for vessels secured up to a seventy-two (72) hour maximum to a proposed twenty-four (24) hour maximum.

**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, Chapter 3, because it has no potential for resulting in physical change to the environment, directly or indirectly.
- 2) Approve staff recommendation to reassign the proposed maximum allowable time period for a vessel to occupy this section of the 15<sup>th</sup> Street Public Dock from seventy-two (72) hours maximum to twenty-four (24) hours maximum as shown on Attachment A.

Harbormaster Kurt Borsting reported staff proposes a change to the allocation of time limits at the 15th Street dock. Currently, 46 linear feet of the Harbor side of the dock are limited to 20-minute parking; 36 linear feet on the west side of the dock are limited to 3-hour parking; 47 linear feet of the dock are limited to 72-hour parking for boats with a maximum length of 9 feet; and 28 linear feet on the land side of the dock are limited to 72-hour parking with no limit on boat size. Under staff's proposal, 72-hour parking for boats with a maximum length of 9 feet would be reduced from 47 feet to 20 feet, and 27 linear feet of 24-hour parking for boats with a maximum length of 9 feet would be added. Staff proposes the change in response to community feedback. Title 17 Section 17.25.010 authorizes the Harbormaster to post dock markings or signs limiting the time a vessel is secured to a dock or supplies may be left on a dock in order to achieve the greatest public use and to avoid extended occupancy, congestion, or blocking of the dock. If approved, staff will monitor the new time limits to determine whether they achieve greater use of the dock.

In reply to Commissioner Yahn's queries, Harbormaster Borsting was not aware of limits on boat size for the outside edges of the dock. The time limits presume boats will be bow-tied, and most boats are bow-tied to the dock. With respect to enforcement, staff has implemented a public education campaign and sent individual emails to live-aboards. Staff has recorded the time and vessel CF number and attached a notice of the time limit and blue painter's tape to the vessel's hull at the beginning of the 72-hour time period. Staff then photographed the dock area with the vessels. Over the next few days, staff returned to the dock to compare the photo with the area to determine whether vessels and/or supplies had been moved. Staff found almost universal movement of vessels. At the 15th Street dock, enforcement resulted in a 30-percent improvement in usage and one impounded vessel.

In response to Commissioner Kenney's inquiries, Harbormaster Borsting advised that the dock has individual cleats. Changing from individual cleats to a continuous rail within the zone for 9-foot boats may not increase usage because the area is already heavily used. Also, a continuous rail can be a tripping hazard. Public Works Manager Miller's response to Commissioner Kenney's inquiry regarding the timeframe for dredging the 15th and 19th Street docks is inaudible.

Richard Dorn [phonetic] felt the 24-hour time limit will be an improvement. The 72-hour zone is usually filled with vessels. A 12-hour zone would be a good improvement for daily users. Six boats are sometimes tied to one cleat, which makes access to the dock difficult. A continuous rail would be more user-friendly and efficient.

Eric Langenbach advised that as a live-aboard he often left his vessel tied in a 72-hour zone over a weekend. Because of restrictions, he cannot tie his vessel to the dock again on Monday morning to go to work. Live-aboards have been issued stickers for their skiffs. He requested the Harbor Commission consider some method for live-aboards to access the docks more often.

Hein Austin requested an exemption for live-aboard vessels with CF or live-aboard numbers. In some instances, vessels may appear not to have been moved during the time period when it had been moved.

Commissioner Blank moved to approve the staff recommendation to reassign the proposed maximum allowable time period for a vessel to occupy this section of the 15<sup>th</sup> Street Public Dock from seventy-two (72) hours maximum to twenty-four (24) hours maximum as shown on Attachment A.. Commissioner Kenney seconded the motion. The motion carried by the following roll call vote:

**Ayes:** Chair Girling, Vice Chair Cunningham, Commissioner Beer, Commissioner Blank, Commissioner Kenney, Commissioner Yahn

**Nays:** None

**Abstaining:** None

**Absent:** Commissioner Drayton

Chair Girling requested Harbormaster Borsting consider accommodations in response to public comments.

**4. Harbor Commission 2018 Objectives: Ad Hoc Committee Updates**

Each ad hoc committee studying their respective Functional Area within the Commission's 2018 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, Chapter 3, because it has no potential for resulting in physical change to the environment, directly or indirectly.
- 2) Receive and file.

Functional Area 1: Vice Chair Cunningham reported he and staff met with the Environmental Protection Agency (EPA) regarding disposal of dredged material. Staff is reviewing the possibility of using a confined aquatic disposal (CAD) site.

Functional Area 2: No report

Functional Area 3: Commissioner Beer advised that the committee has drafted language regarding extension of mooring length. The language can be presented to the Harbor Commission for discussion.

Functional Area 4: Commissioner Kenney indicated the committee held stakeholder meetings on April 8 and May 6 to obtain public input and suggestions for the first half of Title 17. The committee's recommendations for the first half of Title 17 may be ready for a Harbor Commission discussion in June or July. Stakeholder meetings for the second half of the Code are scheduled for May 13 and June 24.

Committee recommendations for the second half of Title 17 may be presented to the Harbor Commission in August. A stakeholder meeting for Section 17.10 is scheduled for May 23. The committee needs to coordinate with the Functional Area 3 committee regarding extension of mooring length.

Assistant City Manager Jacobs reported the Brown Act prevents the two committees from meeting jointly. She has the language crafted by the Functional Area 3 committee and will incorporate it into the review of Title 17.

Functional Area 5: Chair Girling related that the committee continues to meet with members of the charter fleet industry.

Functional Area 6: Commissioner Blank stated a visioning session was held in March. Staff is preparing a master list of constituent groups to invite to visioning sessions and exploring methods to collect data more quickly and to hold sessions more frequently.

**5. Harbormaster Update – March and April 2019**

The Harbormaster is responsible for on-water management of the City's moorings, the Marina Park Marina, and code enforcement on the water. This report will update the Commission on the Harbor Department's activities for January 2019.

**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, Chapter 3, because it has no potential for resulting in physical change to the environment, directly or indirectly.
- 2) Receive and file.

Harbormaster Borsting reported the City submitted an application for \$175,000 to the California Division of Boating and Waterways for the Surrendered and Abandoned Vessel Exchange (SAVE) grant on April 12. The prior \$125,000 SAVE grant has funded the removal of 23 derelict vessels from the Harbor, and three vessels are pending removal. During March and April, staff solicited and received quotes from five qualified firms for the demolition/salvage of the three vessels. Staff is negotiating contracts with two firms to remove the three vessels. Harbormaster Borsting met with the U.S. Coast Guard to discuss establishing a permanent West Anchorage, removing fixed navigational aids, re-installing lights at various buoys, and exploring a suggestion to upgrade the navigational aid at the West Jetty. Staff has prepared an initial boater welcome packet that contains a welcome message, Harbor maps, a visitor guide and neighborhood guide, a customer satisfaction survey, Wi-Fi codes, and restroom and shower keys. Eleven people have submitted responses to the Marina Park guest slip survey. Based on the responses, 91 percent were satisfied with their stay and more than 70 percent agreed or strongly agreed that they received quality and value for the cost. One response somewhat disagreed that they received quality and value and expressed a concern about fuel costs in the Harbor. All responses agreed or strongly agreed that they were pleased with the appearance and condition of the guest slips and that they would return. The City is recruiting for Harbor Service Workers. Thirteen of 30 applicants were interviewed on May 6. Second-round interviews are scheduled for May 10. Visitor statistics have declined slightly since the implementation of new fees, but revenues have increased slightly.

Jim Mosher remarked that the Harbor Commission did not include a CEQA finding in its action for time limits on the 15th Street dock.

Len Bose recalled a promise for the fixed channel markers to be repaired in 2018 and requested repairs be prioritized. Channel marker lights are needed most in the Upper Bay.

In answer to Commissioner Kenney's inquiry, Harbormaster Borsting indicated the length overall (LOA) for the vessel *Energitech* is 83 feet. The proposal for *Energitech* is to remove it from the Harbor, remove the

house and the contents, and sell the hull. *Energytech* and *Espousa* were offered at auction and received no bids.

Hein Austin inquired whether Harbormaster Borsting has considered listing the vessels on Craig's List. Harbormaster Borsting indicated staff would investigate listing derelict vessels for sale on Craig's List.

In reply to Chair Girling's query, Assistant City Manager Jacobs advised that the Harbor Commission can make the findings for CEQA and approve the project in its motion for a project or move staff's recommendations for a project. Moving staff's recommendations will include all items. Commissioner Kenney clarified that the Harbor Commission should not move staff's recommendations if it disagrees with any or all recommendations.

**7) COMMISSIONER ANNOUNCEMENTS (NON-DISCUSSION ITEM)**

Commissioner Cunningham announced June 1 is the second annual Harbor cleanup day.

Commissioner Kenney indicated a Regional Water Quality Control Board meeting regarding copper-based anti-fouling paints is scheduled for May 9 at 5:30 p.m. May 13 is the next community meeting to review Title 17.

**8) QUESTIONS AND ANSWERS WITH STAFF ON HARBOR-RELATED ISSUES**

In answer to Commissioner Blank's question, Harbormaster Borsting reported seven applications have been submitted for special events to exceed the speed limit.

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

In reply to Commissioner Yahn's inquiry, Assistant City Manager Jacobs advised that the Sheriff's Department converted the dinghy docks to 20-minute parking because of security concerns.

Commissioners requested items for conversion of the dinghy docks at the Sheriff's Department and discussion of the draft Code language for mooring extensions.

Jim Mosher noted the Harbor Commission's decision regarding the dock configuration project at 939 Via Lido Soud has been appealed. The City Council will hear the appeal on May 28.

Chair Girling announced his resignation from the Harbor Commission. The June meeting will be his final meeting.

**10) DATE AND TIME FOR NEXT MEETING: Wednesday, June 12, 2019**

**16) ADJOURNMENT**

There being no further business to come before the Harbor Commission, the meeting was adjourned at 8:42 p.m.



**CITY OF**  
**NEWPORT BEACH**  
**Harbor Commission Staff Report**

June 12, 2019  
Agenda Item No. 6.2

**TO:** HARBOR COMMISSION

**FROM:** Carol Jacobs, Assistant City Manager - 949-644-3313,  
[cjacobs@newportbeachca.gov](mailto:cjacobs@newportbeachca.gov)

**TITLE:** Proposed Changes to Title 17 – Harbor Code, Sections 17.01 (Definitions), 17.05 (General Provisions), 17.20 (Vessel Launching and Operation), 17.25 (Berthing, Mooring and Storage), 17.30 (Harbor Use Regulations), 17.35 (Harbor Development Regulations)

---

**ABSTRACT:**

The City Council requested that the Harbor Commission Review Title 17- Harbor Code, of the Newport Beach Municipal Code in February of 2018. The Harbor Commission appointed an ad hoc committee comprising Commissioners Kenny, Blank and Yahn. The proposed changes are being recommended to the full Harbor Commission.

**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, Chapter 3, because it has no potential for resulting in physical change to the environment, directly or indirectly.
- 2) Approve the recommended changes to Title 17 (Attachment A) and forward the recommendations to the City Council for consideration.

**FUNDING REQUIREMENTS:**

There is no fiscal impact related to this item.

**DISCUSSION:**

At the request of City Council, the Harbor Commission was tasked with revising and updating Title 17- Harbor Code. The purpose of this revision was to review the code in light of the City's new Harbor Department and increased service levels.

The Harbor Commission created a subcommittee consisting of Commissioners Blank, Kenney and Yahn. The subcommittee worked together for months to review Title 17 and update the code in draft form as they saw necessary. The purpose of this review was to update Title 17 in response to the City creating its own department and updating the code based on how the harbor is

managed under the City's control. The committee felt it important to provide the public with some initial thoughts regarding possible changes to the code. Once the subcommittee reviewed the Code, the committee felt it important to gather input on its initial thoughts to determine if they were on the right track and in alignment with the needs of all harbor users.

The subcommittee embarked on a public outreach campaign to reach all of the stakeholders and garner input from the community. The code is rather lengthy so the subcommittee decided to divide the code into three sections for community review.

The subcommittee created an email address when stakeholders could email comments on the proposed changes to [Title17Review@newportbeach.ca.gov](mailto:Title17Review@newportbeach.ca.gov). In addition, the subcommittee held two public meetings on April 8, 2019 and May 6, 2019. After the first outreach meeting, the subcommittee met again to review the input provided by the public. The committee went through all of the comments (Attachment B) and developed recommendations on whether to accept, reject or modify the suggestion. At the second meeting, the subcommittee went over their recommendations based on input. The public comments after that meeting are shown in Attachment C. Emails to staff for the Title 17 review, as well as additional correspondence are included in Attachment D.

This staff report and recommendations are the result of a review by the Harbor Commission subcommittee, staff and the community. This following sections are included in this review:

<u>Section</u>	<u>Title</u>
17.01	Definitions
17.05	General Provisions
17.20	Vessel Launching and Operations
17.25	Berthing, Mooring and Storage
17.30	Harbor Use Regulations
17.35	Harbor Development Regulations

Below is a summary of proposed significant changes. Items considered clarifying language and minor changes are not identified below. For specific word changes, see Attachment A.

- **17.01 – Definitions**
  - Minor revision to “Business or Business Activity”
  - Minor revision to “Commercial Fishing Vessel”
  - Revision to term “Fairway”
  - Creation of definition for “Greywater”
  - Revisions to definition of “Mean Lower Low Water”
  - Revision to “Pierhead Line”
  - Revision to “Seaworthy”
  - Revision to “Sub-Permit”
  - Significant revision to “Vessel/length/Width”
- **17.05 - General Provisions**
  - None

- **17.20 – Vessel Launching and Hauling**
  - 17.20.010 – Use of motor craft within 100 feet of launching sites or when swimmers are present
  - Change to use of Grand Canal for human powered vessels from June – September to year round
- **17.25 – Berthing, Mooring and Storage**
  - Changes to Time Limits and Rules for Public Docks
  - Changes to Sea Lion Deterrents
  - Changes to Storage Regulations for unattended vessels
- **17.30 – Harbor Regulations**
  - None
- **17.35 Harbor Development Regulations**
  - None

The subcommittee recommends the Harbor Commission approve the recommended changes to Title 17 and authorize staff to forward the recommended changes to the City Council for consideration.

#### **ENVIRONMENTAL REVIEW:**

Staff recommends the Harbor Commission 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, Chapter 3, because it has no potential for resulting in physical change to the environment, directly or indirectly.

#### **NOTICING:**

The agenda item has been noticed according to the Brown Act (72 hours in advance of the meeting at which the Harbor Commission considers the item).

#### **ATTACHMENTS:**

Attachment A – Proposed Changes to Title 17  
 Attachment B – Public Comments at April 8, 2019 public meeting  
 Attachment C – Public Comments at May 8, 2019 public meeting  
 Attachment D – Public Correspondence

## **Chapter 17.01**

### **DEFINITIONS**

#### **Sections:**

**17.01.010 Effect of Chapter.**

**17.01.020 Rules for Construction of Language.**

**17.01.030 Definition of Terms.**

#### **17.01.010 Effect of Chapter.**

For the purposes of this title, the words and phrases herein defined shall, unless the context clearly indicates otherwise, have the meanings herein set forth in this chapter. (Ord. 2008-2 § 1 (part), 2008)

#### **17.01.020 Rules for Construction of Language.**

In addition to the general provisions of the Municipal Code, the following rules of construction shall apply:

- A. The particular shall control the general.
- B. Unless the context clearly indicates the contrary, the following conjunctions shall be interpreted as follows:
  1. “And” indicates that all connected words or provisions shall apply.
  2. “Or” indicates that the connected words or provisions may apply singly or in any combination.
  3. “Either...or” indicates that the connected words or provisions shall apply singly but not in combination.
- C. In case of conflict between the text and a diagram, the text shall control.
- D. All references to departments, commissions, boards, or other public agencies are to those of the City of Newport Beach, unless otherwise indicated.
- E. All references to public officials are to those of the City of Newport Beach, unless otherwise indicated. (Ord. 2008-2 § 1 (part), 2008)

#### **17.01.030 Definition of Terms.**

- A. Definitions: A.
  1. Abutting Upland(s) Property. The term “abutting uplands property” or “abutting upland(s)” shall mean the adjacent bordering property held in fee or by lease. In instances, such as on Balboa Island, where a City-owned public walkway exists between the pier and the adjacent bordering property, the “abutting uplands property” or “abutting upland(s)” shall mean the property adjacent to and



abutting the property held in fee or by lease on the landward side of the walkway.

2. Anchorage or Anchorage Area. The terms “anchorage” and “anchorage area” shall mean any portion of Newport Harbor which has been designated pursuant to law and approved by the Federal Government for the temporary anchorage of vessels, using the vessel’s own anchoring tackle.

3. Applicant. The term “applicant” shall mean a person applying for a permit under this title.

4. Assigned Vessel. The term “assigned vessel” shall mean a vessel lawfully registered, owned or documented to a permittee to occupy a designated mooring or berthing location in Newport Harbor.

B. Definitions: B.

1. Back Bay. See Upper Newport Bay.

2. Bareboat Charter. The term “bareboat charter” shall mean any vessel not inspected by the United States Coast Guard under Title 46 of the Code of Federal Regulations and which has been chartered for consideration.

3. Beach. The term “beach” shall mean the expanse of sand, gravel, cobble or other unconsolidated material that extends landward from the low water line to the place where there is distinguishable change in physiographic form, or to the line of permanent vegetation. The seaward limit of a beach (unless specified otherwise) is the mean low water line.

4. Beam. The term “beam” shall mean the width of a vessel. Vessel beams are generally critical at two locations of the boat; i.e., at the water line where the boat directly interfaces the dock, as well as at the walking deck; i.e., the widest point of the vessel. For the purpose of compliance with any measurement requirements, the beam shall be interpreted as the widest point of the vessel.

5. Berth. The term “berth” shall mean any location such as a floating dock, slip, side tie, mooring

6. Reserved.

7. Breakwater. The term “breakwater” shall mean a structure or barrier protecting a shore area, harbor, anchorage, or basin from waves, usually constructed as a concrete or riprap (rock wall) structure.

8. Building Official. The term “Building Official” shall mean the Building Manager/Chief Building Official of the City’s Community Development Department, or his or her designee.

9. Bulkhead or Seawall. The term “bulkhead” or “seawall” shall mean the retaining wall that separates dry land areas and water areas.

10. Bulkhead Line. The term “bulkhead line” shall mean the harbor land/water perimeter lines established in Newport Harbor by the Federal Government which define the permitted limit of filling or solid structures that may be constructed in the Harbor. The establishment of bulkhead lines does not necessarily allow the property owner to build to the limits of the bulkhead line due to potential environmental considerations established by the State of California and/or the Federal Government.

11. Business or Business Activity. The terms “business” and “business activity” shall mean all activities, **whether the activity is non-profit or for profit**, engaged in for gain, benefit, advantage or livelihood to any person, directly or indirectly, including, but not limited to, any profession, trade, occupation, employment or calling engaged in trade, commerce, the exchange of goods, services, or property of any kind, transportation of persons as well as goods, communication, renting or leasing real or personal property or that provides any service,.

C. Definitions: C.

1. Caulerpa. The term “Caulerpa” shall mean an invasive Mediterranean seaweed (*Caulerpa taxifolia*) introduced to southern California in 2000 that has a potential to cause severe ecological damage to coastal and nearshore waters.

2. Certified Charter. The term “certified charter” shall mean any vessel inspected by the United States Coast Guard under Title 46 of the Code of Regulations and which has been chartered for consideration.

3. Channel. The term “channel” shall mean a water area in Newport Harbor designated for vessel navigation with necessary width and depth requirements, and which may be marked or otherwise designated on Federal navigation charts, as well as in other sources.

4. Chartered for Consideration. The term “chartered for consideration” shall mean any vessel which has been hired or leased by the owner, directly or through an authorized representative, to any person for a voyage in exchange for the payment of money, the receipt of something of value, or the forgiveness of a debt.
  5. City. The term “City” shall mean the City of Newport Beach.
  6. City Council. The term “City Council” shall mean the City Council of the City of Newport Beach.
  7. City Manager. The term “City Manager” shall mean the City Manager of the City of Newport Beach or his or her respective designee.
  8. City Tide and Submerged Land. The term “City tide and submerged land” shall mean that area within Newport Harbor granted to the City by the State of California.
  9. Coastal Access. The term “coastal access” shall mean the ability of the public to reach, use or view the shoreline of coastal waters or inland coastal recreation areas and trails.
  10. Coastal Commission. The term “Coastal Commission” shall mean the California Coastal Commission, the State agency established by State law responsible for carrying out the provisions of the Coastal Act and for review of coastal permits on appeal from local agencies.
  11. Coastal-Dependent Development or Use. The terms “coastal-dependent development” or “coastaldependent use” shall mean any development or use which requires a site on, or adjacent to, the sea to be able to function at all (from California Public Resources Code, Section 30101).
  12. Code. The term “code” shall mean the Newport Beach Municipal Code.
  13. Commercial. The term “commercial” shall mean any business activity whether the business activity is nonprofit or for profit. Commercial activities shall include, but are not limited to, marinas, charter facilities, yacht clubs, yacht sales, rental facilities, boat yards, pier rentals and any other business activity. Commercial Fishing Vessel. The term “commercial fishing vessel” shall mean a vessel registered by the Department of Fish and Wildlife pursuant to Section 7880 *et. seq. or successor provision* of the Fish and Game ~~Wildlife~~ Code of the State of California, when operating under the authority of the fish and game permit *or license*.
  14. Community Development Director. The term “Community Development Director” shall mean the Community Development Director of the City of Newport Beach or his or her designee.
  15. Current. The term “current” shall mean a flow of water in a particular direction. Such flows can be driven by wind, temperature or density differences, tidal forces, and wave energy. Currents are often classified by location, such as longshore current, surface current or deep ocean currents. Different currents can occur in the same general area resulting in different water flows. For example, a rip current can flow perpendicular to the shore through the surf zone, a long shore current may flow southerly, parallel to the coast and seasonal deep water current may flow to the north.
- D. Definitions: D.
1. Design Criteria. The term “design criteria” refers to “Waterfront Project Guidelines and Standards, Harbor Design Criteria—Commercial and Residential Facilities” adopted by the City of Newport Beach, and as amended from time to time, as minimum standards for design whenever harbor permits are required. The City may require additional requirements, based on the specific details of a particular application and project.
  2. Dinghy or Tender. The term “dinghy” or “tender” shall mean a vessel no longer than fourteen (14) feet in overall length.
  3. Dock. The term “dock” shall mean a structure generally linked to the shoreline to which a vessel may be secured. A dock may be fixed to the shore or fixed on pilings, or may float in the water.
  4. Dolphin. The term “dolphin” shall mean a multi-pile structure that is used for mooring large boats that generally cannot be accommodated by floating docks.
  5. Dry (Boat) Storage. The terms “dry storage” or “dry boat storage” shall mean all on-land storage of vessels, including vessels normally stored in open or enclosed rack structures, on trailers, on cradles, on boat stands, or by other means.

E. Definitions:

1. Eelgrass. The term “eelgrass” shall mean a marine flowering plant (*Zostera marina*) that is found primarily in coastal bays and estuaries on soft substrate.
2. Encroachment. The term “encroachment” shall mean the extension of a building, structure or other improvement, or part thereof, on the property or domain of another.
3. End Tie. The term “end tie” shall mean berths located on the outermost end of a floating dock structure where the dock is alongside only one side of the boat. The boats associated with an end tie may be situated beyond the pierhead line along the channel.
4. Erosion. The term “erosion” shall mean the wearing away of land by natural forces. On a beach, erosion is the carrying away of beach material by wave action, currents or wind.
5. Estuary. The term “estuary” shall mean the region near a creek or river mouth in which the fresh water of the river mixes with the salt water of the sea.

F. Definitions:

1. Fairway. The term “fairway” shall mean an area of water adjacent to slips or mooring buoy location that feeds into a channel, and which is used for direct access to slips or mooring. When associated with built slips, the fairway water area is defined as lying between the outer end of a line of fingers and the nearest obstruction on the opposing side (i.e., other slips, bulkhead, vessels on side ties, etc.). When associated with a mooring area, the fairway water area is defined as lying between the outer end of the mooring buoy on either side of the fairway.
  2. Federal Channel. The term “Federal Channel” shall mean that area of the Lower Newport Bay described by the Army Corps of Engineers, Chief of Engineer to Congress on November 11, 1936, as recorded in the First Session of the Seventy-Fifth Congress in 1937.
  3. Finance Director. The term “Finance Director” shall mean the Finance Director of the City of Newport Beach or his or her respective designee.
  4. Finger. The term “finger” shall mean a portion of a floating dock section that is perpendicular to the walkways and is used for tying up and boarding vessels.
  5. Fire Chief. The term “Fire Chief” shall mean the Fire Chief of the City of Newport Beach or his or her respective designee
  6. Freeboard.
    - a. Dock System Freeboard. For the purposes of dock systems, the term “freeboard” shall mean the distance between the water surface and the walking surface of the dock system. Generally, two conditions are of interest when referring to freeboard: (i) dead load only freeboard, and (ii) dead plus live load freeboard. Dead load refers to the weight of all construction materials and equipment that may be permanently attached to the docks. Live load refers to the weight of all temporary loads such as pedestrians and berthing loads.
    - b. Vessel Freeboard. For the purposes of vessels, the term “freeboard” shall mean the vertical distance between the water line and the top of the deck.
  7. Functional Capacity. In terms of wetlands and estuaries, the term “functional capacity” shall mean the ability of the wetland or estuary to be self-sustaining and to maintain natural species diversity.
- G. Definitions: G.
1. Gangway. The term “gangway” shall mean a structure that provides pedestrian access from land to the floating docks. One end is generally attached to the bulkhead, fixed pier or landside with a hinge, and the other end rolls on gangway wheels or slide plates, which rest directly on the dock surface. The word “brow” is synonymous with “gangway.”
  2. Graywater. The term “graywater” shall mean all water and other fluids used on a vessel for any purpose whatsoever, including but not limited to, 1) that used for washing or cleaning clothing, linens, towels, bedding, and other linens; 2) that used for cooking equipment and eating utensils, and serving ware; 3) that used for bathing, showering and cleansing; 4) that used for washing and/or cleaning all or any portion of the interior of a vessel, including but not limited to, heads, kitchens, engine room, floors,

windows, furniture, equipment and other portions of the interior of the vessel.

3. Groin. The term “groin” shall mean a shoreline protection structure built, usually perpendicular to the shoreline, to trap nearshore sediment or retard erosion of the shore. A series of groins acting together to protect a section of beach is known as a groin system or groin field. A structure that extends from a beach or bulkhead perpendicularly to the shoreline into tidal waters is intended to trap and retain and/or reduce the erosion of sand and retard the general erosion of the shoreline and undermining of shore protection structures (bulkheads, riprap slopes, etc.).

#### H. Definitions:

1. Harbor Commission. The term “Harbor Commission” shall mean the Harbor Commission of the City of Newport Beach.
2. Harbor Department. The term “Harbor Department” shall mean the Harbor Department of the City of Newport Beach. Any provision within this Code or any uncodified ordinance or resolution referring to the Harbor Resources Division shall mean the Harbor Department.
3. Harbor Lines. The term “harbor lines” shall mean all established bulkhead, pierhead, and project lines as defined within Newport Harbor by the Federal, State, County and City Governments. The harbor lines in Lower Newport Bay have been established by an act of the U.S. Congress and can only be modified by an act of Congress.
4. Harbor Maintenance Uses, Equipment and Facilities. The terms “harbor maintenance uses, equipment and facilities” shall mean all uses and their related equipment, vessels, docking, and land storage facilities and access which provide: dredging and beach replenishment; demolition, repair and new construction of docks, piers, bulkheads, and other in and over-water structures; mooring maintenance and repair; waterborne debris and pollution control, collection, and removal. This category also includes environmental, survey, or scientific vessels and related equipment based, or on assignment, in Newport Harbor. All vessels under this definition may also be referred to as “work boats.”
5. Harbormaster. The term “Harbormaster” shall mean the Harbormaster of the City of Newport Beach, or his or her designee. Any provision within this Code or any uncodified ordinance or resolution referring to the Harbor Resources Manager shall mean the Harbormaster.
6. Harbor Regulations. The term “harbor regulations” refers to Title 17.
7. Harbor Structures. The term “harbor structures” refers to any pier, float, piling, bulkhead, seawall, reef, breakwater or any other structure in, upon or over the waters of Newport Harbor or the Pacific Ocean or any other water where the tide ebbs and flows within the City of Newport Beach or adjoining waters.
8. Habitat. The term “habitat” shall mean the locality, including the physical and biological environment, in which a plant or animal lives.
9. Headwalk. The term “headwalk” shall mean that portion of a dock that serves as a primary pedestrian access to mainwalks, fingers, and slips. Fingers may be attached directly to headwalks. Headwalks are generally parallel to the bulkhead. The term “marginal walk” is synonymous with “headwalk.”
10. Houseboat. The term “houseboat” shall mean any vessel or structure on or in any waterway, floating or nonfloating, which is designed or fitted out as a place of habitation and is not principally used for transportation.

#### I. Definitions: L.

1. Launching Facility. The term “launching facility” shall mean a generic term referring to any location, structure (ramps, docks), and equipment (cranes, lifts, hoists, etc.) where vessels may be placed into and retrieved from the harbor waters.
2. LCP. See Local Coastal Program.
3. Live-Aboard. The term “live-aboard” shall mean the use or occupancy of a vessel as a domicile for a period exceeding eleven (11) twelve (12) nights seventy-two (72) hours in any thirty (30) day period.
4. Local Coastal Program (LCP). The term “Local Coastal Program” shall mean a local government’s: (a)

land use plans, (b) zoning ordinances, (c) zoning district maps, and (d) within sensitive coastal resources areas, other implementing actions which, when taken together, meet the requirements of, and implement the provisions and policies of the Coastal Act at the local level.

5. Longshore. The term “longshore” shall mean parallel to and near the shoreline.
6. Lower Newport Bay. The term “Lower Newport Bay” shall mean the area of the bay southerly of the Coast Highway.

J. Definitions: M.

1. Maintenance Construction. The term “maintenance construction” shall mean the construction work relating to no more than twenty (20) percent of the total replacement value of the dock, as well as other criteria as stated in subsequent sections of this title. Construction estimates and the total value of work on any given project is based on pre-determined values of various work on record and established by the City of Newport Beach. Maintenance construction only requires City of Newport Beach approval.
2. Mainwalk. The term “mainwalk” shall mean that portion of a dock that serves as a primary pedestrian access to fingers and slips. Fingers are generally attached directly to mainwalks. Mainwalks are generally perpendicular to the bulkhead and headwalk, and may connect directly to a headwalk.
3. Marina. The term “marina” shall mean a commercial berthing facility (other than moorings, anchorage or noncommercial pier) in which vessels are continuously wet-stored (in water) and/or drystored (on land/racks) for more than thirty (30) calendar days.
4. Marine Activity Permittee. The term “marine activity permittee” shall mean any person, or persons, partnership, corporation, or other entity holding a permit issued pursuant to the provisions of Chapter 17.10 of the Newport Beach Municipal Code.
5. Marine Sales and Services, Uses and Vessels. The term “marine sales and services, uses and vessels” shall mean related business activities which provide repair, maintenance, new construction, parts and supplies, fueling, waste removal, cleaning, and related services to vessels berthed in, or visiting, Newport Harbor.
6. Mean High Water. The term “mean high water” shall mean the nineteen (19) year average of the higher high water heights (for diurnal tides, high water and higher high water are the same).
7. Mean Higher High Water. The term “mean higher high water” shall mean the nineteen (19) year average of only the higher high water heights.
8. Mean Low Water. The term “mean low water” shall mean the nineteen (19) year average of the lower low water heights (for diurnal tides, low water and lower low water are the same).
9. Mean Lower Low Water (MLLW). The term “mean lower low water” shall mean the nineteen (19) year average of only the lower low water heights. MLLW has been used as a datum to define elevations of structures within the bay and along the coastline. To convert MLLW elevations to NAVD88, add 2.62 feet. For landside developments using an MSL (mean sea level) datum, add two and eighty-two hundredths (2.82) feet to MSL elevations to equate to MLLW elevations.
10. Mono Pile. The term “mono pile” shall mean a normally large diameter pile that is used for mooring large boats that generally cannot be accommodated by floating docks. Generally, mono piles and dolphin piles are used for similar purposes.
11. Mooring. The term “mooring” shall mean a device consisting of a floating buoy or other object that is secured to the harbor bottom by an anchor system for purposes of securing a vessel. The term “mooring” shall mean any appliance used to secure a vessel in Newport Harbor other than a pier, which is not carried aboard such vessel as regular equipment when under way.
12. Mooring Area. The term “mooring area” shall mean an area designated for a group of moorings.
13. Motorboat. The term “motorboat” shall mean any vessel being propelled by machinery.
14. Mud Line. The term “mud line” shall mean the highest elevation of accumulated sediments adjacent to the structure in question.
15. Multiple Vessel Mooring System. The term “multiple vessel mooring system” shall mean a floating platform secured to a single **or double anchor system** which allows multiple vessels to be secured that

are shorter in overall length than the side of the platform to which the vessels are to be moored.

K. Definitions: N.

1. New Construction. The term “new construction” shall mean the construction work relating to fifty (50) percent or more of the total replacement value of the dock, as well as other criteria as stated in subsequent sections of this title. Construction estimates and the total value of work on any given project is based on pre-determined values of various work on record and established by the City of Newport Beach. New construction requires City, State and Federal approvals.
2. Newport Bay. The terms “Newport Bay” and “Newport Harbor” are often used interchangeably. The term “Newport Bay” shall mean the estuary consisting of the Lower Newport Bay and the Upper Newport Bay.
3. Newport Harbor. See also Newport Bay. The term “Newport Harbor” shall mean the water area within the Lower Newport Bay and within the Upper Newport Bay, exclusive of the Upper Newport Bay Marine Park.
4. Nonprofit Organization. The term “nonprofit organization” shall mean an entity designated as tax exempt by the Internal Revenue Service or the State Franchise Tax Board.

L. Definitions: O.

1. Offshore Mooring. The term “offshore mooring” shall mean a mooring that is located bayward of the pierhead line and is comprised of a single or double buoy, weight and chain installed for the purpose of berthing a vessel as provided by Chapter 17.25, or any successor statute.
2. Onshore Mooring. The term “onshore mooring” or “shore mooring” shall mean a mooring for vessels which is located in the nearshore perimeter of the harbor and its islands, perpendicular to the shoreline. One end of the mooring line is attached to a point on or adjacent to the bulkhead, and the other end is attached to a single buoy, weight and chain installed for the purpose of berthing a vessel as provided by Chapter 17.25, or any successor statute.
3. Open Coastal Waters. The term “open coastal waters” shall mean the area composed of submerged lands at extreme low water of spring tide extending seaward to the boundaries of the exclusive economic zone (twelve (12) to two hundred (200) miles). This includes navigation channels, turning basins, vessel berthing, anchorage and mooring areas of Newport Bay.
4. Operable. The term “operable” shall mean capable of **safely and consistently** maneuvering under the vessel’s own power from the mooring to a demarcation line designated by the appropriate authority and generally to be defined as the line between the seaward ends of the harbor entrance jetties and back to the mooring.
5. Operator. The term “operator” shall mean the person who operates or who has charge of the navigation or use of the vessel.

M. Definitions: P.

1. Pacific Ocean. The term “Pacific Ocean” shall mean the waters off of the City of Newport Beach from the beach, as defined in Section 17.01.030(B)(3), seaward three nautical miles.
2. Passenger. The term “passenger” shall mean every person other than the operator and a member of the crew or other persons employed or engaged in any capacity on board a vessel in the business of that vessel.
3. Permittee(s). The term “permittee(s)” shall be the person or entity who holds a validly issued permit under any provision of this title.
4. Person. The term “person” shall mean an individual, proprietorship, firm, partnership, joint venture, syndicate, business trust, company, corporation, association, committee or any other legally recognized entity.
5. Pier. The term “pier” shall mean any fixed or floating structure for securing vessels, loading or unloading persons or property, or providing access to or over the water. A pier includes wharf, dock, slip gangway or float, or any other landing facility and floating dry dock.
  - a. Commercial Pier. The term “commercial pier” shall mean a pier adjacent to commercially or nonresidentially zoned property with single or multiple berths which are rented or leased, including any



pier used in connection with marinas, charter facilities, yacht clubs, yacht sales, rental facilities and boat yards. For purposes of this chapter, multiple piers which are adjacent to a lot or parcel of land occupied by a multifamily dwelling or dwelling units that are income generating, and structures adjacent to commercially zoned uplands that are business or income generating in nature, shall be deemed commercial.

- b. Noncommercial Pier. The term “noncommercial pier” shall mean a pier used for private recreational purposes by the owner(s), occupant(s), guest(s) or lessee(s) of the abutting residentially zoned upland property.
- c. Public Pier. The term “public pier” shall mean a pier used for public recreational purposes provided by a public agency.
- 6. Pierhead Line. The term “pierhead line” shall mean the harbor water area perimeter lines established in Newport Harbor by the Federal Government that define the permitted limit of fixed pier, floating dock and other in-water structures which may be constructed in the harbor. The pierhead line typically shall define the limit of pier and floating dock structures and defines the limit of construction except as otherwise approved by the Harbor Commission. Vessels may extend channelward of the pierhead line by the beam of the vessel.
- 7. Police Chief. The term “Police Chief” shall mean the Chief of Police of the City of Newport Beach or his or her respective designee or by the City Council.
- 8. Project Lines. The term “project lines” shall mean the harbor water area channel lines of the improvements constructed by the Federal Government in 1935-1936, see City of Newport Beach Waterfront Project Guidelines and Standards, Harbor Design Criteria—Commercial and Residential Facilities-.
- 9. Property Owner. The term “property owner” shall mean the owner of the abutting upland property who has obtained a permit to place a structure in Newport Harbor pursuant to Chapter 17.50.
- 10. Public Trust Lands. The term “public trust lands” shall mean all lands subject to the common law public trust for commerce, navigation, fisheries, recreation, and other public purposes. Public trust lands include tidelands, submerged lands, the beds of navigable lakes and rivers, and historic tidelands and submerged lands that are presently filled or reclaimed and which were subject to the public trust at any time (from California Code of Regulations, Section 13577; see tidelands and submerged lands).
- 11. Public Works Director. The term “Public Works Director” shall mean the Public Works Director of the City of Newport Beach, or his or her designee.

N. Definitions: R.

- 1. Residential. The term “residential” shall mean those properties that are designated by the Zoning Code for a residential use, as opposed to commercial.
- 2. Rhine Wharf. The term “Rhine Wharf” shall mean the area at the terminus of the Rhine Channel where vessels may load and unload supplies directly to and from the wharf while tied directly to the wharf.
- 3. Rhine Wharf Public Pier. The term “Rhine Wharf public pier” shall mean the pier and long float parallel to the Rhine Wharf, and which is used for public recreational purposes provided by a public agency.
- 4. Riprap. The term “riprap” shall mean a protective layer or facing of rock, concrete blocks or quarry stone, placed to prevent erosion, scour, or sloughing of an embankment or bluff.
- 5. Risk Manager. The term “Risk Manager” shall mean the Risk Manager of the City of Newport Beach, or his or her designee.

O. Definitions: S.

- 1. Sail Area. The term “sail area,” as defined for the purposes of structural analysis or berthing facilities and structural pilings, shall mean the area of a boat, above the water line, that is exposed to wind under tied/berthed conditions.
- 2. Sailing Club. The term “sailing club” shall mean an organization operating from a fixed location and principally engaged in the coordination or facilitation of the use of sailing club-operated boats by its

membership.

3. Seaworthy. The term “seaworthy” shall mean that the vessel is operable, not leaking fluids overboard, its hull, keel, decking, cabin and mast are structurally sound and generally free from dryrot .
4. Shore. The term “shore” shall mean the narrow strip of land in immediate contact with the sea, including the zone between high and low water. A shore of unconsolidated material is usually called a beach.
5. Shoreline. The term “shoreline” shall mean the intersection of the ocean or sea with land; the line delineating the shoreline on National Oceanic and Atmospheric Administration (NOAA) Office of Coast Survey nautical charts and surveys approximates the mean low tide water line from the time the chart was prepared.
6. Reserved.
7. Side Tie. The term “side tie” shall mean a berth where the dock is alongside only one side of the boat.
8. Slip. The term “slip” shall mean a berth where the boat has a finger on one side and either another finger or adjacent boat on the other side.
9. Sport Fishing Charter. The term “sport fishing charter” shall mean a vessel chartered solely for sport fishing outside of Newport Harbor.
10. Submerged Lands. The term “submerged lands” shall mean lands which lie below the line of mean low tide (from California Code of Regulations, Section 13577).
11. Sub-Permits.
  - ~~Sub Permits— Shall be defined as those mooring sub permits issued by the City for the temporary use of a deemed vacant or a noticed vacant mooring.~~
  - **The term** Sub-Permit—shall **mean** those mooring permits issued by the City for a temporary use of a deemed vacant or noticed vacant mooring for any period of time less than thirty (30) days as determined by the Harbormaster.

P. Definitions: T.

1. Tidelands. The term “tidelands” or “public tidelands” shall mean all lands that were granted to the City by the State of California, including, but not limited to, submerged lands and/or lands that are located between the lines of mean high tide and mean low tide.
2. Tidelands Trust. The term “tidelands trust” shall mean all tidelands and submerged lands granted to the City of Newport Beach by State or Federal legislation and the terms and conditions of any such legislative grant.
3. Turning Basin. The term “turning basin” shall refer to an area, often designated on nautical charts, that is connected to a channel which is large enough to allow vessels to maneuver or turn around. The term “turning basin” shall mean that portion of any channel which has been so designated pursuant to law and approved by the Federal Government, for the purpose of permitting vessels to turn around or permitting their course or direction to be altered therein.

Q. Definitions: U.

1. Upper Newport Bay. The terms “Upper Newport Bay” and “Back Bay” are often used interchangeably. The term “Upper Newport Bay” shall mean the area of the bay northerly of the Coast Highway Bridge.
2. Upland. The term “upland” shall mean land with a shared property line with and immediately adjacent to Newport Harbor.

R. Definitions: V.

1. Vessel. The term “vessel” shall mean and include every description of watercraft used or capable of being used as a means of transportation on water. This includes all vessels of any size homeported, launched/retrieved, or visiting in Newport Harbor, arriving by water or land, and registered or unregistered under State or Federal requirements, except a seaplane on the water. “Vessel” shall also mean and include human-powered vessels and windpowered vessels.
  - a. Human-Powered Vessel. The term “humanpowered vessel” shall mean a vessel that is being propelled by the human body through the use of oars, paddles, or the like and without the use of wind, a motor, or other machinery.



b. Wind-Powered Vessel. The term “wind-powered vessel” shall mean a vessel that is being propelled by the wind through the use of sails and without the use of a motor or other machinery.

2. Vessel Length/Width. The term “vessel length/width” are terms described as follows:

a) Documented/Registered Length which is the length listed on the vessels USCG Documentation Certificate, State of California or other official registration document and is the length used to determine the required mooring size for a mooring permittee

b) Length Overall (LOA) which is the length including all vessel attachments which may include bowsprits, swim steps or stern mounted dinghies. LOA is used to determine the maximum vessel length that can fit in any particular slip or side-tie.

c) Width which includes all vessel attachments including boarding steps, rub rails, etc...

3. Vessel Owner. The term “vessel owner” shall mean the owner of the vessel as shown on current registration with the Department of Motor Vehicles or the United States Coast Guard. If the vessel is recently purchased, the vessel owner must obtain registration from the Department of Motor Vehicles or United States Coast Guard within six months.

S. Definitions: W.

1. Walkway. The term “walkway” shall mean a walkway on a wide portion of the floating dock system that is used for pedestrian access. A walkway can refer to the headwalk, mainwalk and/or fingers.
2. Waters of Newport Harbor. The term “waters of Newport Harbor” shall mean all waters of Newport Harbor in which the tide ebbs and flows, whether or not the ordinary or mean high tide line of the Pacific Ocean has been fixed by ordinance, statute, court action or otherwise and whether or not the lands lying under the tidal water are privately or publicly owned.

T. Definitions: Z.

1. Zostera Marina. See Eelgrass. (Ord. 2018-18 § 1, 2018; Ord. 2018-17 §§ 3—6, 2018; Ord. 2017-8 §§ 1, 2, 2017; Ord. 2017-7 §§ 1, 2, 2017; Ord. 2013-27 § 1, 2013; Ord. 2013-11 §§ 124—131, 2013; Ord. 2013-1 §§ 2, 3, 4, 5, 2013; Ord. 2011-6 §§ 1, 2, 2011; Ord. 2010-26 §§ 1, 2, 3, 2010; Ord. 2009-2 § 1, 2009; Ord. 2008-2 § 1 (part), 2008)

## **Chapter 17.05**

### **GENERAL PROVISIONS**

#### **Sections:**

<b>17.05.010</b>	<b>Title.</b>
<b>17.05.020</b>	<b>Purpose.</b>
<b>17.05.030</b>	<b>Applicability.</b>
<b>17.05.040</b>	<b>Administrative Authority.</b>
<b>17.05.050</b>	<b>Duties of the City Manager.</b>
<b>17.05.055</b>	<b>Duties of the Harbormaster.</b>
<b>17.05.060</b>	<b>Duties of the Public Works Director.</b>
<b>17.05.065</b>	<b>Duties of the Harbor Commission.</b>
<b>17.05.070</b>	<b>Establishment of Channels, Turning Basins, Etc.</b>
<b>17.05.080</b>	<b>Public Trust Lands.</b>
<b>17.05.090</b>	<b>Local Coastal Program.</b>
<b>17.05.100</b>	<b>Coordination with Resource Agencies.</b>
<b>17.05.110</b>	<b>Rules for Interpretation.</b>
<b>17.05.120</b>	<b>Payment of Fees.</b>
<b>17.05.130</b>	<b>Permits Nontransferable.</b>

#### **17.05.010 Title.**

This title shall be known as the “City of Newport Beach Harbor Code” and referred to as the “Harbor Code.” (Ord. 2008-2 § 1 (part), 2008)

#### **17.05.020 Purpose.**

A. Preserve the diverse uses of the harbor and the waterfront that contribute to the charm and character of Newport Bay, and that provide needed support for recreational boaters, visitors, and residents with regulations limited to those necessary to protect the interests of all users;

B. Maintain and enhance public access to the harbor water and waterfront areas;

C. Enhance the water quality and protect the marine environment in the harbor;

D. Preserve and enhance the visual character of the harbor;

E. Preserve and enhance historical resources of the harbor;

F. Provide for the ongoing administration and maintenance of the harbor;

G. Recover the costs of service provided to tidelands users and the fair market value where appropriate;

H. Administer the use of public trust lands in a manner consistent with the tidelands trust, the California Constitution, the certified Local Coastal Program, and applicable laws;

I. Implement the policies of the General Plan and certified Local Coastal Program. (Ord. 2008-2 § 1 (part), 2008)

#### **17.05.030 Applicability.**

The provisions of this title, and any rules and regulations adopted pursuant to this title, shall be applicable to and within Newport Harbor and all public trust lands under the jurisdiction of the City of

Newport Beach, except where otherwise provided in this title. Any activity or action or use of the harbor is prohibited unless specifically permitted by the provisions of this Code, or the tidelands trust. (Ord. 20082 § 1 (part), 2008)

#### **17.05.040 Administrative Authority.**

The responsibility for the administration of the provisions of this title is delegated to the City Manager, or officers or employees of a department or departments of the City designated by him or her; provided, however, that some or all of the duties necessary to be performed in the administration may be performed by the Harbormaster. (Ord. 2018-17 § 7, 2018; Ord. 2013-11 § 132, 2013; Ord. 2008-2 § 1 (part), 2008)

#### **17.05.050 Duties of the City Manager.**

The City Manager shall be authorized to:

- A. Carry out the orders of the City Council and to enforce all harbor regulations, ordinances and tidelands trust requirements;
- B. Order any vessel improperly berthed to change its position or location as he or she may designate, and in case his or her orders are not complied with, or the vessel is unattended, to cause such vessel to be so moved, and to collect the cost thereof from the vessel, or owner thereof;
- C. Promptly report to the appropriate Federal agency any violation of the laws of the United States for the protection of navigation and the preservation of navigable waters, particularly any encroachment on the waterway by the building of illegal structures, illegal filling or dumping of material of any sort into the waterway, or throwing overboard or setting adrift or allowing to be set adrift anything that is or might become obstructive or dangerous to navigation. (Ord. 2013-11 § 133, 2013; Ord. 2008-2 § 1 (part), 2008)

#### **17.05.055 Duties of the Harbormaster.**

It shall be the duty of the Harbormaster to:

- A. Act for and assist the City Manager in administering the provisions of this title, coordinating with appropriate department directors for services falling within their respective functions as defined in Title 2, and coordinating as required with other governmental agencies and with interested civic associations;
- B. Act as the head of the Harbor Department and supervise and assist the City staff assigned to the Harbor Department to carry out the purposes of this title, or any successor title;
- C. Administer the harbor-related policies adopted by the City Council and the Harbor Commission, and to recommend to the City Manager appropriate changes and modifications to harbor related policies; and
- D. Conduct regular inspections of both public and private facilities and structures located upon or over the waters of Newport Harbor or the Pacific Ocean or any other water where the tide ebbs and flows within the City, and to recommend action to the City Manager to ensure compliance with this title. (Ord. 2018-17 § 8, 2018)

#### **17.05.060 Duties of the Public Works Director.**

It shall be the duty of the Public Works Director to:

- A. Maintain files and records of all pier permits issued by the City;
- B. Perform such duties as assigned to the Public Works Director by this title, or any successor title; and

Issue approvals in concept for development located on tidelands or submerged lands that did not involve a discretionary action authorized by Title 20 or Title 21 where the authority is specifically assigned to the City Council, Planning Commission, Community Development Director, or Zoning Administrator.

(Ord. 2018-17 § 9, 2018; Ord. 2013-11 134, 2013; Ord. 2008-2 § 1 (part), 2008)

#### **17.05.065 Duties of the Harbor Commission.**

It shall be the duty of the Harbor Commission to:

- A. Advise the City Council in all matters pertaining to the use, control, operation, promotion and regulation of all vessels within Newport Harbor;
- B. Approve, conditionally approve, or disapprove applications on all permits where the City of Newport Beach Municipal Code assigns the authority for the decision to the Harbor Commission;
- C. Serve as an appellate and reviewing body for decisions of the City Manager on permits, leases, and other harbor-related administrative matters where the City of Newport Beach Municipal Code assigns such authority to the Harbor Commission;
- D. Advise the City Council on proposed harbor related improvements;
- E. Advise the Planning Commission and City Council on land use and property development applications referred to the Harbor Commission by the City Council, Planning Commission, or the City Manager;
- F. Make recommendations to the City Council for the adoption of regulations and programs necessary for the ongoing implementation of the goals, objectives, and policies of the Harbor and Bay Element of the General Plan. (Ord. 2008-2 § 1 (part), 2008)

#### **17.05.070 Establishment of Channels, Turning Basins, Etc.**

All channels, turning basins, anchorage areas, and pierhead and bulkhead lines in Newport Harbor shall be as established by the Federal Government or by the City Council upon recommendation of the Harbor Commission. A map thereof shall be kept on file in the offices of the City Clerk and the Harbor Department for public inspection. (Ord. 2018-17 § 10, 2018; Ord. 2013-11 § 135, 2013; Ord. 2008-2 § 1 (part), 2008)

#### **17.05.080 Public Trust Lands.**

- A. Applicability. Public trust lands include tidelands, submerged lands, the beds of navigable lakes and rivers, and historic tidelands and submerged lands that are presently filled or reclaimed and which were subject to the public trust at any time.
- B. Limits on Uses. Public trust lands are subject to the common law public trust, which limits uses to navigation, fishing, commerce, public access, water oriented recreation, open space and environmental protection.
- C. Exceptions. State legislation has modified public trust restrictions for the historic tidelands in Beacon Bay, the Balboa Bay Club, and Harbor Island.
  - 1. Beacon Bay. The Beacon Bay Bill (Chapter 74, Statutes of 1978) and Senate Bill 573 (Chapter 317, Statutes of 1997) allow the residential lots of Beacon Bay located within State tidelands to be leased for residential purposes until June 27, 2043.
  - 2. Balboa Bay Club. The Beacon Bay Bill (Chapter 74, Statutes of 1978) and Assembly Bill 3139 (Chapter 728, Statutes of 1994) allow Parcel D of the Balboa Bay Club to be leased for residential purposes until December 31, 2044.
  - 3. Harbor Island. Chapter 715, Statutes of 1984, allows the filled or reclaimed land on Harbor Island to be leased for nonpermanent recreational and landscaping purposes. (Ord. 2008-2 § 1 (part), 2008)

#### **17.05.090 Local Coastal Program.**

- A. Discretionary applications shall be reviewed to insure conformity with the policies and regulations of the certified Local Coastal Program.

B. All uses of the marine environment shall be carried out in a manner consistent with sustaining the biological productivity of coastal waters and to support populations of all species of marine organisms adequate for long-term commercial, recreational, scientific, and educational purposes.

C. Where applicable, development in Newport Harbor shall:

1. Protect, and where feasible, expand and enhance vessel-launching facilities in Newport Harbor;
2. Protect, and where feasible, expand and enhance low-cost public launching facilities, such as trailer launch ramps, boat hoists, commercial landing facilities, and organized recreational boating launch facilities;
3. Provide a variety of berthing opportunities reflecting State and regional demand for slip size and affordability throughout Newport Harbor;
  4. Protect, and where feasible, enhance and expand marinas and dry boat storage facilities;
  5. Protect shore moorings and offshore moorings as an important source of low-cost public access to the water and harbor;
  6. Protect, and where feasible, enhance and expand dinghy docks, guest docks at public facilities, yacht clubs and at privately owned marinas, restaurants and other appropriate locations;
  7. Protect, and where feasible, expand and enhance facilities and services for visiting vessels, including public mooring and docking facilities, dinghy docks, guest docks, club guest docks, pumpout stations and other features through City, County, and private means;
  8. Protect, and where feasible, expand and enhance facilities necessary to support vessels berthed or moored in the harbor, such as boat haulout facilities;
  9. Protect, and where feasible, expand and enhance existing harbor support uses serving the needs of existing waterfront uses, recreational boaters, the boating community and visiting vessels;
  10. Support private sector uses, such as vessel assistance, that provide emergency, environmental enhancement and other services that are not provided by the public sector and that are essential to the operation of a harbor;
  11. Provide, expand and enhance, where feasible, existing recurring and year-round harbor special permits and special purpose uses such as boat shows and boating festivals, boat sales displays and delivery/commissioning facilities. (Ord. 2008-2 § 1 (part), 2008)

#### **17.05.100 Coordination with Resource Agencies.**

In carrying out the provisions of this title, coordination with the California Coastal Commission, the Army Corps of Engineers, California Department of Fish and Game, U.S. Fish and Wildlife Service, National Marine Fisheries Service, other resource management agencies, and private organizations, as applicable, shall be required in the review of development applications in order to ensure the protection of marine resources.

Continue to cooperate with the State and Federal resource protection agencies and private organizations to protect marine resources. (Ord. 2008-2 § 1 (part), 2008)

#### **17.05.110 Rules for Interpretation.**

Where uncertainty exists regarding the interpretation of any provision of this Code or its application to a specific site, the Harbormaster shall determine the intent of the provision and issue a written administrative interpretation. An interpretation by the Harbormaster may be appealed to the Harbor Commission, as provided in Chapter 17.65. (Ord. 2018-17 § 11, 2018: Ord. 2008-2 § 1 (part), 2008)

#### **17.05.120 Payment of Fees.**

Any application for a permit or other approval required by this title shall not be considered complete and will not be processed for approval unless accompanied by payment of all applicable fees established

by resolution of the City Council. All fees shall be established and paid in compliance with this section and Chapter 3.36 of this Code.

A. Date. All fees required to be paid under any provision of this title shall be due and payable on a schedule established by the Finance Director.

B. Revenue. The revenue resulting from the administration of this title shall be accounted for separately and used exclusively for the purposes authorized to be used for public trust lands.

C. Penalty for Failure to Pay Fees. Any owner or permit holder who fails to pay any fee required by this title after same is due shall be subject to a penalty in the amount established in Chapter 3.36, or any successor chapter. Failure to pay the fee, plus any accrued penalty, within one hundred twenty (120) days of when the fee was due, shall constitute grounds for revocation of the permit by the Harbormaster.

- D. Administration. The Harbormaster and/or Public Works Director shall administer the provisions of this title, except for the collection of fees, which shall be the responsibility of the Finance Director. (Ord. 2018-17 §§ 12, 13, 2018; Ord. 2013-11 §§ 136, 137, 2013; Ord. 2008-2 § 1 (part), 2008)

#### **17.05.130 Permits Nontransferable.**

Unless otherwise authorized in this title, any permit, license or approval issued under this title is personal to the person receiving such permit, license or approval and may not be transferred or assigned to any other person without the express written consent of the issuing official or body in compliance with the provisions for issuance of such permit, license or approval. (Ord. 2008-2 § 1 (part), 2008)

### **Chapter 17.20**

## **VESSEL LAUNCHING AND OPERATION**

### **Sections:**

#### **17.20.010 Vessel Launching and Hauling**

#### **17.20.040 Trespass or Injury to Vessel**

#### **17.20.050 Abandoned or Unattended Vessels and Property.**

#### **17.20.060 Air and Water Propulsion Vessels Prohibited**

#### **17.20.070 Vessel Races**

#### **17.20.010 Vessel Launching and Hauling.**

A. Where Permitted. No person shall launch or remove any vessel from the waters of Newport Harbor over any public seawall, sidewalk, street end or public property, except at locations where a regular business, as authorized under Title 20, of launching and hauling vessels is conducted or at launching sites designated by resolution of the City Council.

B. Any person who uses a City Council designated boat launch site shall comply with all of the following:

1. Designated boat launching locations may be used only between the hours of seven a.m. and sunset.
2. The use of motors on any vessel or watercraft being launched or recovered shall not be permitted within one hundred (100) feet of such launching sites when swimmers are present.
3. Only human powered vessels or watercraft may be launched from designated sites.
4. No mechanical devices may be used for purposes of launching any vessel or watercraft at such locations, or for transporting them on beaches. (Ord. 2008-2 § 1 (part), 2008)

#### **17.20.020 Vessel Operation.**

A. Speed Limit. No owner, operator or person in command of any vessel, except a public officer or

employee in the performance of his or her duty, shall operate the same or permit the same to be operated in any portion of Newport Harbor or the water in the present or prior channel of the Santa Ana River within the City at a rate of speed in excess of five nautical miles per hour, or at any speed which creates a wake that may cause damage to moorings of vessels or floating structures, except as hereinafter provided.

B. Designation of Closed Areas. Whenever the City Manager finds that public safety so requires, he or she may designate any water area or tidelands or filled lands in or upon which harbor improvement work is being performed as a closed area and shall cause the areas to be posted accordingly. Except for persons actually engaged in such harbor improvement work or public officers in the performance of their duty, no person shall enter or remain within or drive or operate any vessel or watercraft into or within any area which has been so designated as a closed area and which has been posted or marked with appropriate signs giving notice thereof.

1. The channel between Bay Island and Balboa Peninsula is designated as a closed area from and including June 1st through September 15th of each year; no person shall operate any motorboat into or through such channel.

2. The Grand Canal is designated as a closed area from and including June 1st through September 15th of each year; however, the closure shall not apply to vessels berthed at residential piers or moorings located along or within the Grand Canal. Human powered vessels are allowed in the Grand Canal year round.

C. Restriction of Water Traffic. For such time as necessary preceding, during and after any activity, or other event on the waters of Newport Harbor, or at any other time when the City Manager deems it necessary for the safety of persons, vessels or other property, he or she shall have authority to restrict or prohibit waterborne traffic in the harbor, and it shall be unlawful to willfully fail or refuse to comply with any order, signal or direction of the City Manager, his or her deputies or agents. For purposes of this section, waterborne traffic shall mean any object, structure or vessel in contact with the water.

D. Towing. It is unlawful for any person operating a vessel to tow any object, structure or vessel at a distance in excess of seventy-five (75) feet astern of the towing vessel.

No person owning, leasing, occupying or having charge or possession of any vessel shall anchor such vessel on the Pacific Ocean unless the vessel is continuously occupied by a person during: (1) any nighttime hours (sunset to sunrise); (2) any time period when a Small Craft Advisory or greater has been issued by the National Oceanic and Atmospheric Administration; and (3) during daylight hours, except for one shore excursion daily for no more than three hours. (Ord. 2018-18 § 2, 2018; Ord. 2013-11 § 145, 2013; Ord. 2008-2 § 1 (part), 2008) (Ord. No. 2009-2, § 2, 1-27-2009)

#### **17.20.040 Trespass or Injury to Vessel.**

A. Damage to Property. No person shall willfully or carelessly destroy, damage, disturb, deface or interfere with any buoy, float, life preserver, sign, notice, navigational marking, or other similar property under the jurisdiction of the City, County, or other governmental agency.

B. Boarding Vessel Without Permission. No person shall climb into or upon any vessel moored, docked or anchored in Newport Harbor, without the consent of the owner or other person having charge thereof, except for those authorized by the Harbormaster.

C. Tampering with Vessel. No person shall willfully injure or tamper with, or break or remove any part of or from, any vessel in the City, or tamper with the lines securing any such vessel, without the consent of the owner or other person having charge thereof, except for those authorized by the Harbormaster.

D. Tampering with Moorings. No person shall tamper with any mooring or anchorage in the City whether or not the same is occupied by a vessel, except for those authorized by the Harbormaster for the maintenance of harbor operations. (Ord. 2018-17 §§ 22, 23, 2018; Ord. 2013-11 § 146, 2013; Ord. 2008-2 § 1 (part), 2008)

#### **17.20.050 Abandoned or Unattended Vessels and Property.**

All stray, unattended or abandoned vessels, timber or any other personal property found in the water or on the shore of Newport Harbor or the Pacific Ocean, not in the lawful possession or control of some person, shall be immediately reported to the Harbormaster. Any such property shall be dealt with as provided in the appropriate provisions of Chapter 1.20, or Section 510 et seq. of the California Harbors and Navigation Code, as the same now read or may hereafter be amended. Proceeds of any sale of such property shall be deposited in the general fund of the City. For purposes of this section, any vessel on the Pacific Ocean shall be deemed to be stray, unattended and abandoned if the vessel is unoccupied by a person during: any nighttime hours (dusk to dawn); any time period when a Small Craft Advisory or greater has been issued by the National Oceanic and Atmospheric Administration; or daylight hours for more than three hours. (Ord. 2018-17 § 24, 2018; Ord. 2008-2 § 1 (part), 2008) (Ord. No. 2009-2, § 3, 1-27-2009)

#### **17.20.060 Air and Water Propulsion Vessels Prohibited.**

A. No person shall operate any vessel on the waters of Newport Harbor if the vessel is powered or maneuvered by means of mechanical air or water propulsion above the surface of the water.

B. The provisions of this section do not apply to the operation of any vessel by any public agency or any person responding to an emergency on behalf of any public agency. (Ord. 2017-2 § 1, 2017; Ord. 2015-13 § 1, 2015; Ord. 2008-2 § 1 (part), 2008)

#### **17.20.070 Vessel Races.**

A. The Harbormaster may issue a permit to a person, as defined in Chapter 17.01, or any successor chapter, that would allow individuals operating a human-powered vessel, wind-powered vessel, or vessel providing support services to a human or wind-powered vessel as part of the person's special event (e.g., race) or organized practice to exceed the speed limit provided in Section 17.20.020(A), or any successor subsection. Notwithstanding the foregoing, no person shall operate any vessel in an unsafe, uncontrolled, or unseaman-like manner, and in no event at a speed that endangers the safety of persons or property.

B. The Harbormaster has discretion to determine if a permit shall be associated with a single event or multiple events; however, no permit shall be valid for more than six months from the date of issuance.

C. Permits issued under this section are non-transferrable and shall be in addition to any license, permit or fee required under this Code or any other provision of law.

D. The Harbormaster may impose conditions on a permit to protect persons and property and to assure that the activity allowed under the permit will not create a nuisance or interfere with the reasonable use of Newport Harbor by other vessels or persons. At a minimum, every permit issued under this section shall be conditioned to require permittees to: (1) obtain, provide, and maintain at their own expense, for the full period of time for which the permit is granted, policies of insurance with such limits and coverage as established by the City Risk Manager that clearly identify the activity and vessel(s) covered; (2) indemnify, defend and hold harmless the City, County of Orange, and the State of California for all liability, injury or damage that relates to or arises from permittee's event/activity; and (3) otherwise comply with this Code, California Harbors and Navigation Code, and the Federal Inland Navigation Rules.

E. Any permit issued under this section may be immediately revoked at any time, without notice, by the Harbormaster, if: (1) the permittee fails to comply with the conditions contained within the permit; (1) an individual participating in the permittee's special event or organized practice operates a vessel in an unsafe, uncontrolled, or unseamanlike manner or at a speed that endangers persons or property; or (3) an individual participating in the permittee's special event or organized practice fails to comply with the



lawful instructions of the Harbormaster, or any other person authorized by the City to enforce rules and regulations within Newport Harbor.

- F. Any decision of the Harbormaster under this section may be appealed pursuant to Chapter 17.65, or any successor chapter. (Ord. 2018-18 § 3, 2018)

## **Chapter 17.25**

### **BERTHING, MOORING AND STORAGE**

#### **Sections:**

#### **17.25.10 Docking Regulations.**

#### **17.25.020 Anchorage, Berthing and Mooring Regulations.**

#### **17.25.030 Storage Regulations.**

#### **17.25.010 Docking Regulations.**

##### **A. Docking Permission Required.**

1. No person having charge of any vessel shall make the same fast to any pier in Newport Harbor, or permit the same to remain at such location after finishing loading or unloading such vessel, without the consent of the owner, agent, or person in charge of any such pier.

2. No person shall make fast any vessel to any other vessel already occupying any pier, either public or private, without first obtaining a special event permit as required in Chapter 11.03, or any successor chapter. At the Rhine Wharf, the Harbormaster shall have the authority to authorize this activity, via a Rhine Wharf permit, under either of the following conditions: (a) a commercial fishing vessel is loading or unloading, and no other mooring or berthing space is available in the harbor for this purpose; or (b) a vessel is taking refuge from inclement weather and no other mooring or berthing space is available in the harbor for this purpose. In no event shall more than one vessel be made fast to the dockside vessel and no other vessel shall be made fast to the outboard vessel. Both vessels shall have operators aboard at all times.

3. No person holding a harbor development permit issued under the terms of Chapter 17.50 or having care, custody, control or use of any pier in Newport Harbor shall permit or allow a vessel to be made fast to any other vessel which is occupying any pier over which the permit holder has control, except as provided in the exceptions found in subsection (A)(2) of this section.

- B. Obstruction Prohibited. No person shall intentionally obstruct the free access to and departure from any portion of any pier.

##### **C. Time Limits and Rules.**

1. Public piers and other harbor facilities may be maintained by the City for the purpose of loading and unloading passengers, supplies, and boating gear and for similar purposes. It is the policy of the City to maintain such facilities in a manner that will permit the greatest public use and avoid continuous occupancy, congestion or blocking thereof. Where necessary to achieve public use and to avoid extended occupancy, congestion or blocking thereof, the Harbormaster is authorized and directed to post the following dock markings or signs limiting the time during which a vessel may be tied up or secured, or supplies or gear may be placed at or on any such pier or facility. The dock markings shall have the

meanings as herein set forth:

- a. Blue markings shall mean vessels tied up or secured for twenty (20) minutes maximum.
- b. Green markings shall mean vessels tied up or secured for three hours maximum.
- c. Black markings shall mean vessels tied up or secured for twenty-four (24) hours maximum.
- d. Yellow markings shall mean vessels tied up or secured for seventy-two (72) hours maximum.
- e. Red markings shall mean vessels shall not be tied up or secured for any amount of time.
- f. XXX markings shall mean vessels tied up or secured for twelve (12) hours maximum.
- g. Orange markings shall mean the maximum length vessel permitted to be tied up or secured is nine feet.

Public piers, docks, and harbor facilities are not intended for the longterm storage of vessels. As such, vessels tied up or secured in marked areas designated for either twelve (12), twenty-four (24) hours or seventy-two (72) maximums may not continue to use that same dock area beyond those established periods by relocating the vessel to another section of that dock, or securing the line associated with that vessel to another tie off location on that dock. Any vessel that has occupied a twenty-four hour or seventy-two hour marked area must be removed from this same public pier, dock or facility after the expiration of time allowed and may not re-occupy the dock for a subsequent tie up period sooner than twenty-four hours following expiration of the time allowed.

2. The Rhine Wharf, adjacent to the Rhine Wharf public pier, shall not be used by vessels for any purpose except with a valid Rhine Wharf permit issued by the Harbormaster, and subject to the following conditions:
  - a. Vessels may be tied or secured to the Rhine Wharf for four hours maximum;
  - b. The Harbormaster shall have the authority to limit the size of vessels using the Rhine Wharf;
  - c. Vessels using the Rhine Wharf shall be in the actual process of loading, unloading or engaged in temporary repairs; and
  - d. The Harbormaster may authorize an extension of the four-hour period where special circumstances dictate such an extension.
3. When dock markings and signs are posted giving notice of the time limits and size restrictions in subsections (C)(1)(a) through (f) of this section, no person shall tie up or secure a vessel at any such facility for a period of time in excess of that period, exceed the maximum permitted vessel length, or permit any supplies or gear to remain on such facility for a period in excess of that posted on the sign.
4. The Rhine Wharf public pier or dock shall be closed between the hours of 12:00 a.m. and 6:00 a.m. daily.
  - D. Vessel Tie-Up Method. Every vessel tied up and secured at any pier in Newport Harbor shall be fastened in such a manner as to assure the security of such vessel fore (bow) and aft (stern) at a minimum with the exception of dinghies which may tie up bow only at public piers.
  - E. Direct Fueling Prohibited. No person shall fuel any vessel with any petroleum product directly from a tank wagon or truck.
  - F. Gangway Required—Lights. Every vessel used for hire while loading or unloading passengers or crew from a pier or from another vessel shall be provided with a gangway with manropes or railings, and from sunset until sunrise any such gangway shall be lighted adequately to provide visibility as long as such gangway is or may be used.
- G. Dockside Steam Engine Spark Prevention. No person shall use any donkey engine or other steam engine on any pier or vessel within Newport Harbor in loading or unloading vessels or otherwise without a bonnet or spark arrestor attached to the smokestack of such engine so as to prevent sparks from coming into contact with the pier or vessel. (Ord. 2018-17 §§ 25—27, 2018; Ord. 2011-6 § 3, 2011; Ord. 2008-2 § 1 (part), 2008)

### **17.25.020 Anchorage, Berthing and Mooring Regulations.**

Location. No person having charge of any vessel shall berth or anchor the same in Newport Harbor except within the 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 (I) 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. It is unlawful and a public nuisance for any person owning, leasing, occupying or having charge or possession of any vessel to: (a) berth or anchor the same in Newport Harbor except within the designated areas; or (b) anchor a vessel 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 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 projection of the property lines of the property to which the pier is connected in accordance with Section 17.35.020, or any successor section.

2. Any boat berthed at a pier or slip shall not extend bayward a distance of more than the maximum width of its beam beyond the end of the pier or slip. 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 from 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 holds a current and valid permit except with the permission of the Harbormaster for temporary use, as herein provided.

#### **F. Chains and Fastenings.**

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

2. All mooring lines on buoys shall be so arranged that, when dropped, they will immediately sink. 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.

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

## I. Mooring, Anchoring and Vessel Condition Requirements.

**Mooring Anchoring.** 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 using moorings in Newport Harbor shall be firmly anchored to a mooring from bow and stern in such a manner as to prevent the vessels from swinging, turning or drifting, except in areas designated by the Harbormaster as single mooring areas. Vessels in single mooring areas shall be tied from the bow. 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—Seaworthiness and Operability.** Vessels assigned to a mooring by permit must be maintained in an operable and seaworthy 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 seaworthy and operable, the Harbormaster shall give written notice in accordance with the service requirements of Section 1.05.030, or any successor section, to the permittee requesting a demonstration that the vessel is 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 seaworthy or operable. In the event that the Harbormaster determines that vessel is not seaworthy or operable, the permittee shall: (a) commence repairs within thirty (30) days upon service of the written notice of such determination and complete repairs within ninety (90) 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) days of service of the written notice of such determination and request assignment of a different vessel that is seaworthy and operable to the mooring within sixty (60) 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. It is unlawful and a public nuisance for any person owning, leasing, occupying or having charge or possession of any vessel in the City to 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, and boxes that is visible aboard the vessel or stored inside the vessel in such a way 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 and health, such as, but not limited to: propagation of vermin, rats, insects, unsanitary conditions from the accumulation of fecal materials;
- f. Maintenance in such nonseaworthy condition that it is unsafe, unsightly or poorly maintained, including, but not limited to: broken windows, unsecured doors and hatches, excessive marine growth attached to the vessel, the vessel is inoperable for its intended use, partially destroyed or partially repaired for more than three continuous months, provides access to marine mammals, is actively seeping hazardous or toxic material into the surrounding waters, and would present a physical danger to public safety personnel during emergency access;
- g. Operation of its mechanical or electrical systems creates excess 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 of Newport Beach;
- 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, (ii) continues after a written or oral request to

terminate the conduct, (iii) is offensive to a considerable number of people;

- j. Anchorage in an area controlled by the City without adequate anchor(s) rope and 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 and impedes safe navigation in the bay; and
- m. Installation of a marine sanitation device that is not connected directly to an internal holding tank at all times while in Newport Bay.

In the event that the City of Newport Beach determines that a vessel is a public nuisance, the City of Newport Beach may commence public nuisance abatement per Chapter 10.50, or any successor chapter.

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, or any successor section, 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 and the permittee shall: (a) take any and all necessary action to employ and maintain appropriate sea lion deterrent measures; or (b) remove the vessel. 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 day time frame, the Harbormaster may install temporary deterrent measures as needed and recover the City's cost of compliance. With the exception of the sea lion deterrence requirements, the requirements of this section are not applicable to vessels used in marine construction or marine contracting services.

- J. Specifications. Specifications for the size of chains required on moorings and weights of moorings shall be adopted by resolution of the City Council.
- 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 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), or any successor section, 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 dealing with moorings and buoys, except the revocation of permits by the Harbor Commission and collection of all fees hereafter. (Ord. 2018-17 § 28, 2018: Ord. 201311 §§ 147—150, 2013; Ord. 2010-5 §§ 1, 2, 2010; Ord. 2009-2, §§ 4, 5, 1-27-2009; Ord. 2009-1 § 1, 127-2009; Ord. 2008-2 § 1 (part), 2008)

### **17.25.30 Storage Regulations.**

A. Vessel or Trailer Storage on Beaches Prohibited—Exceptions. No person shall store any vessel, watercraft, trailer or other similar object on any public beach in the City except as provided in subsection (A)(1) of this section. As used in this section, the term “store” shall mean to leave or permit to remain unattended for a period of three hours or more and not in the possession or control of the owner or user.

1. Vessels, watercraft and equipment directly related to the use of the vessel or watercraft (related equipment) may be stored on a public beach as follows:

a. Any vessel(s), watercraft and/or related equipment owned and maintained by the City or its contractors which is (are) used in conjunction with recreation programs offered by the City;

Any vessel(s), watercraft and/or related equipment that cannot feasibly be berthed or moored at a privately owned pier or mooring and is (are) used by a nonprofit corporation for noncommercial purposes provided a vessel storage permit has been approved by the Harbormaster. A vessel storage permit shall be approved only if there is substantial evidence that the permit would not adversely affect the health, safety or welfare of those who use, enjoy or own property near the waters of Newport Bay. Vessel storage permits are subject to the following standard conditions as well as any additional conditions imposed by the Harbormaster:

i. The permittee shall not cause or permit any unreasonable noise that would adversely affect the use or enjoyment of public or private property in the vicinity of the vessel, watercraft or equipment;

ii. The permittee shall not engage in, or permit, any activity that unreasonably interferes with the use of the beach or adjoining waters by the public;

iii. The permit shall not cause or permit any activity that pollutes any public or private property of the waters of Newport Bay;

iv. The permittee may be revoked by the Harbormaster, without cause, at any time, upon thirty (30) days' written notice to the permittee.

b. Any vessel for which a mooring permit has been issued by the City pursuant to Section 17.60.040, or any successor section, provided the vessel remains on the beach only to the extent necessary to load or unload. (Ord. 2018-17 § 29, 2018: Ord. 2008-2 § 1 (part), 2008)

## **Chapter 17.30 HARBOR USE REGULATIONS**

### **Sections:**

**17.30.010 Landing of Aircraft.**

**17.30.020 Loading or Unloading Hazardous Materials.**

**17.30.030 Live Bait.**

**17.30.010 Landing of Aircraft.**

No person shall land or take off from the waters of Newport Harbor with any aircraft without first obtaining a permit from the City Council. Such permit may be issued if the City Council determines that, under the circumstances, the proposed landing or takeoff will not create a hazard to life or property. In granting such permit, the City Council may impose such conditions on the exercise thereof as it deems appropriate. (Ord. 2008-2 § 1 (part), 2008)

**17.30.020 Loading or Unloading Hazardous Materials.**

No person shall load or unload any hazardous materials to or from any vessel from or upon any pier or other vessel in Newport Harbor without first obtaining a permit from the Fire Chief pursuant to Chapter 9.04, Fire Code, of Title 9 of this Code. (Ord. 2008-2 § 1 (part), 2008)

**17.30.030 Live Bait and Sea Life.**

A. Live Bait and/or Sea Life Receivers Defined. A live bait or sea life receiver is an object for confining live bait or sea life such as those receivers fostering growth of sea life under the water, which

is afloat in the waters of Newport Harbor or the Pacific Ocean, either moored to a pier, bulkhead or sea wall, or moored by means of an anchor or other weight to the bottom of the harbor or ocean; provided, however, that a live bait and/or sea life receiver shall not be deemed to be a “structure” within the meaning of Chapter 17.50.

- B. Requirements for Live Bait Receivers. All live bait or sea life receivers used within the waters of Newport Harbor shall be fitted with screen trays in the bottom thereof so as to retain all dead bait or sea life and other debris within the receiver which can be raised to dispose of the dead bait, sea life and other debris. All live bait receivers within the City shall also have a screen or solid cover which fits closely unless the receiver is completely covered by a roof.
- C. Nonconforming Bait and/or Sea Life Receivers. Storage of live bait or sea life other than in a receiver conforming to the requirements hereof is prohibited. After three calendar days’ written notice, served in accordance with Section 1.05.030, to the owner of a nonconforming receiver, it may be removed by the Harbormaster and stored at the expense of the owner.
  - D. Commercial Bait Boats, Bait and Sea Life Receivers. All boats used to catch or furnish live bait or sea life receivers shall, at all times, have aboard a covered receptacle in which shall be placed all dead bait and other debris. No person shall commercially operate a bait boat, bait or sea life receiver without first obtaining a marine activities permit pursuant to Chapter 17.10. Bait tanks on such boats when containing bait shall be covered at all times when in Newport Harbor by a cover which fits closely over the top except while bait is actually being transferred to or from the tank.
  - E. Disposal of Bait. No person shall place or allow to be placed any live or dead bait in the unconfined waters of Newport Harbor except when it is attached to a hook or hooks in the act of fishing.
- F. Transfer of Live Bait. No person shall transfer live bait from one vessel to another vessel or sell the same at retail from a vessel within the limits of Newport Harbor, except when all vessels involved are moored to a pier and are within the pierhead line, except that during a period of adverse conditions of sea or beaches causing the transfer from offshore receivers to be hazardous, a location inside the harbor may be used with the approval of the Harbormaster. (Ord. 2018-17 §§ 30, 31, 2018; Ord. 2013-11 § 151, 2013; Ord. 2008-2 § 1 (part), 2008)

## **Chapter 17.35**

### **HARBOR DEVELOPMENT REGULATIONS**

#### **Sections:**

- 17.35.010 General Provisions for Harbor Structures.**
- 17.35.020 Piers.**
- 17.35.030 Bayward Location of Piers and Floats.**
- 17.35.040 Other Structures.**
- 17.35.050 Bulkheads.**
- 17.35.060 Balboa Island—Noncommercial Piers.**
- 17.35.070 Areas with Special Harbor Permit Regulations.**
- 17.35.080 Parking Requirements.**

## **17.35.090 Signs.**

### **17.35.010 General Provisions for Harbor Structure**

A. Design of harbor structures shall conform to the “Waterfront Project Guidelines and Standards, Harbor Design Criteria—Commercial and Residential Facilities” as adopted by resolution of the City Council and as may be amended from time to time. The applicant may submit an alternative design for review and potential approval of the City prior to the issuance of a harbor development permit using the “Alternate Material or Method of Construction” appeals process.

B. Protection of Coastal Access and Resources. All harbor structures, including remodels of and additions to existing structures, shall be designed and sited to current standards so as not to obstruct public lateral access and to minimize impacts to coastal views and coastal resources.

C. Appearance. All structures permitted to encroach into open coastal waters, wetlands and estuaries shall be designed and sited to harmonize with the natural appearance of the surrounding area.

D. Eelgrass Protection. The use of materials in pier and dock construction design, materials and methods shall consider minimal impacts to eelgrass and marine habitat.

E. Docking Facilities. Docking facilities shall be designed and sited in relationship to the water’s depth and accessibility.

F. Protection of Traffic. Adequate provisions shall be made for the protection of the traveling public. Barricades shall be placed on streets with lights at night, also flagmen employed, all as may be required by the particular work in progress. The permittee shall not attempt to forbid the full and free use by the public of all navigable waters at or adjacent to the work or structure. If the display of lights and signals on any work authorized is not otherwise provided by law, as may be prescribed by the U.S. Coast Guard, they shall be installed and maintained at the expense of the permittee.

Structures shall be so constructed as not to obstruct, interfere with or prevent the free use of adjacent harbor structures or passage of any sidewalks, street, alley, public way or navigable channel.

G. Liability for Damages. The permittee is responsible for all liability for personal injury or property damage which may arise out of work herein permitted, or which may arise out of the use or possession of such works, and in the event any claim is made against the City of Newport Beach or any department, officer, or employee thereof, though, by reasons of, or in connection with such work, permittee shall defend, indemnify and hold them and each of them, harmless from such claim.

H. Repairs. The permittee shall keep the structures in good repair at all times. Failure to repair, when written notice has been given by the City, shall be cause for the revocation of the permit.

I. Pollution Control. The permittee shall maintain the area delineated on the harbor development permit free and clear from beached or floating rubbish, debris or litter at all times. Adequate safeguards shall be maintained by the permittee to avert any other type of pollution of Newport Harbor from recreational and/or commercial use of the tidelands. Failure to comply with the provisions of this section shall be cause, after written notice has been given to the permittee by the City, for the revocation of the permit. When unusual circumstances arise with respect to the collection of debris or litter, the City Manager may authorize by the use of City forces or by contract, the removal of such debris. Cost for such pollution control will be borne by the permittee

J. Rights to Impose Rental or Other Charges. The approval of permits or leases by the City of Newport Beach shall not constitute a waiver of any rights or requirements which it may now have or hereafter have to impose rental or other charges in conjunction with the maintenance or use of the proposed facility and user of the same.

K. Special Event Permits. If a permittee proposes a use of the harbor other than that allowed by the



Newport Beach Municipal Code, he or she must first obtain a “special event permit,” as provided by Chapter 11.03 of the Newport Beach Municipal Code. Upon issuance of the special event permit, the City of Newport Beach may impose conditions on the permit to assure that the proposed use does not affect the health, safety or welfare of the residents of Newport Beach. (Ord. 2017-8 § 3, 2017; Ord. 201311 § 152, 2013; Ord. 2013-1 § 6, 2013; Ord. 2008-2 § 1 (part), 2008)

#### ~~17.35.20~~ **17.35.020 Piers.**

##### A. Use Regulations.

1. No permits will be granted to persons other than the owners or long-term lessee of the abutting upland properties.
2. The permit application must be signed by the fee owners or long-term lessee of all abutting upland property having access to the pier.
3. Shore-connected piers bayward of residential zoned areas shall be controlled by the permittee. Vessels moored at residential piers shall not create a nuisance with regard to vehicle parking, vessel waste, or noise disturbances to adjoining residents.
4. Shore-connected piers bayward of commercial-zoned areas may be rented pursuant to the provisions of this title.
5. Only piers and certain patio decks authorized under subsection (D) of this section and their appurtenances shall be permitted bayward of the bulkhead.
6. No private piers shall be permitted at street ends.
7. In single-unit and two-unit residential districts, only a single pier and slip shall be permitted bayward of each parcel or lot. For multi-unit or mixed-use districts, only a single pier and slip shall be permitted bayward of each parcel or lot unless permitted by the Harbor Commission or Planning Commission as appropriate.
8. No new, noncommercial piers on Balboa Island shall be permitted, unless approved pursuant to Section 17.35.060.
9. The City shall provide harbor lines, parcel lines, parcel information, utility easements, and other pertinent information associated with the permitting process, via the City of Newport Beach website at: <http://www.newportbeachca.gov>.
10. Permits may be granted for joint ownership piers at the prolongation of common lot lines. The permit for joint ownership piers 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 permit.

##### B. Setbacks.

1. All piers and slips for residential properties shall be set back a minimum of five feet from the prolongation of the property line.
2. With the prior approval of the City, piers and slips for commercial properties may extend past the prolongation of the property line.
3. The prolongation of the property line bayward of the same bearing from the bulkhead shall generally be used in determining the allowable setbacks for piers and slips. Because there are certain physical conditions which preclude the strict application of this policy without prejudice to adjoining properties, special consideration will be given to areas where precise prolongation of the property line has not been determined and the following conditions exist:
  - a. Where property lines are not approximately perpendicular to the bulkhead line;
  - b. Where curves or angles exist in the bulkhead line;
- c. Where bridges, topography, street ends or publicly owned facilities adjoin the property.
4. Setbacks apply to joint ownership piers with the exception that the slips, floats and piers may extend over the common property line.

C. **Patio Decks.** Patios are not permitted to extend over the waters of Newport Harbor unless the waters are adjacent to the upland property and outside the areas described in the tidelands trust, and provided the patio complies with the following conditions:

1. The maximum projection of patio decks encroachments beyond the bulkhead line shall be limited to five feet.
2. The minimum setbacks from the prolongations of the side property lines shall be five feet.
3. No float shall be permitted within one foot of the decks.
4. No permanent structure shall be permitted on the projecting portion of the patios except:
  - a. Planters and benches not over sixteen (16) inches in height;
  - b. Railings not over forty-two (42) inches in height with approximately ninety-five (95) percent open area.
5. A harbor and building permit has been obtained.

D. **Storage Lockers.** Storage lockers and boat boxes may be installed on shore-connected piers and floats subject to the following limitations:

1. The overall height shall not exceed thirty (30) inches when located bayward of residential property zones.
2. The overall height shall not exceed thirty (30) inches when located bayward of commercial and industrial property zones where the piers and floats are used primarily for the mooring of pleasure boats.
3. The overall height shall not exceed sixty (60) inches when located on facilities bayward of commercial and industrial zoned property where the use is not primarily for the mooring of pleasure boats.
4. The overall height shall be measured from the deck of the pier or float to the top of the storage locker and overall height to include the enclosed portion of the locker or box.

E. **Safety Requirements.**

1. All commercially operated boat docking facilities shall be equipped with firefighting facilities as specified by the Fire Code.
2. Any electrical service upon any pier, dock or float shall be installed under a permit obtained from the Community Development Department.
3. Any domestic water service upon any pier, dock, or float shall be installed under a permit obtained from the City of Newport Beach Community Development Department.
4. All commercial piers, floats or docks used for the loading of passengers shall be lighted in such a manner as to provide an illumination level of three (3) foot candles for all areas used for the loading of such passengers.

F. **Encroaching Piers and Floats.** In areas where existing piers and floats encroach in front of abutting upland property owned by others, a new permit approved by the Harbor Commission shall be required upon:

1. Any change in type of existing use of the piers and floats;
2. Any change in type of existing use of the abutting upland property owned by the permittee;
3. Any change of existing ownership of the abutting upland property owned by the permittee or upon the death of the permittee;
4. Any destruction of the pier and float in which over sixty (60) percent of the replacement value of the pier and float has been destroyed.

Before the Harbor Commission acts on the new permit, the owner of the abutting upland property, in front of which the harbor facility encroaches, shall be notified in writing of the meeting in which the new permit will be considered.

G. **Defective Piers.** Upon learning that any pier is in a defective or dangerous condition, the Harbor Resources Manager shall immediately so notify the owner or other person having charge of the same in writing, requiring such person or persons to immediately repair it or to put up barriers to prevent persons

from going upon it. If such person shall fail or neglect to do so, the Harbor Resources Manager may place barriers as necessary for the protection of the public and charge the cost thereof to such person, and it shall be a violation of this title for any person to interfere with any such barrier.

If any pier, or any portion thereof, or any material on such pier, shall fall into the waters of Newport Harbor, it shall be the duty of the owner, agent or lessee of such pier to forthwith remove the same from the waters of the harbor and, if they shall fail to do so, the Harbor Resources Manager may do so and the cost thereof may be recovered from the owner, agent, or lessee of such pier in a civil action. (Ord. 2013-27

§ 2, 2013; Ord. 2013-11 §§ 153, 154, 2013; Ord. 2008-2 § 1 (part), 2008)

#### **17.35.30 Bayward Location of Piers and Floats.**

A. Piers and floats may not extend beyond the pierhead line unless approved by Council policy as may be amended from time to time.

B. Piers and floats shall not be permitted on the north side of the channel south of Bay Island.

C. Piers and floats shall not be permitted in the beach area along the northerly side of Lido Isle between the easterly line of Lot 849 and the westerly line of Lot 493.

D. Piers and floats shall not be permitted in the beach area along the southerly side of Lido Isle between the easterly line of Lot 919 and the westerly line of Lot 457. (Ord. 2018-5 § 1, 2018; Ord. 2008-2 § 1 (part), 2008)

#### **17.35.40 Other Structures.**

A. Race Committee Platforms. Race committee platforms and instruction platforms may be constructed bayward of the bulkhead line at recognized yacht clubs and recognized sailing schools. All work shall require issuance of a Harbor Development Permit.

B. Floating Dry Docks and/or Hydro Hoist Permits for floating dry docks may be approved by the Public Works Department, subject to the following conditions:

1. The location is in waters bayward of commercial, manufacturing or unclassified zones;
2. The prior approval of a Harbor Use Permit by the Harbor Commission;
3. Permits for floating dry docks are issued for one location only. A new permit must be obtained to move a floating dry dock from one location to another location within the harbor. (Ord. 2008-2 § 1 (part), 2008)

#### **17.35.50 Bulkheads.**

A. All bulkheads in residential districts shall be installed on the established bulkhead line or at a location behind the bulkhead line that would preserve the design profile of the harbor. Any retaining or ornamental wall installed landward of the bulkhead line shall be considered a bulkhead if it also serves to contain the waters of the harbor and shall be processed in the same manner as if it were on the bulkhead line. The establishment of bulkhead lines does not necessarily allow the property owner to build to the limits of the bulkhead line, due to the potential environmental considerations established by the State of California and/or the Federal Government.

The ~~Harbor Resources Division~~ City may approve bulkheads located between U.S. Bulkhead Station Nos. 112 and 109, not to exceed the bayward side of the "Vacated East Bay Avenue." U.S. Bulkhead Station No. 104 for the addresses at 2209, 2223, 2227, 2231 and 2233 Bayside Drive: staff recommendation for a bulkhead at these properties shall not exceed a point bayward of the average high tide line established at a point forty (40) feet landward of the face of the bulkhead at the property at 2137 Bayside Drive, and then on a straight line from that point to the bayward most point of the bulkhead at the property at 2301

Bayside Drive.

B. Bulkheads shall be at the existing height established for the area and shall be connected to adjacent bulkheads. In cases where no adjacent bulkhead or bulkheads exist, a wing wall or wing walls shall be constructed from the bulkhead landward adequate to contain the fill behind the bulkhead.

C. The height and design of all bulkheads and wing walls shall be subject to the design and construction standards of the Community Development Department.

D. All bulkhead construction permits shall be subject to a detailed construction drawing being approved by the Community Development Department. Drawings and substantially structural calculations shall be signed by a civil or structural engineer.

E. The bulkhead shall not be used to support any structure on the abutting upland property unless the bulkhead has been properly designed to carry the additional loads.

F. In areas where there is existing development and it is of direct benefit to the City to have a bulkhead constructed, the City may contribute one-third (1/3) of the cost of constructing a bulkhead across street ends.

G. Bulkheads shall be designed and sited to protect the character of the existing shoreline profiles and avoid encroachment onto public tidelands.

- H. Maintenance or replacement of existing bulkheads is permitted when expansion or encroachment into coastal waters is limited to the minimum extent necessary to repair, maintain, or replace an existing bulkhead and the backfill is not used to create new usable residential land areas. (Ord. 2013-11 §§ 155, 156, 2013; Ord. 2008-2 § 1 (part), 2008)

#### **17.35.060 Balboa Island—Noncommercial Piers.**

No new noncommercial piers on Balboa Island shall be approved unless determined by the Public Works Department and Harbor Commission to be in the public interest. New noncommercial piers, if approved, shall be constructed in strict conformance with this section and the design criteria. Piers presently permitted may be maintained and repaired upon securing a maintenance permit. Any revision of an existing pier or float shall be in strict conformance with this section and shall not be approved if the addition or revision would, in comparison to the existing structure, further restrict or impair the public's use of the bay or beach in the vicinity of the pier or floats.

B. Revision to existing structures shall be limited to the following:

1. The overall square footage of the revised structure shall be equal to or less than the square footage of the permitted structure;
2. The revised structure does not extend beyond the City permit line (the U.S. pierhead line or such other bayward extension of the permit area that is permitted by this section or the Council policy; and
3. The revised structure is wholly within the original permitted area as specified in the existing permit on file with the City.

C. Whenever any application to install a new noncommercial pier is submitted to the Harbor Commission, all property owners (according to the latest equalized assessment roll prepared by the County of Orange and available to the City) within three hundred (300) feet of the exterior boundaries of the parcel for which the application is submitted shall be notified in writing by the City of the pending application. The applicant shall provide the Harbor Commission with a list of property owners and envelopes addressed with postage prepaid. (Ord. 2008-2 § 1 (part), 2008)

#### **17.35.070 Areas with Special Harbor Permit Regulations.**

A. Promontory Bay. The following conditions are to be placed on each harbor development permit when approved:

1. That the permittee shall be responsible and maintain the area delineated on the harbor development permit free and clear from floating rubbish, debris or litter at all times;

2. That the permittee shall be responsible for all maintenance dredging, in accordance with the design profile for Promontory Bay, for the area between the bulkhead line and pierhead line as delineated by the harbor development permit.

B. Grand Canal. There shall be no permits issued for shore moorings or pier platforms fronting on alleys, avenues or other public easements terminating on the canal. There shall be no new permits issued for shore moorings or pier platforms bayward of those lots at the extreme south end and north end of Grand Canal. The following conditions are to be in effect and placed on each harbor development permit for the Grand Canal:

1. The permittee shall be allowed either one pier platform, or in lieu thereof, two shore mooring type appurtenances per lot. Pier platforms and shore moorings shall be constructed according to the design criteria adopted by the City of Newport Beach.

2. All vessels (maximum length eighteen (18) feet) moored in the Grand Canal shall be tied off to pier platform structures or shore moorings. Floating platforms or slips will not be allowed. Vessels tied to the bulkhead or by alternate methods not approved by the Harbor Department shall be prohibited.

3. The permittee shall be allowed no more than one vessel per shore mooring.

4. Any shore mooring approved for the Grand Canal shall display a permit number issued by the Harbor Department.

5. Each vessel tied to any pier platform in the Grand Canal shall be anchored from the stern in such a method as to prevent the vessel from swinging into adjoining vessels or across bayward prolongations of private property lines. (Ord. 2008-2 § 1 (part), 2008)

#### **17.35.080 Parking Requirements.**

Parking shall be provided pursuant to Title 20 of this Code. (Ord. 2013-11 § 157, 2013: Ord. 2008-2 § 1 (part), 2008)

#### **17.35.90 17.35.090 Signs.**

No sign permitted on the tidelands shall exceed four square feet in total area except signs permitted pursuant to a lease with the City or under a marine activities permit issued pursuant to Chapter 17.10. (Ord. 2008-2 § 1 (part), 2008)

**NEWPORT BEACH HARBOR COMMISSION  
PUBLIC MEETING  
Review of Proposed Changes to Title 17 of the Harbor Code  
Marina Park, 1600 W. Balboa Blvd., Newport Beach, CA 92663  
Monday, April 8, 2019  
6:00 PM**

Commissioner Kenney reported proposed changes to Sections 17.01, 17.05, 17.20, 17.25, 17.30, and 17.35 will be addressed during the meeting, if time permits. The Harbor Commission Ad Hoc Subcommittee will consider each comment provided by the public but may not incorporate each into the subcommittee's recommendations to the Harbor Commission. In a public hearing, the Harbor Commission will review the subcommittee's recommendations and may approve the recommendations as written, approve the recommendations with amendments, or deny the recommendations. If the Harbor Commission approves the recommendations, either as written or revised, the City Council will review them in a public hearing.

PUBLIC COMMENT	RESPONSE
<b>Applicant definition</b>	
There's no onshore reference at all. When you say applicant, what if someone has a private property interest and they're applying for a permit, dredging or otherwise? Would that not apply to private properties?	We'll have to look at where the "further" is because I'm not sure where that is yet. ["as defined further herein"]
<b>Fairway definition</b>	
My mooring, A308, the first boat in front of the pavilion, has tackle, and it's been set up for a 65-foot boat. The person who bought it just moved to a 50 (inaudible). The buoys are still big enough for the 50 (inaudible). The tackle's there, the weights are there. I have the reports for all that. I bought at the same time this came about. I did talk to you about that. (inaudible) with my boat out there and see if I could get permission to do so. (inaudible) anything like that (inaudible) paying for 5 feet more for mooring the boat.	That's not a topic for this evening. We will get to the issue with respect to how we expand moorings. If that mooring was designed for a 65-foot boat, the fairway should be adequate to meet the definition, I would think.
I believe the fairways are designated by the Federal Government. It defines mooring area by latitude and longitude and have to remain in that area. The fairways are near the outside of the mooring areas. It should be listed on the nautical charts. It should say within the mooring fields.	You, sir, might be right. If so, the intent of this language is to define something other than the navigable channels that are shown on the Federal charts. We need to determine technically how those waterways are defined in the Inland Rules and all of the Federal regulations. We may have to change this definition somewhat to deal with that.  This is referring to the fairways within the mooring field. The amount of water between row 1 and row 2 is what we're considering the fairway. We're not considering the fairway to be that water outside the boundaries of the mooring fields.
<b>Graywater definition</b>	
Item 4 says that used for washing and/or	The intent is interior.

cleaning all or any portion of a vessel, but then it refers to the interior of the vessel. Is it exterior and interior?	
Right now, that definition would include blackwater because it doesn't exclude blackwater. I don't know where this all gets going with the graywater, but if it's any fluid ...	
It's not limited to heads. We know we're not going to pump the head overboard. The way that reads, it'd be ...	This says the cleaning of heads. There's certainly a difference in the Federal regulations between blackwater and graywater. It's a Federal offense to discharge blackwater in Newport Harbor.
You may want to take care to exclude blackwater.	
Did I hear correctly that it's allowable to dump graywater in the Harbor? My question is, has that been run through the County Water Board. I'm shocked.	Yes. In my opinion, a private boat can dump certain portions of graywater. None of this has been run through anybody but us. There's nothing currently in our Municipal Code that says you can't do this because it's not excluded.
I know a little bit about that stuff. That's the way it's been for years. The Water Board's looking at things, sources of pollution. A little bit of graywater from a boat is nothing. The pollution in this Harbor is coming from the land.	
Could you clarify what I thought I might have heard you say? Your intention in this was directed at the charter boat fleets. Do you mean this is not intended to focus on all the other kinds of boats? I'm just confused as to what it applies to. For people who start at the beginning of the document, would it have any merit to offer some clarification on that at the definition level?	We're just in definitions. As we go through, you'll find graywater is dealt with later in the Municipal Code as we deal with marine activities permits. We need to define it first. I don't think it applies to a private vessel. As we go through the Municipal Code, I don't believe there's any reference to a private vessel having to capture graywater. The lawyers do this, and this is the way it has always been. There are a number of terms in here that only apply to specific sections of the Code.
What I hear you saying is maybe this should be preceded by "for purposes of a Harbor use permit, the term graywater shall mean ... ."	
Speaking on behalf of the group, our concern is that you're slipping in a definition here that might affect the normal use of a boat in private use. Let's say we're on our boat and we take a swim and we want to rinse off with a shower that's on the swim step. This would not be allowed if somewhere else in the Code it says you're not allowed to discharge any graywater because it says shower. This could be a slippery slope that would erode the use and enjoyment of our boats in ways that you don't intend. I just see it as an easy slip by later saying you can't discharge	This again is definitions. We're just creating what the words are. The action of those words, what's actionable and whether it's an offense or not, is later on in the document. We have the marine activities conversation later on. Unless there's something saying you can't do what you just mentioned, which there isn't, then (crosstalk).

graywater off your boat. I feel like that's coming.	
When you say, "for any purpose whatsoever including but not limited to," that list is infinitely long. You can tie it to a Harbor use permit or you can say what's excluded.	
<b>Live-Aboard definition</b>	
My perception is the original intent was like in Portland, Oregon, where you have boats with no motors. That would be a houseboat. This one seems a little vague. What is a houseboat? On one hand, you picture something like (inaudible) with a slide and all that. On the other hand, any boat out here has a shower and a bed and that kind of thing. I was just curious if there's a way to clean that up or if you like it. It could be "as determined by the Harbormaster." Maybe it's perfectly vague. You have catamarans now that are houseboat/catamaran. Is their main purpose to cruise the Harbor or to live on it? I don't know. If I wanted to have a houseboat out there, would I be in violation? It's a houseboat by its own definition but not by others. It has motors. It's made for cruising lakes. Am I allowed to put it there under that definition?	We call you a live-aboard if you live on your boat even though it may not be considered a houseboat. I don't know if we've had the discussion about houseboats. This definition has been in the Code for years and years. Your understanding of the intent is correct. Even though there are a lot of people who own boats that don't make it out of the slip very often, the intent of the boat is to be used for transportation, whether it's cruising or fishing or going to Catalina.
The previous versions of this specifically prohibited houseboats. No houseboats period. If it's still in there or not, I can't say for sure.	I can't answer that.
Is there anywhere in the Code referencing any activity that is related to a houseboat usage other than just the definition itself?	Let us follow up and see what the reference is and see if we can clean it up. I think the intent is that you don't want permanent connections between land and a floating structure, a houseboat. Maybe we need to rethink that definition.
In the marinas I've been in, it's a standard of three nights a week. If we have five weekends in a month, it would take a minimum of 12 days to be more in-line with the standard.	
I believe years ago it used to be 12 nights. I'm not positive. We were always told that it was 12 nights per month. That type of stay allows us to contribute to the businesses in the community.	
I've got a wooden sailboat, and I've been working on it 20 years. I am looking forward to maybe spending one weekend in my lifetime. (crosstalk) by the City is fantastic. It solved that 72-hour thing. What if I got a week off and wanted to spend a week? This is perfect. It's great. I can totally live with that.	We can consider 12 nights.



<b>Marina definition</b>	
I question the 30-calendar-day period in the definition of marina. There are marinas that are used on a short-term basis including our own Marina Park. I suggest we take the 30-day period out.	
<b>Mono Pile definition</b>	
Do we have any?	There were some. Maybe they're not used in this Harbor, but I would suggest we leave the definition in.
<b>Multiple Vessel Mooring System definition</b>	
It says it could be used in the double can mooring areas also. That means there could be a 4-foot wide dock and you could put a Harbor 20 on either side of it as long it wasn't exceeding the area designed for the mooring.	That's correct.
<b>Operable definition</b>	
In the past, I had the question that the sailboat had to have an operational motor, which a sailboat is entirely capable of moving and maneuvering under sail alone. Enforcement wise, the Sheriff's Department defined that it's a sailboat having an operational motor.	We have not changed that. If you can maneuver under the vessel's own power from the mooring to a demarcation line on a sailboat ... Under this definition, it doesn't need to have a motor.
<b>Permittee definition</b>	
That's not plural. Sometimes there's more than one, like a husband and wife. Is permittee a general term for whatever names or trusts? Two people as a permittee.	Yes. We do allow two folks on a permit. If you look at how you can hold title to a mooring, you can have two permittees on the same mooring. A permittee could be two permittees, a husband and wife. Not two people as a permittee, two separate permittees. You're allowed to do that. You might have an entity and an individual.
<b>Pierhead Line definition</b>	
There's an exception to that, if you encroach on the property line. You could have an extra-wide boat. When I redid mine, I had to sign a declaration that it could not be wider than 18 feet in my case, which means the vessel could not extend beyond the end of the dock more than 18 feet. The reason it was an 18-foot limit is because if I went 18 feet and 1 inch, I'd be on the property line.	This refers to going channel wide from the bulkhead. It's going out parallel to the property lines. Sometimes the property lines are not parallel. In his case, he's on a crook. It's possible. He's right. We should improve this to apply that.
Did I hear you say that any problems with the Harbor Commission would then go to the City Council?	That is correct. That would be a change from what happened in your situation. That's a proposed change.

Very shortly before that, it was that way. It was illegally changed without a vote to the way you had it for me. Now it's gone back to this because you understand what it's supposed to be. In that circumstance, since it was wrongfully done because it was wrongfully approved as a change when it was meant for something else, what would be the situation?	The decision that was made under those rules would stand. We're changing the rules now.
The problem is also the fees I paid were for the City Council, not for a Harbor.	I don't think this is the appropriate place to talk about your situation. This is just a definition. None of this has been changed yet.
Why was that chore taken away from the Harbor Commission? The point being, we're moving a Harbor Commission role to the City Council.	I don't know. It was before I got here. In the current Title 17, there are certain areas where decisions by the Harbormaster are appealable to the City Council. There are other sections where that decision is appealable to an administrative law judge, which in our opinion does not make any sense. What we're proposing is to make everything consistent. Any decision by any of the boards or commissions in the City of Newport Beach are ultimately appealable to the City Council. They are the court of last resort. We're going to talk about the appeal process in another set of meetings. If you have an interest in that, you'll want to come to those.
<b>Seaworthy definition</b>	
How do you differentiate between seaworthy and operable?	I'm not a lawyer, but operable is a defined term, and now it's used as seaworthy. If you went back, seaworthy would mean a vessel that is capable of safely and consistently maneuvering under its own power, etc.
<b>Sub-Permit definition</b>	
There may not need to be parts a and b. Maybe it should be titled Mooring Sub-Permit.	We need to look at that.
<b>Wind-Powered Vessel definition</b>	
A Harbor 20 is classified as a sailboat powered by wind. As soon as the motor goes in the water, a sailboat becomes a motor boat.	Wouldn't any sailboat be a wind-powered vessel?
<b>Vessel Length/Width definition</b>	
In my view, it needs to be the deck length of the boat and not include the bowsprit for an overhanging dinghy or even an outboard that sticks out from the stern of the boat. If you use the term overall length, that means from the tip of the bowsprit to the back of the davits. For a	

motorboat, if it's an outboard, the extension of the motor. If you go by deck length, you've got something much more related to the mooring length. The deck length relates to the weight of the boat. The overhangs don't mean much in those terms. There's a lot of confusion around that.	
The bowsprit or the overhang on the back makes a significant difference at the docks. Not on the moorings, but at the docks.	
The length of the vessel as determined by the Coast Guard Documentation Center is the length on deck.	
I believe what we're looking at here is what is the determination for purposes of issuing, say, a mooring permit, whether it's offshore or onshore, or what number in feet is allowed. Historically, unlike marinas which are done completely differently, no one has ever been using tape measures to try to figure out what was approval worthy for the (inaudible). It has always been one of two things, either the documented length of the vessel or, if it is in State registration, the State-registered length.	
Maybe there should be an offshore vessel length with a certain definition, an onshore vessel length with a certain definition, a private pier split vessel length.	
A vessel length, which is the documented or the DMV, and a length overall would give you two different definitions. If you want to use the length overall, you'd use that definition.	
Use the length overall because that implies everything you've got.	
One definition is vessel length, which is your documented length. Your other definition is length overall, which would include ...	
The moorings have been here close to 100 years. It's quite simple. Almost every boat on their documents of ownership, whether it's State registration or anything else, the manufacturer throws out ... I've got a 50-plus year-old sailboat, and it says 35 feet. That is the length on deck. Anybody that wants to bolt anything on—it can get to the point where it's going to be a problem. As far as moorings especially, what we're worried about is the space between the two balls plus the rise and fall of the tide and the chain and the weight. The weight of the boat is	We understand the concept. We need to do some work on that. It may be that there needs to be different definitions depending on whether it's an offshore mooring or a slip.

important and the length on deck. It's where the lines are tied up to the boat basically. That's usually within a foot of the front and the back.	
The word to consider in there is nominal.	
In the boating world, there are only two definitions, length on deck and length overall.	
Would it be possible on this definition to add a sentence that says something like "for the purpose of the moorings, we'll be using Coast Guard documented length" (inaudible).	That would be possible. We wouldn't deal with it here. We would deal with it when we get into the moorings.
<b>Section 17.20.10.A</b>	
I take my 8-foot dinghy out of the back of my truck, put it over the seawall at the end of Fernando Street, drag it down the sand, and paddle out. Is that prohibited under this? It talks about special launching areas, and I couldn't find any on the website anywhere.	It deals with all that. It says except designated launching sites.
The ends of all the streets were originally designated as launching sites. That has been removed here without any comment or input from anyone. This is the first time I've seen it written like this.	Nothing has been changed. I have no idea how long this has been like that. We certainly didn't take anything out. It may have been done a long time ago, but that's why we're here. It looks like the last time it was changed was in 2008.
This is clearly a time when we can clear all these issues up. That whole section, 17.20.10, how did it not apply to small craft, like everybody launches their boat over the seawall on Devil Island on the weekend? How about when it talks about no trailers, dollies and rollers? There are people that have these (inaudible) kayaks that are rather heavy. They use sand dollies to walk them down the beach. That's been taken away. A petite lady no way can carry a (inaudible) kayak. I think we need to look at that whole section in terms of making it clear on what you can do and from where.	I agree with you. This provision has been here for quite a while. I find it interesting that visiting yachtsmen can't take an inflatable and put it on the beach for an hour. (inaudible) tied to a public dock. I know of a couple of launch sites. There's one at 19th Street, two in the Back Bay.
There is a launching ramp next to the public pier on your way out of the Harbor. There is a ramp there.	That's private property, I believe.
You're saying at Devil Island the whole perimeter would have to be designated for people to launch their boats by hand.	Under the current Code, I think it would.
At one time in the '70s and '80s, all street ends were allowed to have launching over the street end.	
There were a lot of changes to the regulations	

that weren't really authorized. It would be better to go back to the original regulations and make the modifications from there because there have been a lot of reversals suggested that were in the regulations when they originated.	
There's a lot of user-friendly stuff that has been taken out from the '80s and '90s. It's going to be considerably different in a lot of places.	We'll go back and take a look.
This summer, my son was launching his dinghy off one of the beaches where he was allowed to, and he had wheels on it. He got accosted by the police, and the police almost gave him a ticket. This is something that you changed and might want to tell the police as well.	It's not changed yet.
My concern is that the signs at the end of the streets represent clearly what this law is going to be. As he stated, it says hand-carried boats. My husband and I carry our quarter boat sometimes and put it in the water there. If there's some kind of discrepancy between the two, we should make sure that doesn't happen.	
It's great that you're trying to take out the trailers, dollies, and rollers, but people need some help getting their boat out. Boats are too heavy. As we get older, we hurt ourselves doing things we think we can.	
I believe what you want to do is prohibit what amounts to a vehicle that is powered by an engine of some sort, four-wheel drive or otherwise or tractor, from going out on these beaches. On the other hand, what has happened over the years is the proper need and opportunity to use a dolly, which you then propel by hand ... . Section 4 went in the right direction, but Section 3 in a sense conflicts with it. You have an opportunity to make this work better for everybody.	
Except for the (inaudible) fisherman, which can take a truck and launch their boats.	They have special dispensation from the Council. They are not subject to Title 17. And they're on the beaches as opposed to the Harbor.
It's Federal law that commercial vessels are exempt from a lot of this.	
Maybe this section a is just too restrictive.	We'll take a look at the whole section. We understand your concerns. We need to be a little clearer and more user-friendly.
What about number 2, that you're launching a small dinghy, so you can't use the motor for 200 feet.	That has to do with the proximity of swimmers. There's Federal law that covers swim areas. I'm not saying it would be strictly enforced, but I'm saying it

	is commensurate and in concert with the designation of the swim area.
Are shore moorings going to be extended to 200 feet long?	No.
That would mean that both the docks at 19th Street and 16th Street, if you park in the back at low tide, you'd be breaking that law because you're on the sand almost.	
The California boating law, I believe, says within 200 feet and it's an exceeding speed. You couldn't drive down this channel. You're within 200 feet of a swim area. 19th Street is lined off. The same thing with Peninsula Point or at the (inaudible) Street dock. That public pier has swim lines. You wouldn't be able to go in and out of the Harbor.	We'll clarify this where you don't come in conflict with swim areas.
A number of years ago, I was trying to sail off the beach. There isn't a single place I can launch it on this entire island except to go to the Dunes. I'm precluded from going anywhere in the Harbor because of rules.	One of the objectives of the Harbor Commission is to try to create additional launch facilities. We're absolutely stymied. We cannot find a location in Newport Harbor where either physically or economically we could add another launch ramp. All we have is the Dunes.
All the more reason this Section a should be less restrictive. Just let people launch off the beach.	
How about Lower Castaways eventually?	There are issues at Lower Castaways. We've looked at it.
Many harbors use a stationary crane for launching vessels, where it's permanently mounted onshore. You pull up alongside, and they pick up the boat, swing it over, and set it down right in the Harbor. It could possibly work at Rhine Wharf.	The issue is finding enough land to park larger vehicles with trailers for a period of time.
<b>Section 17.20.20.A</b>	
Are we changing that for racing sailboats?	That's already been changed. It's in there.
Someone can't say "I'm only going 5 knots." The wake governs, correct? There are a lot of maritime lawyers that want to contest all that, every time you say something.	The wake. It's either/or.
The rental craft use the main channel because it's impossible to tell them to slow down when they're outbound and they're late coming back in.	
It doesn't matter if you tell them to use the main channel, tell them not to speed. It's all about enforcement. You've got to make it a little	

complicated. I appreciate the idea of instructing them to do that. On Thursday afternoon when the beer can races are flying down the middle of the channel, I don't think anyone wants in the Main Channel.	
<b>Section 17.20.20.C</b>	
How about during the Christmas Boat Parade? What does that do? Are there any restrictions?	
Should that read Harbormaster?	No. The Harbormaster works for the City Manager.
One of the first things the new Harbormaster did was respond to a call by me. During the Boat Parade when everybody was speeding, my dock was going into convulsions. From the next day on, everything was good. I don't think it needs to go higher. That's a minor thing. When people have a complaint, they're not going to call the City Manager.	This is for something extraordinary, not everyday operations.
That should be enforced by whoever is enforcing the laws of the Harbor. That's strictly a law enforcement situation.	It's currently the Sheriff.
May I suggest that you talk to the guys that run the Christmas Boat Parade to see if there's any additional language that might make their jobs easier. It seems to be a big problem during those five nights of the Boat Parade, with the rental duffies cutting in and out of the parade for instance.	
<b>Section 17.20.20.B.2</b>	
Grand Canal during the summer months, how about allowing human-powered craft, like standup paddleboards and kayaks?	
There are people who live on the Canal and use them.	
The problem there is a good percentage of the time there's low tide and there's hardly any water there.	Hopefully that's not the case. The dredging of the north end is just being completed. The south end was dredged late last year.
I'm suggesting you consider "the closure shall not apply to vessels berthed at residential piers or human-powered crafts."	
<b>Section 17.20.40</b>	
Trespasser entry on a vessel only speaks within the City. Shouldn't that be expanded to—if you're worried about a vessel being anchored in	The purpose of the anchoring restrictions in the Pacific Ocean are merely safety. If you're anchoring in the Pacific Ocean, you're in open water and

the Pacific Ocean, wouldn't you be worried about somebody trespassing on a vessel anchored in the Pacific Ocean.	subject to wind, waves, and tides. The City wants vessels out there to be manned pretty much all the time.
They didn't want permanently moored boats off the beach.	
<b>Section 17.20.20.E</b>	
I understand the purpose, but I still think three hours is restrictive. By the time you get in, pick somebody up, grab some groceries, and come back, it's going to be longer than three hours. I would prefer five hours.	
Does that mean anchoring off Big Corona? The turning basin?	Yes. No.
<b>Section 17.25.10.C.f</b>	
Assume the scenario that somebody is gone for the weekend, they come back to their boat. They go to work early the next morning and return at 10:00 p.m. They can't be away from the dock for more than 24 hours because they're going back to work, and they leave their boat on the dock.	We may need to look at the 24 hours.
When there were no dinghy docks in the sea field, there were a lot of boats in disarray. We got some dinghy docks, and it helped. We got the 72 hours, and it really helped. The moorings are better and more people spend time on their boats and have easy access. If I come down the third day in the 72 hours and go out to my boat for 5 or 6 hours to do some work, where do I put the dinghy for 24 hours?	
The way this is written is totally, absolutely unworkable and totally unenforceable. If they move for 20 hours, (inaudible) into it somewhere, which is a good idea. The minute these docks were put in as they are now, and (inaudible) there's going to be storage before that. There were like three or four boats tied up at a public dock. As soon as it became public that there was going to be boat storage, they've filled up, and they've been totally full ever since. They've added all these extra spaces, and they've immediately filled up. It's almost impossible to get in and tie up most days. Sometimes it takes 15 minutes after you're there to work your way between boats because so many boats are stored there. Boats are stored there for six months and longer. We need something that will fix the problem. Enforcement would work if it was set up in two different stages. The first thing is identify all the vessels tied up in the 24/72	Why don't those of you that are impacted take a shot at giving us your version of this paragraph and submitting it to us in an email? We'll take all of those into consideration.



hours. The 24/72 is fine for people with 72, but it's biased against the people that are stuck with 24 hours. Start with indicating it should be 72 hours on some portion of each of the docks.	
The County Harbor Patrol took away the dinghy dock over at the Harbor Patrol facility because they were tired of the messes. They painted it all red. I appreciate that you guys are trying to make this work. In Avalon, there's a tag system where they tag the boat. That's their system for the 72 hours.	
A helpful direction would be finding and arranging more tie-up space. We're aware of opportunities and look forward to your working on that.	
The situation that would work would be to first identify all the boats using the 72-hour with a CF number. Otherwise, there's no way to identify the boat. First, issue a notice of pending violation. Illegal to remove the notice from the vehicle by a third party. The vessels tied up get 24-72 hours from the time the notice is posted at which time it needs to be removed. If the notice has been removed, it goes with the time stamp from when it was marked. If it's still there 72 hours later, it's subject to penalty. The 24-hour removal would be if you receive a notice, it has to be removed for 24 hours. The 24-hour notice should exempt live-aboard people because (inaudible) post our boats. We're there every day and using the boat every day. The way to enforce it could be with laptops with a photo galley for each dock.	What you have explained is what the Harbormaster is working on right now. I have seen how he's going to enforce the time limits on the docks with CF numbers and notices. He's doing an education piece right now. You should see some of those on the docks. Our goal is to get people who are storing their boats for six months at a time out of there. They will be documented. It takes a long time to take care of an asset that has been ignored decades. We are trying to do that.
Another way to eliminate the congestion at these docks. I pay \$25 a month for a dinghy rack so I can get back and forth to my mooring. Maybe you can put a dinghy rack somewhere on the dock. It might alleviate some of that congestion.	
In the markings by times, is there any merit in a 12-hour zone?	
The three-hour zone for most people that live on their boats and the 20-minute zone don't work because we go in the morning to do our chores on land. We come back more than three hours later.	
A lot of the larger dinghies don't fit in the 72-hour.	
Is Rhine Wharf a dinghy dock ever?	No.

<b>Section 17.25.10</b>	
You might look further at the history regarding the double moorings where connector lines were required rather than an option. The fairways don't work when people don't have lines connecting the buoys. It's a thought for your consideration.	
With floats.	
Harbor Patrol was at the back area, and he watched a 35-foot boat go through two moorings and break both of the spring lines. He did nothing.	
Could it also be said that mooring field areas are not navigable areas for traffic.?	That's probably not enforceable.
Not everybody can do this, but I have dinghy I put in between my line and the lines out of the water. They can see the dinghy, so they're not going to run through that. If it's visible with enough floats or a dinghy, that helps a lot.	Why doesn't the Mooring Association get together and come back to us with a recommendation on this?
<b>Section 17.25.20 Sea Lions</b>	
How about putting up a sea lion island so they have someplace?	That issue was addressed at the Harbor Commission meeting in March.
What will you use to deter them? Seal stops are the only thing that works. If you're going to charge for buckets and things, that's worthless.	Should we take this out?
What did you have in mind for bill the mooring permittee for such deterrents?	If we have to spend \$300 on something for your boat because you're out of town or an absentee boat owner ... I'd like to ask the Newport Mooring Association to weigh in on this. We can take this language out. Part of this is to protect your boats if you're not there for 24 or 72 hours or two weeks. If you'd prefer to handle this privately, we'll stay out of it. We can issue a citation, and that's already in the Code.
At the beginning it should say if the permittee does not respond within a designated timeframe. They should be receiving a notice of the timeframe to care of the situation.	
This is under moorings, but sea lions get on swim steps on boats or at docks as well. It says moored vessels.	The intent of this is it pertains not only to boats on moorings but also boats on docks.
Dock owners would prefer to have no City involvement in sea lions.	

The Mooring Association Board particularly cares about representing all the opinions out there. We will definitely be doing survey activity, and the City will help us with that. In that manner, your input will be received.	
There is a cheap way to deter sea lions.	
I think we need to dwell on "bill the mooring permittees for such deterrents." What are you talking about? That language needs some work.	It's a catchall phrase. If you don't want it in there, we can take it out.
<b>Section 17.25.30</b>	
Does that mean standup paddleboards or kayaks when you say vessel storage?	They're vessels under the Inland Rules.
(crosstalk) kayak over to shore (crosstalk) up to three hours and go somewhere (crosstalk)?	
Can we make it four hours?	
For the majority of people heading to San Diego for the (inaudible), they've already figured out (inaudible) work. They've pulled up on beaches countless times. In Seattle, you go ashore, and you pull your dinghy up on shore. If you've got any brains at all, you set it up so it's not going to float away. You do your shopping and come back. The dinghy docks aren't always available. It's just being a more welcoming place for people to stop and spend money if we made ourselves a little more accessible to cruisers.	
	The second word in i, ii, iii, and iv should be permittee rather than permit. We may have to look at Section 17.30.30 as it pertains to the bait barge.
Where does the white sea bass fall? I recommend Title 17 deal with it.	We need to look at that. I'm sure there's a special permit for that that may not be dealt with in the Municipal Code.
<b>Section 17.35.020</b>	
If we wanted to put motion sensor lights on regular docks for nighttime, would that have to be in here? When I've had to drop my husband off and come home by myself at night, I wasn't happy that the street lights were dark and the dock was dark.	That's not a Title 17 issue, but you should address it to the Harbormaster.
They do make timing, mounted, LED, solar photo infrareds. It gathers sun. It has a low-cast light. When you walk in front of it, it brightens up.	

Assistant City Manager Jacobs announced another public meeting is scheduled for May 6. Comments can be emailed to [title17review@newportbeachca.gov](mailto:title17review@newportbeachca.gov). Information about the Title 17 Review is available on the City website. Anyone can register to receive emails about Harbor Commission activities on the City website.

**NEWPORT BEACH HARBOR COMMISSION  
PUBLIC MEETING  
Review of Proposed Changes to Title 17 of the Harbor Code  
Marina Park, 1600 W. Balboa Blvd., Newport Beach, CA 92663  
Monday, May 6, 2019  
6 PM**

Commissioner Kenney reported proposed changes to Sections 17.01, 17.05, 17.20, 17.25, 17.30, and 17.35 will be reviewed. Proposed changes to the second half of the Harbor Code will be reviewed the following Monday night. Comments submitted during and outside the meeting are available to the Harbor Commission Ad Hoc Subcommittee, who will consider each comment. The public is invited to comment on the proposed revisions during the Harbor Commission's review of the subcommittee's recommendations and the City Council's review of the Harbor Commission's recommendations.

Assistant City Manager Carol Jacobs advised that the Harbor Commission Ad Hoc Subcommittee met following the prior public meeting, and its determinations are provided as comments in the redline document.

PUBLIC COMMENT	RESPONSE	Subcommittee response
<b>Applicant definition</b>		
A trust, company, business is not a person.	I would support using the simplest definition, applicant means a person applying for a permit under this title. The definition of person includes trust, corporation. Staff will suggest the definition to the City Attorney for consideration.	Changed to simple definition. Waiting for CAO review.
<b>Bulkhead definition</b>		
If the bulkhead lies on private property, we're paying property taxes on that. If it was farther out, beyond the bulkhead line, it would all be on state lands. Correct? The best tool the City has come up with is when the dock tax came up, you have the satellite image of where the bulkhead line is and where the pierhead line is when they're the same. We found out where our property line is in relation to the Harbor. I don't know that this is the place to make that distinction. If a bulkhead lies inside, meaning on the private property side, of the bulkhead or coincides with it, then it is private property. My tendency is to think that should be explained here.	I'm going to advocate against that. The bulkhead is the bulkhead whether it lies on the property line, inside or outside. There are property definitions and implications thereof when the bulkhead lies in one of those three positions. This is not the place to define that.	No change recommended.
<b>Fairway definition</b>		

<p>I believe that should say the area designated by the City. Otherwise, it makes it all over the whole mooring field. In most places there's not room for passage between the different boats except the areas that are left open, which is a fairway. To put any mooring balls basically makes the whole mooring field a fairway. There are now established fairways where there are spaces left for pressing between the mooring fields.</p>	<p>Gaps in the mooring fields are different from what we're trying to define here. We're trying to define a fairway within a mooring area.</p>	<p>No additional changes recommended. This will also be addressed with the proposed changes to the mooring extension discussion.</p>
<p>I have the same problem trying to visualize what it's trying to do, define, or illustrate. Whether a mooring field has a fairway in it, many or all of the spaces are fairways. The bigger question is, is the definition needed for anything. Is it used anywhere in the Harbor Code or is it referred to in other regulations that maybe say as defined in the Harbor Code? I could not find it in Title 17. Should it perhaps be there in Title 17? Why is it here if it's not referred to elsewhere in the Title? I would again suggest it could be illustrated. You might have a little diagram showing what you're trying to describe.</p>	<p>It's referred to in the design and building standards for structures on the Harbor, including moorings. We're also using fairways when we add the language dealing with extension of moorings. It's something to come. We could have a federal fairway and a city fairway within a mooring field. We could put in the U.S. Coast Guard definition of a fairway, and then we could put in mooring fairway, which would identify the open space between the lanes. Or a mooring field fairway. What if we said Fairway A as defined by the U.S. Coast Guard is X, and B, mooring field fairway, is Y. Since there is not yet a diagram anywhere else in Title 17 and I am clear on what a fairway is, I'm going to advocate that we don't put in a diagram at this time.</p>	<p>Recommended against a diagram in the Municipal Code.</p>
<p>Some of this stuff like this particular discussion, it's important that there's an establishment of stipulation. The City's acting in good faith to try to come up with definitions and write the agreement, and we as mooring holders go along with some of this stuff because you could litigate every paragraph in this. You've got to have a little trust in the boaters, and we've got to have a little trust in you.</p>		<p>General comment only.</p>
<p>One comment about a diagram. That may impede you from extending or changing the mooring (inaudible). If it's fixed in</p>	<p>If you put a diagram in, you can't dimension it because there's the potential that the distances will change.</p>	<p>Do not recommend a diagram.</p>

the diagram, you're locked in to those areas. The way it's worded is really good.		
A fairway is not a channel. These fairways are designed with people with common sense. Hundreds of rental boats a day have no training, no idea, so they don't know the difference between a fairway and going 90 degrees up the channel or down the channel through the moorings. We're boaters here. We could have a show of hands of how many people understand the concept of the fairways between the moorings, and I think you'll see we're doing okay on this one.		General comment.
The problem is the position of the boats change all the time by the wind and by the tide. Sometimes, like mooring field C, some of them are laying to the tide, some of the them are laying to the wind. Sometimes they're 6 feet apart. Other times, they're 35 feet apart. It changes constantly, all day long every day.		General comment.
Which is why this wording is different.	It gives us flexibility to accommodate those kind of changes. That's the point. Here's what I would recommend. We will take this set of comments; we'll have the subcommittee review them; we'll send them to the attorneys. The next round of comments is going to be at the Harbor Commission meeting. We'll define for you what we've changed from this meeting to the Harbor Commission. If you still have concerns with it, then I would suggest at that time we bring it up with the Harbor Commission and let them make the final call before it goes to Council.	No additional change recommended at this time.
Another alternative is just to define one—it's either federal or it's not federal. If it's federal parameters, then whatever else is in the Harbor that is not federal is considered fairway.	Are we going to have two definitions or are we going to leave it like it is? I vote for leaving it like it is. Let's have a show of hands. Who wants to leave it like it is? Who advocates for changing it? Just a few.	No change based on vote

	I think the majority rules on that one.	
<b>Federal Channel definition</b>		
That's an example of if you start designating the type of channel. The first question is where are the federal channels? I just finished my dock permit, and the Army Corps was all over it, lending itself to say, "It's in our jurisdiction too." It must be here, I guess, for a reason, but it seemed just like (inaudible) the type of channel. No boater is going to know which is a federal channel and which is not a federal.	The federal channels are marked on the nav charts. They are what they are. They were established by the Army Corps. That's why the definition is in here.	No recommended change.
<b>Graywater definition</b>		
I direct you to the Pacific Fisheries white sea bass pen. When they pump out their—I want to call it wastewater, which has waste from the fish growing up, it used to have antibiotics and other things. They pump it into the Harbor. Do you know if that's still done? Is that called graywater? They may have changed.	I believe they have an obligation to dispose of that elsewhere. I can't tell you with 100 percent certainty. My recollection is that they have an obligation, just as the charter fleet does, to empty the pen. Any residue, dead fish, etc., have to be disposed of properly, not dumped in the Harbor. First of all, it's against the law, for those of you that are fishermen, to dump your bait tank in the Harbor as you're coming in. Those have to be disposed of before you enter the Harbor. I recently attended a presentation made by that group. My memory is that they described vacuuming those contents. I'd be happy to confirm if that's their practice. That's a good point. I would consider that graywater or at least I'd deal with it in another manner somewhere else in here. There is a section that deals with bait receivers. The same is true with the bait receiver. All that residue needs to be properly pumped out and disposed of correctly. It's not supposed to be dumped in the Bay. We have that clause in another area than the Title? I'm almost certain we do. We're going to get to it when we get to the bait receiver.	No additional changes to definition.
<b>Houseboat definition</b>		No recommended changes



<p>I saw something that was a pontoon boat with a spa on it and a big screen TV. What would you call that?</p>		
<p>The way this reads, somebody could purchase a Lake Powell style houseboat and live on it and that would be legal. According to this, why would it not be legal? That type of boat has an engine. It's capable of going around the Harbor. I don't think that's a good enough definition. Live-aboards are legal if they meet all the requirements. A houseboat as I described—I think you've got to define it right here. I'm talking about a legal live-aboard with a houseboat, a Lake Powell style houseboat, which I thought we wanted to try to not allow. I think you're opening the door to allow it with this definition. A live-aboard with a catamaran or a Sidewinder are getting bigger and bigger. If it's got a galley and a head and it's got a permit to live aboard, how could you distinguish between the type of hull? A sloop could be a place to live. It's got a bunk. It's got a galley. It's got a head. Everyone thinks of a houseboat as being a pontoon boat with everything short of a fireplace on it. There are houseboats that never move, like they have in Seattle and Sausalito. Then there are houseboats like they have on Lake Powell that move quite a bit. I guess those are going to be legal per this definition. Maybe that's okay. I'm not saying it isn't. I'm just pointing that out.</p>	<p>No. Because that's a definition. As Mr. Mosher correctly pointed out, in Section 17.60.050, houseboats, all houseboat activity is prohibited in the Harbor. This is just a definition. In another section of the Code, houseboats are not allowed in the Harbor. That's why the definition is there, so we can exclude them from the Harbor later on. A legal live-aboard would have a permit. We struggled with this. How would you change it?</p>	<p>No recommended changes.</p>
<p>The problem is those houseboats are not ocean-going vessels. Anything that's not an ocean-going vessel would be a houseboat. If it can operate, it can get to the demarcation line and back. That's not the point I was making, that all the boats have to be ocean-going. There are ocean-going houseboats that travel regularly on the ocean, that are ocean-going vessels. All of the</p>	<p>There's a way to deal with that, and that has to do with operable. Maybe we change the word operable to make sure that any vessel that is defined as operable must be ocean-going. I strongly disagree. Harbor 20s are by definition by the manufacturer non-ocean-going. If all of a sudden you throw a requirement in here that says in order to have a mooring permit, you have to be ocean-going,</p>	<p>No recommended changes</p>

lake houseboats are not ocean-going vessels. They're (inaudible) water vessels. They would not survive on the ocean for even moderate weather.	Harbor 20s will no longer be allowed to moor on a mooring.	
Maybe you can put in restricting the ones that are designed for lake usage.	I think we're treading on very thin ice here. We've come up with a definition that allows the most activity and opportunity for those who want to boat on Newport Harbor to do so. Any further definition will cause us to be looked at with great scrutiny by organizations that are encouraging us to provide public access. Low-cost public access to the water. We went around and around on this, trying to come up with a solution. We currently don't have any. If somebody were to come in with a houseboat, Mr. Borsting would maybe rent them a mooring for a day, but they certainly wouldn't be here permanently.	No recommended changes
Is there something that states a boat after a certain size needs to be ocean-going in the Code at all?	Nope. You could have a 65-foot Baycruiser.	No recommended changes
Maybe since there's already a restriction on the number of live-aboards that are allowed in the Harbor—maybe that's enough of a restriction as it is.		General comment
It would not restrict them because they would have so many days a month that they could stay on the boat even though it's a houseboat.	I'm very comfortable with this definition. If someone has a better idea, come up with some language.	No recommended changes
It has to be ocean-going. It can't be in the Harbor if it's not ocean-going. There are ocean-going houseboats. If people look at this and say it's okay to have a houseboat on the Harbor, houseboats will be showing up on the moorings for sure because a majority of the boats for now do not leave the moorings at all.	You'd get rid of a lot of boats out here. Do you want to specifically state that a houseboat needs to be ocean-going? We don't have that condition on any other boat that enjoys a mooring, live-aboard or not. If we restricted it or made it more restrictive, we will come under scrutiny we do not want.	No recommended changes
Is this added?	No. This has been here for decades. We just couldn't figure out how to manipulate it to provide the protections that we're looking for.	No recommended changes

You haven't had any houseboats yet, so I guess it's working.	Good point. It's been working. If it's not broken, don't fix it.	No recommended changes
Do we expect an onslaught of houseboats?	It only takes one, and then others could follow. All we're trying to do is be careful that the definition is correct.	General comment.
	<p>The differentiating word here is one that is not principally used for transportation. If we're talking about a lake houseboat, those are transportation vessels. They live aboard. You could have a place of habitation and a use for transportation. That, to me, would qualify a lake houseboat as opposed to a Seattle-style houseboat that doesn't move, that stays permanently in one place. Correct.</p> <p>We've talked about that particular definition. If we're not changing it, we're still leaving the door open for what we've just described.</p> <p>Right. We can't legislate aesthetics. Just because you don't want it here, just because you don't think it's attractive, doesn't mean it can't be here. This is a public amenity. It belongs to the people of the State of California. We cannot exclude a section of them because their boats are ugly.</p> <p>Does it help if you put that one word, ocean-going, in? Not used for ocean-going transportation.</p> <p>Then we're going to be subject to scrutiny on all the other boats that are not ocean-going that enjoy moorings.</p>	General comment.
(crosstalk) just going to make more ocean-going houseboats, and then we'll have the whole Harbor filled up with those. The idea is really the moorings are designed for live-aboards. That's a benefit for people that do have a permit. The thing is it's really recreational boating. Some people can't afford a house on the Bay with a dock. People from inland can have a mooring just as much as somebody that lives here and has a financially high-end.		General comment

You've got a big mix of people. You don't want everybody to have a live-aboard here. The way you've got it set is fine. It's worked well.		
The real intent is to keep the Seattle-style houseboats out, right? That addresses that specifically.	Right, stuff that doesn't move. Stuff that cannot be used for recreation. The Seattle and Sausalito-style houseboats have fixed connections to the bulkhead. That's the difference. The lake-style boats do not. We certainly can control through not only the Harbor Code but also through our Building Code the permanent, attached-type structures. We really don't have to worry about those. I recommend we keep the language as is.	General comment,
<b>Pierhead Line definition</b>		
It's consistent with a declaration I had to sign to get my dock permit, that the vessel will not overhang beyond the beam of the boat.		General comment
<b>Seaworthy definition</b>		
Good luck with that.		General comment
That's kind of a weird (crosstalk). I would say made with competent material.		General comment
I would delete "and generally free from dry rot." That was put in there when most boats were made of wood.	There are still boats that have wood decking that can be subject to dry rot and, therefore, a hazard for fire/life safety personnel that are coming on board.	No recommended change.
There are a number of wooden boats in the Harbor still.	Again, there are a lot of fiberglass hulls that have a wood deck or a wood superstructure. I'd like to leave that dry rot in there just because I've witnessed it. I would concur.	General comment
<b>Vessel Length/Width definition</b>		
Those are really the only two dimensions that are ever used, as far as I know. Width is the beam. That's standard.		General comment
I thought we had a pretty extensive discussion about LOD,	We're not defining it because that's not what we're going to use. It is the	No recommended change

length on deck. That's usually what's on the registration of your—it's not length overall; it's length on deck. Are you saying that there's no length on deck ... What's the max slip that we have here in Marina Park? If you've got a 40-foot sailboat with a bowsprit, you're usually let in at 40 feet, and that's okay, but the bowsprit is longer than that. That's still understood?	dimension most frequently used in documented length or registered length. Forty feet. The documented registered length we felt was the most objective. It's not arguable. For purposes of mooring permits, that's what should be used.	
There's no significance in the bowsprit on the mooring (crosstalk).		General comment
Basically, the documented registered length is normally the length on deck. It just doesn't say LOD.	Correct.	General comment
<b>Section 17.05.065(E)</b>		
This seems like something that would be decided by the City Council, not by anybody else. Did the City Council instruct you to do whatever they wish?	It would ultimately be decided by the City Council, absolutely. However, sometimes the City Council—why you have a Harbor Commission and why you have a Planning Commission is because they're the subject matter experts on those subjects, and they would provide a recommendation to the City Council from their perspective, whether that be Harbor or Planning. Hopefully they will take our recommendations into consideration and adopt them. If they're going to give us the credibility, then hopefully they'll stand behind us.	General comment
It says to advise them on what you're referred.		General comment
<b>Section 17.20.020(A)</b>		
There's a provision in the California Constitution that goes something like nobody owning, possessing or controlling access to any of the navigable waters of the State shall not impede access thereto. That'll be most liberally interpreted in favor of allowing access. I know the City was sued many years ago on that. There	These are the designated launching sites, if you will. Almost all of them are street ends. Obviously not every street end is designated as a launching site. This was adopted in 1971. We certainly want to take a fresh look at what this is.	For this conversation, the group agreed to let the language stand as is for now and ask the City Council if this is something they would like reviewed separately as this is a topic of its own.

are all sorts of people on all the islands around here and the Peninsula who have dinghies and kayaks in their garages, and kids have to launch them. To sometimes have to go to a designated launching place that might be blocks and blocks away is a real problem for people who have historically ... I've got a couple of inflatables in the garage my grandkids use and a couple of kayaks.		
Number 6 is the Fernando Street dock? Look at Number 20. That's the area, right? In that area where Number 20 is, there are people on our mooring field who access their boats, who do not want to take up public space on the docks. They bring their paddleboards on the roof of their vehicles. Wherever they can find parking in that neighborhood, they're not going to carry that paddleboard blocks away. They go to the nearest place where there's water, they jump on that paddleboard, they paddle to their boat, and they use their boat. Consider those people as well in the decision-making.	No. Number 6 is 18th Street. Twenty is Coronado Street. Fernando is 27. We have not analyzed each and every one of these launching sites. I'm sure that somebody did at some point in time. That's the real purpose why we're here. Should it be every street end? Should we designate street ends and certain beaches? If so, should we go through an extensive analysis to determine if these are still the proper locations? I don't have the answers.	
I notice that my street, Ruby, is one of the launching ramps, so we're not breaking the law. I feel sympathy for people at some of the other streets who are blocked off and have to go blocks out of their way. There is overuse perhaps concentrated at the legal spots.	I have no way to confirm this, but I believe this was done in relation to shore moorings. Where there were some shore moorings, that street end was not designated as a launching site.	
Can you more clearly define where is 25? Is that E? The launching areas are keyed with the red circle? That's the street end that I live on. 17.20.020 says where permitted. There are two shore moorings, and there is a street sign or City sign that says no launching of any boats from this site. That's not permitted. It's a conflict because people all the time want to ... What's a vessel? Anything that floats? That's a paddleboard, a kayak. One kid on	E Street. Yes, the red circles. That's why we're here. We didn't go check every one of these. I can't tell what's at every street end.	

the corner has his own Ski Doo. He hauls it down the sidewalk, pulls it over the seawall, and launches it, whatever the sign says. What I'm getting at is it looks like there needs to be a review of which is going to govern.		
The general public has no idea about this. People come down all the time, and they just walk out to the end of the street (crosstalk). Most of the signs don't say you can't launch. They're just blank.		
Could you perhaps exempt hand-carried vessels?		
The signs at the end of those streets say hand-carried vessels only.		
Maybe it's because of the two shore moorings there. They don't want to have a conflict of damaging the boats on the shore moorings.	<p>I'm certain that the signage and the location of the shore moorings have changed over time. Whomever within the City didn't know there were designated sites or didn't look at the designated sites and didn't realize they were creating conflict. I have a suggestion. Can we get the Harbor Department to do a survey and determine the concurrence between signage and this authorized map? I certainly wouldn't advocate for taking any of these away.</p> <p>This was done in '71 for whatever reason at that time. There are certainly a lot more spots that aren't showing here that are easily accessible like most of them are. I think there are more that should be added or there should be something considered more of a universal without any red dot seen at the end of a street. There should be availability unless there's something with that street end that makes it dangerous or non-navigable for launching a vessel. This map could be obsolete.</p> <p>I would recommend that this is a subject that needs study on its own outside of Title 17. This involves a lot of residents and a lot of folks. It's not just the people who are trying to get to their boats. It involves the</p>	

	<p>residents. I would recommend we leave the language as it is because right now it says if it's authorized, you can do it, but the Harbor Commission at some point direct staff to do an overall brand new analysis, actually go out and get some hard data about this, so that we can make an informed decision about where things should be.</p> <p>I would like to suggest that we do a three-part overlay, existing, include the moorings, include the signage. I know there are street ends where it's sometimes dangerous to launch. I'm sure one of the reasons that some of them are not designated or that there is signage prohibiting is it may be somewhat of a dangerous situation. I like Carol's idea. I'm going to suggest we leave this alone, but we advise the Council that with respect to this provision we'll do a separate analysis and come back to them at a later date.</p> <p>The general tone of this group is we're looking for ways to make more spots available, not reduce the number of spots.</p>	
<p>On the 19th Street pier, according to this, you can't launch a vessel. 19th Street, there's a dock, there's a parking area, and you can't launch there? A vessel on a cart would not be permitted?</p>	<p>At 18th Street you can. You have to go through the bollards and over the sand at 18th Street.</p> <p>No, you can. You can go down on the float and throw your paddleboard in the water from the float or carry your (inaudible) down and throw it off the float.</p> <p>Manual push. It can't be mechanically aided.</p>	
<p>Can you launch at Marina Park? If I had a boat on a trailer and I'm coming from Riverside? Since we have parking and elbow room and space, why aren't we making this the center of access? If we could recommend overriding that, it just makes sense. This is a better center to launch than having people go through the neighborhoods and find their way to park and lug their boats down to the street ends if you were visiting. I'm surprised it isn't. Any vessel. You have a davit here; you have a crane. You have the facility, parking. You have temporary</p>	<p>No.</p> <p>I think that's a Public Works and public safety matter because the lifeguard boats use here and we have safety personnel here. I remember the discussion from when Marina Park was in design.</p> <p>You're suggesting a trailer boat?</p> <p>You don't have parking for trailers.</p> <p>Public use of that crane is a liability for the City that it doesn't want to take on. If you cartopped your kayak here, I don't see a reason why you shouldn't be able to throw it in the water off the float.</p>	



access. You can pull up alongside and get your boat in the water much more easily than around the neighborhoods.		
This came up last time. The parking of the cars with the trailers was a big concern.	One of our goals is to try to find a second launch ramp. We've scoured the Harbor trying to find a location. It's difficult because it's not just a place to drop a boat. It'd be great if we could have a crane.	
When that was thought of, there was no Uber. You could pull up a trailer here. You have a time-limited space and you could off-load your boat, and then you can take it to another location and Uber back here. I'm not suggesting that we park here. I'm suggesting that we launch here because this is a marina park, and it does promote access.	One of the issues we face in Newport Beach is parking. You'd have to have a special area to be able to park a trailer. I don't believe you can park a car and trailer on the street in the metered parking.	
I'm speaking as a resident and not in my official capacity. Just looking at this map, it seems like they're all concentrated in one area on the Peninsula and Balboa. I don't know if it's possible to put some on Lido or on the PCH side of the Bay, but that might help alleviate some traffic issues during summer. I don't know if it's possible.		
How does Lido get away with having one?	Their street ends are all owned by the community association. Those are private property.	
The same thing on the mainland and on the islands.		
<b>Section 17.20.040</b>		
Is there another place in the Code about trespassing or is this the only place? Do you have a slide of where the pierhead line, the bulkhead line is on any given dock? Bulkhead line is my northern property line. It cuts right through one of the floats of my dock. Everything on the private property side is essentially an area that's private property. When somebody comes around and	It's certainly in the Penal Code. It's the GIS map. There's a way to configure the GIS with those filters. What's your specific concern over trespass between the project and pierhead? We're not going to write liability into the Code for one homeowner or even a small group of homeowners. This is a broad definition that applies universally through the Harbor.	No recommended changes

<p>wants to fish or have fun, I'm not chasing them away. It is a liability that I'm assuming is covered by my homeowners policy if somebody trips and falls, they trip over the groin, which is on my property. It's differentiated from state lands. Where does the trespassing occur? I'm not suggesting it would be on the state land side. It would appear to me that the trespassing is on the private property side. Where does the liability come and go? Is it going to be in the Code? Harbor-wide is what I'm talking about, about trespassing. Who would be the City individual I'd go to, to give my comments? There are no trespassing signs all over, but they're disregarded like the launching signs. I just wondered for the purposes of this discussion and Title 17 if we're going to talk at all about the definition of trespassing on land or just vessels. My dock is half on state lands. Where would I find the trespassing statement here?</p>	<p>This definition applies only to the state lands. It does not apply to private property. I'm sure there is another portion of the Municipal Code that would deal with trespassing on private property, but it wouldn't be in Title 17.</p> <p>You can certainly go to the Police Department. It's also part of the California Penal Code because that's where trespass is truly defined. The City of Newport Beach Police Department is responsible for enforcing that section of the California Penal Code that deals with trespass. We are way outside the scope of this meeting. It would be my advice to mark the property line clearly and post a no trespass. Posting that sign limits your liability. Nope, we're dealing with the Harbor and state tidelands.</p> <p>This deals with anything over the state tidelands. If the pier or dock is on the state tidelands, it's covered here.</p> <p>Anything that's on state lands. The half that's on state lands is covered right here. The half that's on private property is covered somewhere else.</p>	
<p><b>Section 17.25.010(C)</b></p>		
<p>I get what you're saying about 15th Street, but what about 19th Street? We have a different problem at 19th Street. Is there going to be any recommendations about that because it's a problem now? It's completely inaccessible. Are those 3-hour zones still going to be at risk of impound until this gets sorted out? That's an expensive way to experiment. What about tomorrow? People are worried now. They don't know what to do. For places where there are a lot of boaters that have been using that dock for years or decades over that. There are some pretty simple solutions we could do to make everybody get along and be happy. That's change those 3-hour zones to 12-hour zones for people who have stickers for boats connected to a</p>	<p>The approach we're taking is to see if it works at the 15th Street trial. If we have success ...</p> <p>The problem I have observed is that the tidal conditions at 19th Street are one of the contributors to the problem there. We've marked a lot of area for 72 hours that are subject to tidal conditions.</p> <p>It becomes inaccessible, exactly. We're going to handle that at a different time. That needs to be dealt with as well.</p> <p>We've been educating folks about the time limits and doing enforcement. We did some enforcement in that area that led to some impounds.</p> <p>That needs to be researched. I don't disagree with you. The current configuration of the hours on that dock needs to be revisited. I'm just</p>	<p>Harbor Department to review separately. Added 24 hour time limit to 15<sup>th</sup> St. dock at Harbor Commission meeting of 5/9/19.</p>

mooring. There are people that need to tie up there still.	not bringing that tomorrow to the meeting.	
The simplest thing to do is follow the rules, then you don't have a problem, which has never been done in the past.		General comment
The issue is not only the time but also the length of the vessel. There is a lot of space for the 9-foot vessel. I'm speaking as a live-aboard. Most of the live-aboards I know need larger boats than 9 feet. We all stack up at the 3-hour, and many of us have to go to work or doctors' appointments. Because of the 9-foot limit, it's a big issue for us. I'd like to propose that—it's a beautiful dock out here—it can be used for 20 minutes without any harm to the public as a 20-minute short stay, and you can convert the 20-minute stay that's only 15 minutes or the 3 or 12 hour. That will complete maybe the problem.		Harbor Department to review.
The outside dock with the 20-minute, the dock is almost free all the time just for a couple of boats. If you've got a 40-foot boat, it takes up most of that dock. In the summer time, people are using that dock to come and go, just to take people on and off. All of us need that slip. Marina Park is rarely separate (inaudible). It's only about 10 or 12 years ago maybe that they actually expanded the 15th Street three (inaudible). It used to be just the front dock and a little bit on the side.	For the purposes of the Code, we're going to leave it as it is. I understand you're a live-aboard. There's a dilemma here. On the one hand, we want to accommodate as many people as we can. That's the purpose for the 9-foot limit. Live-aboards have the ability to tie two dinghies to their boat as opposed to one. Use the 9-foot dinghy when you're going to be for any length of time. The public docks also need to be available not just to the mooring permittees but also to the general public. We have to balance the needs of both.	Harbor Department to review.
Just an observation. When you guys mark 15th Street, there are a couple of large inflatables there. Two days later, they're at Fernando Street taking space there. They're going to move around as long as you have motors. The 24-hour thing you have here, I come down here for three days. If I have to move it for 24 hours, where do I put it? Mine's a rowboat. I don't have a motor		Harbor Department to review.

like those guys that can go to the (inaudible) or the other dock. It limits my ability to get to my mooring.		
<b>Section 17.25.020(I)(4)</b>		
Just got the survey today. I have some preliminary results. Sixty-six votes cast; 55 were in favor of the Harbor Department doing something active, so 55 to 11. Personally, I'd like to hear more about what are we talking about billing. If the Harbor workers are just scaring the sea lions off with a hose or something, is that a non-billable event? Are they installing devices? What are we talking about, what kind of deterrents?	The discussion at our last meeting was installing the seal stop. I don't know that we would install. I thought that was what we discussed, putting the seal stop device on the boat temporarily. We're not going to make any permanent modifications to a boat. There are a couple of things. First of all, we cannot charge you for anything unless we have a fee for it. I don't think we have a fee for this. Right now, we don't have a fee for it. We'll probably have to have one. We can only charge you what we estimate it to cost, the cost of service. We cannot make money off you. We do a fee for service survey, and that's how we come up with our fees. As we move forward with this and if we want to establish a fee for this, we would take recommendations from the Harbor Department and the Harbor Commission that says if we have a sea lion problem, these are the steps we take. Calling you is free. Squirting them down is free if we happen to be out there. If we have to put buckets or netting or something like that on your boat, that is the cost, and it's \$100 or \$125.50. You'll know what that fee will be in advance of this going out and being implemented by anyone.	No additional changes recommended.
Just speaking for myself, the Harbor workers are on the Harbor all the time. They're seeing what's going on. If they have devices onboard to place on the vessel after the sea lions were scared away, that'd be great. I can't imagine too many people being against that. Installing seal stops at a giant expense ...	Don't mistake what I said. Whatever we would do would be on a temporary basis. We're not going to start drilling holes on your boat.	General comment
Are we talking about the first day we see the seals on there or within that seven-day period that we	The intent for this is when the clock runs out and you haven't responded, the City can take action.	General comment

have to take action? Am I going to get a call on Tuesday morning and I come down at 5:00 Tuesday evening after work, and you guys have taken action, and I get a bill?	The good news is when we start that multi-day clock, most people are very responsive. They're out there right away to address it. This rule is going to address the exception. If you're out of town, you don't have to wait the seven days. If you're on a phone call, you can just take care of that work right up front.	
<b>Section 17.30.30(E)</b>		
The term is non-domesticated sea life.	I would include the white sea bass pen to make sure they have the same obligation to dispose. They could think they don't have the obligation because they're not specifically called out. I agree. It should be any facility for fostering the growth of live animals under the surface of the water.	Added language to the definition of Life Bait to include other sea life.
It might be included because it calls it out that they have an obligation to maintain it.		General comment
<b>Section 17.30.010</b>		
The landing of aircraft, is that meant on the waters of the Harbor? If they're landing on a vessel, it doesn't affect it?	Yes. Are we going to allow somebody to land their helicopter on the helipad of their large yacht? It's over the Harbor, so it would be the subject of this Code. You are not allowed to land your helicopter on your helipad on your large yacht while your large yacht is on Newport Harbor. You've got to go out half a mile. That's not true. It says you could with a permit. If you get a special events permit, you can do it. There's no guarantee you're going to get the permit.	General comment
The verbiage about not creating a public hazard to life or property is pretty good, or nuisance or public hazard. Maybe that could go into that hand-launching thing. That would cover a lot of the issue.		General comment

Commissioner Kenney advised that the next opportunity for public comment on the proposed changes could be the June Harbor Commission meeting, depending on the attorney's review of the proposed changes. A public meeting for review of proposed revisions to the second half of Title 17, starting with Section 17.40, is scheduled for Monday, May 13, at 6 p.m.

In response to a question from the public, Assistant City Manager Jacobs indicated the proposed revisions for the May 13 meeting will be posted online on May 7.

## Biddle, Jennifer

---

**From:** Jacobs, Carol  
**Sent:** Monday, April 15, 2019 4:43 PM  
**To:** Title 17 Review  
**Subject:** Title 17 Comments

I spoke today to Mr. Tom Hynes who lives at 219 19<sup>th</sup> Street. He believes that the City has taken away a great public access when they put the “No Fishing” signs on the 19<sup>th</sup> Street dock. He would like to see fishing allowed on the dock. In addition, he would like to see enforcement on dinghy’s by chaining up boats and not hire any additional staff.



### CAROL JACOBS

Assistant City Manager  
[cjacobs@newportbeachca.gov](mailto:cjacobs@newportbeachca.gov)  
949-644-3313

**Biddle, Jennifer**

---

**From:** Sunny Smith <sundialsunny@gmail.com>  
**Sent:** Saturday, April 06, 2019 4:49 PM  
**To:** Title 17 Review  
**Subject:** Balboa island Channel

Thank you for all the fine work you do to keep our precious harbor safe and beautiful.

There is, however, one area that desperately needs your attention. That is the Balboa Island north channel. As you know, there is beachfront along the entire north bay front which makes it ideal for swimmers - many of whom are children. In summer months, there is almost a steady parade of boats - many 30' and over - motoring through the channel, down to the bridge and back. What is most frightening is that there seems to be a total disregard for the speed limit by these vessels, many of which are crowded with revelers. Needless to say, it is terrifying to be swimming around the bay only to look up to see a 25-35' power boat bearing down upon you.

We've called the Harbor Patrol numerous times but usually receive the same response: "By the time we get there, the boat will be gone."

Couldn't this channel be "off limits" to vessels over a certain size? And couldn't we occasionally have an officer ticketing those who ignore speed limits? There must be some measures that could be taken to make this lovely area fun and safe for us ALL.

Thank you again for your diligence and thank you for your consideration of this vital issue.

Sincerely;

Sunny Smith  
Balboa Island Resident (24 years)

Sent from my iPad



**Biddle, Jennifer**

---

**From:** Sally Peterson <spete@att.net>  
**Sent:** Monday, April 08, 2019 10:44 AM  
**To:** Title 17 Review  
**Subject:** 17.01.030G3

Since I am unable to attend tonight's meeting, I submit the following statement which I would hope will be entered into the discussion:

I do not feel that the current liveaboards are being monitored to prevent discharge into the bay and late night engine and generator noise. Until the City develops a plan and has sufficient staff to monitor such, the City should not extend the allowable stays by redefining live aboard.

Thank you for the opportunity to provide input.

Sally Peterson  
Balboa Island Resident

**Biddle, Jennifer**

---

**From:** Mary Nasser <mary90403@gmail.com>  
**Sent:** Saturday, April 13, 2019 4:54 PM  
**To:** Title 17 Review  
**Subject:** Harbor master meeting

I cannot attend the meetings, but I concur with those who believe large boats should not be allowed passed a certain point on the back side of balboa island.

Thank you very much,

Mary Nasser  
Homeowner in Balboa

**Biddle, Jennifer**

---

**From:** airtimesports <airtimesports@aol.com>  
**Sent:** Friday, April 05, 2019 10:14 AM  
**To:** Title 17 Review  
**Subject:** Thank you for this invitation,

1. 19th st public dock.

A. Many dinghies out in violation of 72 hr limit.

B. 19th st dock needs to be extended @ 10' into

the bay so that dinghies can make their way to the 72 hr area (back side) at low tide. Now at low tide you can not get in or out of that area.

2. Harbor use, recreational and live aboard.

A. With more and more people using the harbor each year, the key is not more restrictions, but better management.

B. mooring holders should have permits for the 72hr area at the public docks. that area should be for those permits only.

C. live aboard permits should be for 12 months,

The city should have a use permit for people like my wife and I who like many others have boats on moorings and live out of the area, and like to come to Newport and stay on their boats. I would suggest the use permit would allow 7 days per month and the boat would have to comply pump out regulations and be inspected for compliance.

Thanks again for including my input.

My family and I have lifetime residents of this great town

John and Grace Robert's. Mooring k 12

Sent from my Verizon, Samsung Galaxy smartphone

## Biddle, Jennifer

---

**From:** Jim Mosher <jimmosher@yahoo.com>  
**Sent:** Tuesday, April 09, 2019 11:48 AM  
**To:** Title 17 Review  
**Subject:** Title 17 revisions: there is no "Fish and Wildlife Code"

Carol,

If I ever have a chance to review Title 17 more thoughtfully, I will undoubtedly have more comments, but before I forget, there was at least one error in the [suggested correction](#) on "**handwritten page 6**" last night in the recommended changes to the definition of "Commercial Fishing Vessel" (a term used only once, in [Sec. 17.25.010.A.2](#)).

Although the California "Department of Fish and Game" *has* [changed its name](#) to "Department of Fish and Wildlife," so that change is correct, **the code** (of which it is a small part) **is still the "[Fish and Game Code](#)"**, so that name should *not* be changed.

Also, I'm not certain the specific code section referred to is the one intended. [FGC Sec. 7880](#) has to do with the *display* of the registration number.

The actual process of registering a vessel for use in commercial fishing is in [FGC Sec. 7881](#), and that seems more likely what was intended.

However, I'm not sure registering a vessel ensures one has the "permit" that seems to be referred to at the end of the definition. Commercial fishing licenses are covered in FGC [Secs. 7850 et seq.](#)

\*\*\*

Unrelated to the above, I was also surprised by the suggested changes to the sentence on handwritten page 12 saying "*Vessels may extend channelward of the pierhead line by the maximum beam of the vessel.*" It seems to me that is the statement of a *regulation*, and has nothing to do with *defining* what a "pierhead line" is. I would hope the allowable amount of overhang is dealt with elsewhere. So rather than trying to revise that sentence, I would have deleted it (making sure overhang *is* dealt with in the "Berthing" regulations -- specifically [Sec. 17.25.020.C](#)).

\*\*\*

Finally, as I expressed to the Harbor Commission at their last meeting, I am a bit disappointed in the decision to bring the revisions to the City Council in two parts, which precludes the possibility of comprehensively rearranging Title 17 as a whole into a more logically organized and readable form.

It also means the Council will be asked to approve some of the definitions before considering the code in which they are used.

-- Jim Mosher

**Biddle, Jennifer**

---

**Subject:** FW: Phone message - input for Title 17 meeting regarding live-aboards

---

**From:** Oborny, Shirley

**Sent:** Friday, April 5, 2019 5:50 PM

**To:** Jacobs, Carol <[cjacobs@newportbeachca.gov](mailto:cjacobs@newportbeachca.gov)>

**Subject:** Phone message - input for Title 17 meeting regarding live-aboards

Hi Carol,

Mr. James Woodworth called to leave his input. I asked him if he was attending the meeting and he said he was; however, the last time he stood up and spoke out against live-aboards, they keyed his car and did some other damage to his property.

He lives at 15<sup>th</sup> and Bay. He also owns three moorings. He is against live-aboards for the following reasons:

- He feels about 70% of them are not good people; and
- They're one step away from being homeless, which brings about the same kinds of issues with the homeless – more thefts in the neighborhood, scavenging through the trash, leaving litter on the docks, drug dealing, etc.

If you need to reach him his number is 949-903-2628.

Thanks Carol,

*Shirley Oborny*

Executive Assistant to the City Manager

City of Newport Beach

100 Civic Center Drive, 2nd Floor, Bay E

Newport Beach, CA 92660

949-644-3001 Office, 949-644-3020 Fax

[www.newportbeachca.gov](http://www.newportbeachca.gov)

**Biddle, Jennifer**

---

**From:** Heidi Hall <hhatcl@outlook.com>  
**Sent:** Tuesday, April 02, 2019 10:27 AM  
**To:** Title 17 Review  
**Subject:** 17.30(b)

Dear Harbormaster,

I am unable to attend the meeting, but I do have a concern that is extremely important and should be addressed at your meeting. It impacts the lives of people swimming, kayaking, paddle boarding, and generally enjoying the inside channel around Balboa Island. I have lived on Balboa Island for 50 years.

As a child we would swim out in the channel beyond the buoys between the offshore moored boats off Collins Avenue and South Bayfront. We knew we were safe swimming in the inside channel because the larger boats were restricted to come down that channel. We would swim for hours and play on our old surfboards, seeing how many people we could fit on one and still stay afloat until we tipped the scales and all fell off laughing and coughing up water. We played on blow-up rafts and just floated with our eyes closed holding on to the other rafts in tandem. We played sponge tag and while we warmed ourselves in the hot sand, we watched our mothers, aunts, neighbors and grandmothers swim out to the channel so they could just float together and talk beyond our ears. We did this for hours on end every day in the summer and late spring.

As the year progressed the larger boats started encroaching on the inside channel. I am not sure when that restriction was no longer enforced. As I and hundreds of others paddleboard around the Island, we are constantly subject to the larger boats looming down on us and to be honest, most of them are not even paying attention to what and most importantly who is on the water in front of them. I've seen some close calls where boats have had to either slam it in reverse suddenly or veer off to avoid running over a small children who were playing in the water in front of their vessel. You use it every day and especially on the weekends. That happens a lot with these rented Duffy's as well. You've probably witnessed these incidents yourself when you are out enjoying the water.

These hazardous situations can and should be easily avoided; as well as a law suit to the City. Many big, and I mean 30' – 60' boats cruise through the inside channel every weekend when most of the human activity is in the channel.

Boats use to only be allowed in the inside channel if they were going to or leaving their moorings. Let's be a smart and pro-active City and make the inside Channel all the way around the Island safe for the hundreds of children, youngsters, teens and adults to enjoy again without fear of being run over by an skipper not paying attention and potentially and realistically being impacted with the reality of an oncoming propeller. A reality each party will have to live with for the rest of their lives, and you too.

The courtesy of a reply is requested. Thank you for your consideration.

HIS,  
Heidi Hall  
949-285-1145  
hhatcl@outlook.com

Courage does not always roar. Sometimes it is a quiet voice at the end of the day saying, "I will try again tomorrow". May  
Ann Radmacker

**Biddle, Jennifer**

---

**From:** Buzz <buzzlaw@buzzperson.com>  
**Sent:** Monday, April 01, 2019 8:25 AM  
**To:** Title 17 Review  
**Subject:** typos.. or little fixes...

Do you mean "LoA" in 17.01.030 R.2. I have always seen it as "LOA."

The added language to 17.25.10 C.1.f needs to be cleaned up a bit....

vessels tied up or secured in marked areas designated for **either twenty-four (24) hours or seventy-two (72) maximums** may not continue to use that same dock area beyond those established periods by relocating

Perhaps with "either twenty four (24) hour or seventy two (72) hour maximums."



**Biddle, Jennifer**

---

**From:** Atef Rafla <araflamd@gmail.com>  
**Sent:** Thursday, March 28, 2019 8:23 PM  
**To:** Title 17 Review  
**Subject:** Comments on Title 17

Please do something about the eye soars of the abandoned boats and the non maintained boats that are occupying different moorings , obviously owners don't care , so city has to confiscate and get rid of them at owners expense its a health and environmental hazard along with giving /Newport harbor a bad reputation and

*ATEF RAFLA MD*

**2019 TITLE 17 HARBOR UPDATE PUBLIC COMMENT**

BY BRIAN H. OUZOUNIAN

1222 E. BALBOA BLVD., BALBOA, CA 92661

310-466-7960

EMAIL:brian.oci@sbcglobal.net

04-08-19

-REVIEW AND REVISE MOORING RATES TO BE IN LINE WITH STATE LANDS COMMISSION STATE SURVEY. I HAVE THE DOCUMENTS FOR YOU IF DECISION MAKERS AND I COULD MEET TO DISCUSS MY FINDINGS. CURRENTLY THE STATE LANDS COMMISSION SURVEY SHOWS \$.337/SF AND WE AS A CITY ARE OVERCHARGING IN THE DOUBLE DIGITS. BECAUSE NEWPORT BEACH IS AN AFFLUENT AREA THERE SEEMS TO BE A PERCEPTION THAT WE ARE ENTITLED TO CHARGE MORE BUT THIS IS AN INCORRECT PERCEPTION. THE SLC HAS THE DUTY TO ASSURE THAT NO HARBOR OVERCHARGES THE CALIFORNIA BOATING PUBLIC NOR GIFTS THEM RATES BECAUSE THE RATES ARE TO BE "FAIR" UP AND DOWN THE STATE. A RETRO CORRECTION (CREDIT) SHOULD ALSO BE MADE FOR THE OVERCHARGING THAT HAS TAKEN PLACE. THE CITY COUNCIL VOTE A FEW YEARS AGO THAT WAS A POLITICAL VOTE, NOT ONE BASED UPON FAIRNESS.

-HARBOR USERS THAT CREATE WAKES IN THE HARBOR, ESPECIALLY RENTAL VESSELS, DAMAGE PRIVATE PROPERTY AND DOCKS. MORE PATROL AND VIOLATIONS WRITTEN ARE NEEDED, ESPECIALLY EAST OF THE FERRY TO ALL OUTBOUND AREAS PRIOR TO THE JETTY. RENTAL WAVERUNNERS SHOULD BE DIRECTED TO USE THE MAIN CHANNEL FOR OUTBOUND AND INBOUND TRAVEL, WHEREBY REDUCING EXCESSIVE WAKES ON PRIVATE DOCKS. IMPROVEMENT OVER THE WAKE PROBLEM IS NEEDED DURING THE TWO PARADES, 4<sup>TH</sup> OF JULY AND CHRISTMAS AS TO WAKE MANAGEMENT AND SUMMER MONTHS.

-RELOCATIOTN OF THE WHITE SEA BASS PEN. THIS WAS SUPPOSED TO BE TEMPORARY BUT HAS "SQUATTED" PERMANENTLY IN THE PRESENT LOCATION IN THE "A" MOORING FIELD.

-RELIEF IS NEEDED FOR THE DREDGING FOR BAYFRONT HOMEOWNERS THAT PERIODICALLY NEED TO HAVE DREDGING OF SAND TO SUPPORT STRUCTURAL BULKHEADS FRONTING THE HARBOR AND TO ALSO LOWER THE SAND LEVEL FOR VESSELS IN THE DOCKS TO KEEP THEM ABOVE THE RISING BOTTOM. THE NOBLE PRIVATE DREDGERS COMPLAIN ABOUT THE PROCESS CONSTANTLY AND THE COST TO THE BAYFRONT HOMEOWNER IS EXCESSIVE DO TO A BURDENSOME PERMIT PROCESS. THERE HAS TO BE A PARTNERSHIP OR MAYBE THE DREDGING IS SOMETHING THAT THE CITY SHOULD UNDERTAKE FOR THE HOMEOWNERS.

-AS TO DOCK REPAIR AND REPLACEMENT, THE SYSTEM IS A HUGE BURDEN BOTH IN COST AND SCHEDULING. MY RECENT REPLACEMENT TOOK 3.5 YEARS TO PROCURE. BETTER ASSISTANCE IS NEEDED FOR PRIVATE PROPERTY OWNERS TO IMPROVE THEIR DOCKS AND WATERFRONTS

-VACANT MOORINGS ALLOW FOR MORE VISITORS ACCESS TO MOORINGS. THERE SHOULD BE A LOWER FLAT RENTAL RATE FOR PERMITEES THAT HAVE LONG TERM VACANCY DUE TO VESSELS OUT TOURING OUR COAST OR OTHER DESTINATION. A SYSTEM OF CHECKING IN AND OUT WOULD BE ENVISIONED.

## Comments on May 6, 2019, Title 17 Review

These comments on the Harbor Commission's [review by committee](#) are submitted by: Jim Mosher  
[jimmosher@yahoo.com](mailto:jimmosher@yahoo.com) , 2210 Private Road, Newport Beach 92660 (949-548-6229)

The presentation of the results of the April 8 public meeting in the form of a [transcript listing public comments and committee responses](#) provides an excellent record of the public portion of the process, which is very clear even to those who were not able to be present. The disclosure of the committee's subsequent private review of the comments is less satisfactory, with the logic and discussion that led to their recommendations rarely being obvious.

Regarding the specific topics listed in the transcript and their subsequent handling in the [proposed revisions](#):

### Applicant definition

This definition has gone from bad to worse.

At the April 8 public meeting, the committee questioned the purpose of the final phrase "*as defined further herein*," which in the original definition appeared to apply to the word immediately preceding it ("*person*"): a word that is, indeed, further defined in Sec. 17.01.030.M.4 (very broadly, including "*any legally recognized entity*").

"*as defined further herein*" might, arguably, but a bit less plausibly, have also been intended to apply to the words "*business*" and "*vessel*," since the code offers separate definitions of those.

With the committee's original insertion of "*applying for any permit in or on Newport Harbor*" it now appears to apply to the term "Newport Harbor"

Whatever the intent, the purpose of the definition is unclear, since the persons who can qualify as applicants are presumably intended to vary with the kind of item being applied for.

I suspect (though I have not exhaustively checked) that the term is used only in connection with the issuance of permits, so I would suggest this simplified version:

*"3. Applicant. The term "applicant" shall mean a person applying for a permit under this title."*

or better:

*"3. "Applicant" means a person applying for a permit under this title."*

with an understanding that each subsequent section of Title 17 defining a permit will specify who is eligible to apply for it.

If that is not acceptable, I would suggest deleting the phrase "*as defined further herein*," although that still leaves a grammatically tortured sentence of uncertain intent: for example, is it trying to say an "owner" is an "applicant" for purposes of Title 17 even if they *aren't* the person applying for the permit? If that *is* the intent, it needs to be explained in understandable language, not in a convoluted sentence whose meaning would have to be interpreted by a court.

**Fairway definition**

The attempt to apply the definition of “Fairway” to mooring areas has introduced what looks like an unintended grammatical inconsistency between plural (“slips”) and singular (“mooring”).

More importantly, I am unable to picture how the definition is intended to be applied to mooring areas, including those with single-point buoys. An illustration showing the area designated as the fairway would be helpful.

At least equally importantly, the term “Fairway” does not seem to be used in Title 17. So what is the purpose of the definition?

**Graywater definition**

It looks like the committee has added the word “interior” (highlighted in yellow) to Sec. 17.01.030.G.2.

Grammatically, I believe the insertion should read “... any portion of the **interior of a** vessel, ...”

Whatever its definition, at present the term “graywater” does not appear to be used anywhere in Title 17. Since the definition is presumably being added with an intent to impose some kind of regulation on it, the appropriateness of the definition is difficult to assess without knowing what that regulation might be.

**Houseboat Definition**

The “Subcommittee Review” column says *“this is a definition only. No other reference in the code.”*

The latter conclusion is incorrect. Houseboats and activity on houseboats is prohibited in NMBC Sec. 17.60.050 (Houseboats).

So the definition matters.

**Marina definition**

I do not understand why the comment was rejected. Is the marina at Marina Park a marina?

**Mono Pile definition**

The term does not seem to be used in Title 17. What is the purpose of the definition?

**Pierhead Line definition**

I continue to believe the final sentence doesn’t belong in the definition. It describes a regulation stated elsewhere in the code.

**Sub-Permit definition**

The revised definition does not fit the grammatical pattern of the other definitions, and it now defines a sub-permit as a sub-permit. This needs work.

## Vessel Length/Width definition

Definitions of two distinct terms have been confusingly combined in a single listing. Since “Length” and “Width” have no obvious connection, they should appear as separate listings. Even then, they need work grammatically.

In addition, on page 12 of [“FINALTitle17Version4second.pdf”](#), the definition of “Vessel Owner” has become item 1 in a new subsection “S”. It should be Item 3 of subsection “R. Definitions: V.” followed by a subsection “S. Definitions: W.”

### Section 17.20.10.A

Similarly, on page 18, Chapter 17.20 begins with a Section 17.20.010 (Vessel Launching and Hauling) mislabeled (in red) “Section 17.20.020.”

In subsection B.3, what is “*Only human powered vessels or watercraft*” intended to mean?

“*every description of watercraft*” is already included in the Title 17 definition of “*vessel*”. Does human-powered modify only the first term? Or both? Does this now prohibit the hand-launching of a small boat, such as a Sabot, if it is subsequently operating by anything other than human power (rowing)?

### Section 17.20.20.B.2

The phrase adding human-powered vessels to the others permitted in the Grand Canal could be tacked on more gracefully.

Note: the words “*having charge or possession of any vessel shall*” are missing from the sentence that ends at the bottom of page 19 and begins again at the top of page 20.

### Section 17.25.10.C.f

The notation that this is under review seems to have been omitted.

## Section 17.25.20 Sea Lions

The notes indicated someone was awaiting input from the Mooring Association. It is not obvious if that input was received or what it was.

## General Comment

Regarding the revision process as a whole, I remain concerned about Title 17 being revised in two pieces, when a broader reorganization would seem beneficial. For example, Title 17 has a Chapter 17.60 titled “Harbor Permits and Leases,” yet permits are covered in many other chapters, including 17.10 (Marine Activities Permit), 17.50 (Harbor Development Permits) and 17.55 (Dredging Permits). Meanwhile, the permit needed to moor does not seem to be mentioned in Chapter 17.25 (Berthing, Mooring and Storage), but a live-aboard needs a permit that is explained only in the Chapter 17.40 (Live-Aboards). And the permit needed for a commercial pier seems to be in a different place from the one needed for a non-commercial pier (and not mentioned there). This does not seem logical or easy to navigate. But the problem could only be corrected by a complete re-organization of the title.

**From:** tomiovenitti@gmail.com  
**To:** [Title 17 Review](#)  
**Cc:** [Borsting, Kurt](#)  
**Subject:** RE: Opinion title 17  
**Date:** Tuesday, April 30, 2019 1:58:55 PM

---

Correction: Last sentence is Title 17 not Title 1

---

**From:** tomiovenitti@gmail.com <tomiovenitti@gmail.com>  
**Sent:** Tuesday, April 30, 2019 1:57 PM  
**To:** title17review@newportbeachca.gov  
**Cc:** kborsting@newportbeachca.gov; tomiovenitti@gmail.com  
**Subject:** Opinion title 17

### **Title 17 suggestions for consideration:**

#### **From:**

Tom Iovenitti  
1425 W Bay Ave  
Newport Beach, CA 92661  
949-887-0128

#### **17.25.10 (C1- a through f)**

#### **Add/Modify/Include:**

**(g)** For purpose of access by mooring permit holders, use of the public pier and overnight stay beyond the posted colors as designated above section (g) (to be added) in 17.25.10 (C1 a through f) of 72 hour regulation, (# TBD) long term dock permits per public pier, are available for purchase through the City Harbor Department ( Cost TBD ) in the amount of \$ XXXX issued for 12 months on the anniversary date and renewal of mooring permits, for ONE (1) access vessel, motorized or not, no greater than 9.5 ft in length, in serviceable condition, registered with the DMV including current annual license tags and numbers affixed to the vessel, with proper insurance on file with the NBHD, including affixed to the vessel the issued permit in a designated area (TBD) on the vessel, to be used in conjunction with other water related uses in Newport Harbor for access from a public

pier to the associated mooring. Those vessels not in compliance shall be subject to 17.25.10 (C1 a through f) as outlined in Title 1

## Comments on May 6, 2019, Title 17 Review

These comments on the Harbor Commission's [review by committee](#) are submitted by: Jim Mosher  
[jimmosher@yahoo.com](mailto:jimmosher@yahoo.com) , 2210 Private Road, Newport Beach 92660 (949-548-6229)

The presentation of the results of the April 8 public meeting in the form of a [transcript listing public comments and committee responses](#) provides an excellent record of the public portion of the process, which is very clear even to those who were not able to be present. The disclosure of the committee's subsequent private review of the comments is less satisfactory, with the logic and discussion that led to their recommendations rarely being obvious.

Regarding the specific topics listed in the transcript and their subsequent handling in the [proposed revisions](#):

### **Applicant definition**

This definition has gone from bad to worse.

At the April 8 public meeting, the committee questioned the purpose of the final phrase "as defined further herein," which in the original definition appeared to apply to the word immediately preceding it ("*person*"): a word that is, indeed, further defined in Sec. 17.01.030.M.4 (very broadly, including "*any legally recognized entity*").

"as defined further herein" might, arguably, but a bit less plausibly, have also been intended to apply to the words "*business*" and "*vessel*," since the code offers separate definitions of those.

With the committee's original insertion of "*applying for any permit in or on Newport Harbor*" it now appears to apply to the term "Newport Harbor"

Whatever the intent, the purpose of the definition is unclear, since the persons who can qualify as applicants are presumably intended to vary with the kind of item being applied for.

I suspect (though I have not exhaustively checked) that the term is used only in connection with the issuance of permits, so I would suggest this simplified version:

*"3. Applicant. The term "applicant" shall mean a person applying for a permit under this title."*

or better:

*"3. "Applicant" means a person applying for a permit under this title."*

with an understanding that each subsequent section of Title 17 defining a permit will specify who is eligible to apply for it.

If that is not acceptable, I would suggest deleting the phrase "*as defined further herein*," although that still leaves a grammatically tortured sentence of uncertain intent: for example, is it trying to say an "owner" is an "applicant" for purposes of Title 17 even if they *aren't* the person applying for the permit? If that *is* the intent, it needs to be explained in understandable language, not in a convoluted sentence whose meaning would have to be interpreted by a court.



## **Fairway definition**

The attempt to apply the definition of “Fairway” to mooring areas has introduced what looks like an unintended grammatical inconsistency between plural (“slips”) and singular (“mooring”).

More importantly, I am unable to picture how the definition is intended to be applied to mooring areas, including those with single-point buoys. An illustration showing the area designated as the fairway would be helpful.

At least equally importantly, the term “Fairway” does not seem to be used in Title 17. So what is the purpose of the definition?

## **Graywater definition**

It looks like the committee has added the word “interior” (highlighted in yellow) to Sec. 17.01.030.G.2.

Grammatically, I believe the insertion should read “... any portion of the **interior of a** vessel, ...”

Whatever its definition, at present the term “graywater” does not appear to be used anywhere in Title 17. Since the definition is presumably being added with an intent to impose some kind of regulation on it, the appropriateness of the definition is difficult to assess without knowing what that regulation might be.

## **Houseboat Definition**

The “Subcommittee Review” column says *“this is a definition only. No other reference in the code.”*

The latter conclusion is incorrect. Houseboats and activity on houseboats is prohibited in NMBC Sec. 17.60.050 (Houseboats).

So the definition matters.

## **Marina definition**

I do not understand why the comment was rejected. Is the marina at Marina Park a marina?

## **Mono Pile definition**

The term does not seem to be used in Title 17. What is the purpose of the definition?

## **Pierhead Line definition**

I continue to believe the final sentence doesn’t belong in the definition. It describes a regulation stated elsewhere in the code.

## **Sub-Permit definition**

The revised definition does not fit the grammatical pattern of the other definitions, and it now defines a sub-permit as a sub-permit. This needs work.

## **Vessel Length/Width definition**

Definitions of two distinct terms have been confusingly combined in a single listing. Since “Length” and “Width” have no obvious connection, they should appear as separate listings. Even then, they need work grammatically.

In addition, on page 12 of [“FINALTitle17Version4second.pdf”](#), the definition of “Vessel Owner” has become item 1 in a new subsection “S”. It should be Item 3 of subsection “R. Definitions: V.” followed by a subsection “S. Definitions: W.”

### **Section 17.20.10.A**

Similarly, on page 18, Chapter 17.20 begins with a Section 17.20.010 (Vessel Launching and Hauling) mislabeled (in red) “Section 17.20.020.”

In subsection B.3, what is “*Only human powered vessels or watercraft*” intended to mean?

“*every description of watercraft*” is already included in the Title 17 definition of “*vessel*”. Does human-powered modify only the first term? Or both? Does this now prohibit the hand-launching of a small boat, such as a Sabot, if it is subsequently operating by anything other than human power (rowing)?

### **Section 17.20.20.B.2**

The phrase adding human-powered vessels to the others permitted in the Grand Canal could be tacked on more gracefully.

Note: the words “*having charge or possession of any vessel shall*” are missing from the sentence that ends at the bottom of page 19 and begins again at the top of page 20.

### **Section 17.25.10.C.f**

The notation that this is under review seems to have been omitted.

## **Section 17.25.20 Sea Lions**

The notes indicated someone was awaiting input from the Mooring Association. It is not obvious if that input was received or what it was.

## **General Comment**

Regarding the revision process as a whole, I remain concerned about Title 17 being revised in two pieces, when a broader reorganization would seem beneficial. For example, Title 17 has a Chapter 17.60 titled “Harbor Permits and Leases,” yet permits are covered in many other chapters, including 17.10 (Marine Activities Permit), 17.50 (Harbor Development Permits) and 17.55 (Dredging Permits). Meanwhile, the permit needed to moor does not seem to be mentioned in Chapter 17.25 (Berthing, Mooring and Storage), but a live-aboard needs a permit that is explained only in the Chapter 17.40 (Live-Aboards). And the permit needed for a commercial pier seems to be in a different place from the one needed for a non-commercial pier (and not mentioned there). This does not seem logical or easy to navigate. But the problem could only be corrected by a complete re-organization of the title.

May 14, 2019

Ms. Carol Jacobs  
Assistant City Manager  
City of Newport Beach  
100 Civic Center Drive  
Bay 1B-D  
Newport Beach, CA 92660

**Re: Municipal Code Title 17 Update(s)**

Ms. Jacobs,

I attended the ad hoc committee meeting last night regarding pending revisions to Title 17 of the municipal code ("Code"). Prior to attending the meeting, which I only recently became aware of through word of mouth, my knowledge of the Title 17 Code revisions effort was that the Harbor Commission was to focus the Code update to clear redundancies and to direct enforcement authority of the Code from the Harbor Resources Department to the newly formed Harbor Department and the Harbormaster. To my surprise I now understand that some of the revisions being discussed include the granting of additional overnight use to all of the mooring permittees (from 3 to 12 nights) and the additional residential entitlement to commercial marinas for live aboard use. As there seems to be a substantial increase of the Committees scope and the impact of its decisions, I have some follow-up requests. They are:

**Notices and the Brown Act:** Can you please send me the notice(s) of the meeting ("Meeting Notice(s)") which were provided to those impacted by Title 17? Can you identify all the manners in which Notice(s) were provided? Could you send me the list of those provided Meeting Notice(s)? By example I recently received a notice for the "Snowy Plover" Community Meeting [below], which is scheduled a week in advance on the same day, same time and same location. FYI, this meeting notice was mailed on the 11<sup>th</sup> of May, or 9 days prior to this meeting. Were similar Notices mailed for the previous two Title 17 meetings? In this regard please send me all of the communication, as a matter of public record on any and all meetings internal or with the general public regarding Title 17.

**Commercial Marina Leases/Contracts:** Based on last nights meeting, there appears to be some ambiguity amongst the Commissioners and City staff present regarding existing leases or contracts with commercial marinas as if relates to the permissibility of live aboards within commercial marinas. Has the City Attorney reviewed these leases and prepared a legal opinion on the matter of live aboards in commercial areas as provided by the existing leases or contracts? If so can you provide me with a copy of that opinion?

**Residential Permit Expansion EIR/CEQA:** It appears that the City is attempting to increase overnight use of moorings by mooring owners from 3 to 12 nights; this is a 300% increase in potential use. Furthermore it appears that the Committee intends to formalize and memorialize the right within Title 17 of residential live aboards in commercial marinas. It further appears that the Committee intends to out a cap on live aboards within commercial marinas of 7% of the total

square footage of the marina. When pressed to give an estimate of how many slips that additional entitlement might apply, no one on the Committee could provide me with even a rough estimate. It appears to be currently unknown how many commercial slips might be permitted/entitled by the expansion of residential live boards into commercial marinas. Consequently it is then currently unknown what impacts this change in the Code might have to parking, traffic, water quality and surrounding commercial uses.

Has the City Attorney reviewed the matter and determined whether these changes might trigger the preparation of an Environmental Impact Report ("EIR") to review the impacts of traffic (parking and ingress and egress) noise (generators) and water quality impacts. Further has the City determined that a failure to prepare the necessary studies to make these changes to Title 17 may be a violation of the California Environmental Quality Act (CEQA)?

**California Coast Act/California Coastal Commission:** Has the City contacted the California Coastal Commission for review, input and approval of the changes to the municipal Code being discussed by the Committee? Has the Coastal Commission been notified that that Committee is attempting to change the Code such that it is granting additional overnight usage of moorings by mooring permittees from 3 to 12 nights, a 300% increase? Has the Coastal Commission been notified that the City intends to grant an unknown residential live aboard entitlement within commercial marina's within Newport Harbor? Has the Coastal Commission been notified that no specific studies have been completed, if this is a fact, which address the impacts of the changes to the Code on the residents, traffic, parking, access and water quality?

**Conflicts of Interest:** At the meeting last night Commissioner Blank confirmed that he owns a mooring and in fact is a mooring permittee. Some of the changes Title 17 being discussed, changes which Commissioner Blank has had significant input and will vote on as a Commissioner (specifically the 300% increase in overnight usage by mooring permits) will have a substantial net economic benefit to those who own moorings in the harbor. Has the City Attorney reviewed these facts and determined that no conflict as it relates to Commissioner Blank's ownership of a mooring and his substantial role in pushing forward this 300% increase? Has the City Attorney reviewed whether Commissioner Blank should recuse himself from the vote and resign from this ad hoc committee?

**Existing Illegal Live Aboard Moorings:** A question was raised as to the removal of "Wild Waves" from its Mooring in the F field. There was a discussion as to whether this matter had been fully adjudicated by either the Superior Court. The Commissioners clearly believed the permittee still had the case under appeal and that the City had been estopped from taking any further eviction action against the permittee. You indicated this issue "*has been*" fully adjudicated and that the Wild Wave permittee had exhausted all appeal and has no further legal recourse to prevent the City from evicting the permittee from the Harbor. When did this occur, on what date? You indicated this matter was under review by the City and the Harbormaster. Does the City or Harbor Department lack the means or the political will to enforce the illegal occupancy Wild Wave? I would like a full update on the Wild Wave situation.

On a personal note, I simply do not believe that the Harbor Commission should be adding additional entitled use(s) to the mooring and commercial marinas if the Harbor Department lacks

the knowledge, skill and personal to manage the existing entitlements provided in Title 17. The continued existence of Wild Waves showcases the Departments paralysis as it relates to evicting the permitted (and other illegal live aboards, without permit). The continued occupancy of Wild Waves in Newport Harbor clearly shows that the Harbor Department has a long way to go before it can take on additional responsibilities, which would surely result if the Committee's recommendations as to the Code were allowed to stand.

I would sincerely appreciate responses to these very important questions in a timely and thorough manner. I can be reached at [tlebeau@accretiverealty.com](mailto:tlebeau@accretiverealty.com) or (949) 633-5154.

Thank you,

Thomas LeBeau  
Newport Harbor Resident  
1324 E. Balboa Blvd  
Balboa, CA 92661

cc Daine Dixon ([ddixon@newportbeachca.gov](mailto:ddixon@newportbeachca.gov))  
Aaron Harp ([aharp@newportbeachca.gov](mailto:aharp@newportbeachca.gov))  
Paul Blank ([pblank@newportbeachca.gov](mailto:pblank@newportbeachca.gov))



## **Western Snowy Plover Community Meeting**



**Join us for a presentation of the revised  
Western Snowy Plover Management Plan  
for East Balboa Peninsula Beaches**

**MONDAY, MAY 20, 2019**

**6 P.M. TO 7 P.M.**

**MARINA PARK—EVENT ROOM (SECOND FLOOR)  
1600 W. BALBOA BOULEVARD  
NEWPORT BEACH, CA 92663**

City of Newport Beach  
Community Development Department  
Planning Division  
100 Civic Center Drive  
Newport Beach, CA 92660  
949-644-3200

For more information, please visit  
<http://www.newportbeachca.gov/snowyplover>  
or contact Gregg Ramirez, Principal Planner  
[gramirez@newportbeachca.gov](mailto:gramirez@newportbeachca.gov)  
949-644-3219

**From:** Tom LeBeau  
**To:** [Jacobs, Carol](#)  
**Cc:** [Harp, Aaron](#); [Blank, Paul](#); [Dixon, Diane](#)  
**Subject:** Re: Title 17 Municipal Code Revisions  
**Date:** Tuesday, May 14, 2019 1:27:53 PM

---

Thank you Ms Jacobs.

Sent from my iPhone

On May 14, 2019, at 1:22 PM, Jacobs, Carol <[cjacobs@newportbeachca.gov](mailto:cjacobs@newportbeachca.gov)> wrote:

Mr. LeBeau, thank you for your email. I have received your request and will provide a response as soon as possible.

<!--[if !vml]--><!--[endif]-->**Carol Jacobs | Assistant City Manager | City of Newport Beach**

100 Civic Center Drive | Newport Beach, CA | 92660

[cjacobs@newportbeachca.gov](mailto:cjacobs@newportbeachca.gov) | Phone: (949) 644-3313 | Fax: (949) 644-3020

---

**From:** Tom LeBeau <[tlebeau@accretiverealty.com](mailto:tlebeau@accretiverealty.com)>

**Sent:** Tuesday, May 14, 2019 1:06 PM

**To:** Jacobs, Carol <[cjacobs@newportbeachca.gov](mailto:cjacobs@newportbeachca.gov)>

**Cc:** Harp, Aaron <[aharp@newportbeachca.gov](mailto:aharp@newportbeachca.gov)>; Blank, Paul

<[pblank@newportbeachca.gov](mailto:pblank@newportbeachca.gov)>; Dixon, Diane <[ddixon@newportbeachca.gov](mailto:ddixon@newportbeachca.gov)>

**Subject:** Title 17 Municipal Code Revisions

Ms Jacobs,

Please see the attached letter.

Thank you.

Tom LeBeau



**CITY OF NEWPORT BEACH**

100 Civic Center Drive  
Newport Beach, California 92660  
949 644-3001 | 949 644-3020 FAX  
newportbeachca.gov

**DELIVERED VIA EMAIL**

May 21, 2019

Mr. Thomas LeBeau  
1324 E. Balboa Boulevard  
Balboa, CA 92661

Dear Mr. LeBeau,

Thank you for your letter dated May 14, 2019, requesting information on a number of issues regarding the harbor and the update to Title 17 of the Municipal Code. I think it is important that I share with you that there has been no decision on any change to Title 17. These are concept meetings to gather input and all community input is welcome. I will be sharing your letter and my response with the Harbor Commission and it will become part of the public record. Your opinions on this topic are very valuable and I appreciate the time and effort you have taken to share your thoughts on this very important subject. I have responded in the same manner in which you have outlined in your letter to ensure I respond to each of your concerns.

At the February 13, 2018 City Council meeting, the City Council received a report from the Harbor Commission regarding their 2018 goals and objectives. Object 4.1 States: "Review and update City Municipal Codes, Title 17, Harbor Policies 1-5 and Marine Activities Permits". The staff report can be found here: <http://ecms.newportbeachca.gov/Web/DocView.aspx?id=1263357&page=1&searchid=50ce432d-2041-4f7f-ba6f-0a5dea719bec&cr=1>. The minutes of the meeting can be found here: <http://ecms.newportbeachca.gov/Web/0/doc/1273994/Page1.aspx>. The City Council specifically asked the Harbor Commission to review Title 17 in its entirety.

**Notices and the Brown Act.**

The City communicates in a variety of ways, trying to reach our residents. As explained in greater detail below, a subcommittee comprised of less than a majority of the Harbor Commission, is receiving public input on Title 17 revisions. These stakeholder meetings for the review of Title 17 are not Brown Act meetings and do not fall under the same requirements as the Brown Act. However, I want to reiterate that any and all revisions to Title 17 will be vetted at public meetings before the Harbor Commission and City Council.

We encourage residents interested in a subject area to subscribe to our e-notifications. You can subscribe here: <https://www.newportbeachca.gov/government/open-transparent/sign->



[up-for-enotification](#). You may choose the Harbor Commission and you will be notified of all information regarding the Harbor Commission. Per your request, Attachment 1 is a list of all of our public outreach efforts for these meetings.

### **Commercial Marina/Leases and Contracts.**

At the meeting, the subcommittee asked the staff to investigate further what information is contained in the City's commercial leases and permits. I have verified the following information. The City has nine commercial marina leases, and 52 commercial marina permits, for a total of 61 properties subject to the commercial marina program. There are six other commercial tidelands leases that existed prior to the commercial marina program going into effect, and they don't have the same form lease or terms and conditions – Balboa Bay Club, American Legion, etc. All leases require the tenant to comply with the municipal code, but is otherwise silent on any specific provisions related to live-aboards.

The City Attorney is required by our City Charter (Section 421) to sign all leases and contracts. His signature indicates the contract and lease is acceptable from a legal standpoint to the City. There is no specific legal opinion on this matter.

### **Residential Permit Expansion EIR/CEQA**

I think it is important that I explain the Title 17 review process and hopefully this will help answer your questions regarding EIR's and CEQA.

The Harbor Commission subcommittee with the approval of the Harbor Commission and the City Council embarked on a process to update Title 17. The process has been established in the following manner:

1. The subcommittee reviews the code and based on their knowledge of the harbor community propose changes.
2. The subcommittee hosts community meetings at Marina Park to gather community input.
3. In order to effectively manage the process and to try and not make a meeting go on for hours, the subcommittee separated the review into three sections: On April 8 and May 6 the community reviewed the following sections: 17.01, 17.05, 17.20, 17.25, 17.30, and 17.35. The meeting on April 8 was to review the suggestions by the subcommittee and gather community input. The meeting on May 6 was to return to the community and review those items that the subcommittee and community had suggested and discuss those changes.
4. The second round of review began on May 13 and continues June 24 following the same process as above. The sections to be reviewed are: 17.40, 17.45, 17.50, 17.55, 17.65, 17.70 and a new section on mooring extension requests. The third review will be section 17.10 and no dates have been scheduled for the public as of yet.

5. Once the community meetings are completed, the subcommittee will provide a list of recommendations to the full Harbor Commission. I would expect lots of great discussion and would hope that everyone who has an interest in this topic will let the Harbor Commission know their thoughts.
6. The Harbor Commission will make recommendations to the City Council. At a City Council meeting, the City Council will receive public comment and, based upon all of the input received, approve, deny or modify the recommendations of the Harbor Commission, which will be incorporated into the Municipal Code.

The City Attorney's office has been working with staff as we go through this process. Prior to any of this going to the Harbor Commission, the City Attorney's office will review for compliance with the California Environmental Quality Act.

As we noted in the meeting, staff and the subcommittee need additional information on the status of live-aboards in commercial marinas. I believe the purpose of the provision is that the current leases are silent as to live-aboards and the subcommittee was attempting to limit the amount that could be in a marina. As a follow up the City has nine commercial marina leases and 52 commercial marina permits. There are an additional six other commercial tidelands properties that existed prior to the commercial marina going into effect, and they have separate terms. All lessees and permittees are required to follow the Newport Beach Municipal Code. The leases and permits are silent on the issue of live-aboards and staff has not had a complaint about this in the past.

Nothing that the subcommittee has discussed has been approved; the meetings are only to gather input. They are strictly a working group to provide suggestions to the full Harbor Commission who will then provide recommendations to the City Council.

### **California Coastal Act/California Coastal Commission**

The City has adopted its Local Coastal Program and the Coastal Commission would only need to review the revisions to Title 17 if the proposed changes are inconsistent with the City's Local Coastal Program. Prior to implementation of any changes, our Community Development Department will review the changes and determine if the changes are consistent with the City's Local Coastal Program and if the changes require review by the California Coastal Commission.

### **Conflicts of Interest**

Commissioner Blank is a mooring permittee; however, your perceptions regarding his conflict of interest are not accurate. From a staff perspective, I have personally been involved in every discussion with the subcommittee on Title 17 revisions. Commissioner Blank has recused himself from those discussions every time the issue has come up. The document we reviewed at the May 13, 2019 community meeting was not created by the Title 17 subcommittee, but by another Harbor Commission subcommittee. This discussion did come up at a prior Harbor Commission meeting and Commissioner Blank did recuse himself from that discussion as well as the discussion on May 13, 2019.


### **Existing Illegal Live-Aboard Moorings**

The Wild Wave was issued a mooring by the Orange County Sheriff's Department in March of 2015. The history of the City's interaction with the Wild Wave and the process for revocation was discussed at the Harbor Commission Meeting of September 12, 2018, the entire report can be found here:

<http://ecms.newportbeachca.gov/Web/Browse.aspx?startid=691513&cnb=BoardsCommissions&dbid=0>. The report is 287 pages long and the staff report starts on page 13. An abatement warrant was issued on the Wild Wave on May 15, 2019 and the Wild Wave was moved off of mooring F-14 on May 16, 2019 to a City owned mooring in the A mooring field. As you are aware, over this last weekend, staff is making arrangements to have the vessel moved again so as not to disturb residents. That is anticipated to occur this week, weather permitting.

I appreciate your comments and concerns regarding the ability of the Harbor Department, and your concerns that we may have a long way to go until the Department can take on additional responsibilities. All new programs take time to develop and we continue to strive to provide the highest level of customer service to the residents of Newport Beach.

Sincerely,



Carol Jacobs  
Assistant City Manager

Attachment 1: Documentation of Public Outreach Notifications

cc: City Council  
Harbor Commission  
Grace Leung, City Manager  
Aaron Harp, City Attorney  
Kurt Borsting, Harbormaster

### Physical Advertising

- A-Frame Signs at the following Public Docks: 19<sup>th</sup> Street, 15<sup>th</sup> Street, Washington Street. Fernando Street, Coral Ave

### City Webpage

- Promoted on the City's web homepage under News and Events
- Each event is on City Calendar
- Each Event had a City News Story; Story was also e-blasted to all users who signed up for General New, PIO News Releases, Harbor Commission updates
- Promoted on the Harbor Department homepage (featured 3 times under News & 4 times under Events)
- Title 17 has its own subpage under Harbor Commission, which can be accessed with a User Friendly URL: [newportbeachca.gov/title17](http://newportbeachca.gov/title17)

### Social Media:

#### 6 Twitter Posts (Normal Post + Reminder the day before)





**CityofNewportBeach** @newportbeachgov · May 7

The Harbor Commission Ad-Hoc Committee is getting ready to review the second half of the Harbor Code! Join them at Marina Park on Monday, May 13 at 6 p.m. to provide comment & input on part two of the Harbor Code. [#harbor](#) [#community](#) [#newportbeach](#) [#newportharbor](#) [#civicengagement](#)



CONTINUED COMMUNITY INPUT NEEDED ON

## Potential Harbor Code Revisions

[NEWPORTBEACHCA.GOV/TITLE17](http://NEWPORTBEACHCA.GOV/TITLE17)



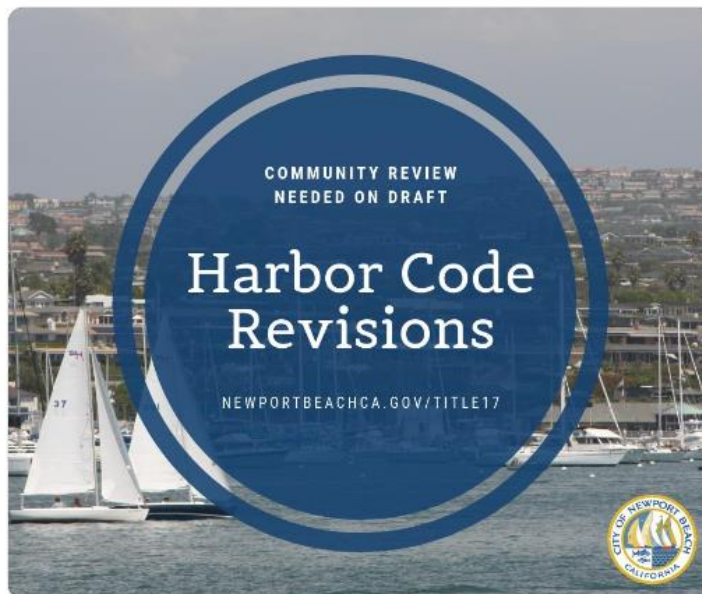
1

2



**CityofNewportBeach** @newportbeachgov · May 5

Friendly Reminder! Tomorrow, May 6 at 6 p.m., the Harbor Commission Ad-Hoc Committee will be going over the first part of Title 17 draft revisions at Marina Park. For more information, check out [bit.ly/2IXDbLv](http://bit.ly/2IXDbLv)



1

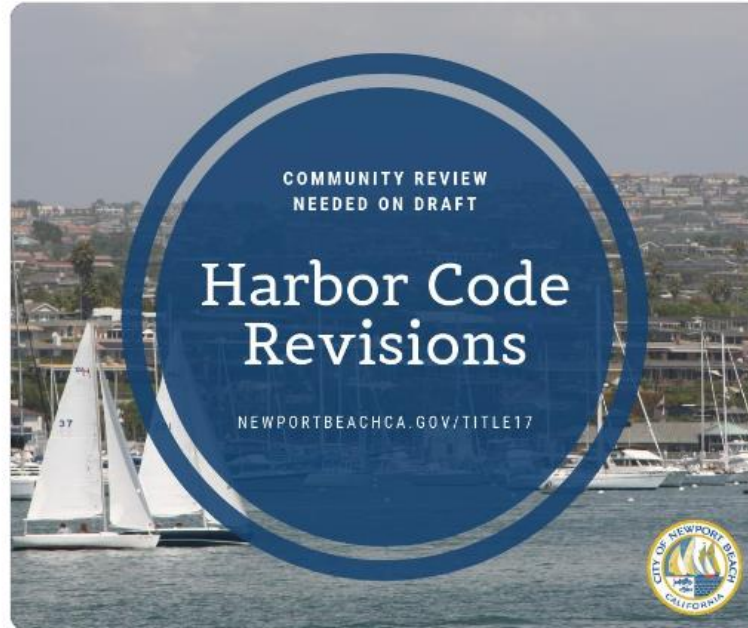
2





**CityofNewportBeach** @newportbeachgov · Apr 28

Attention Harbor Users & Stakeholders! We want your continued input on the draft revisions to the Harbor Code. Join us for our second meeting on Monday, May 6 (next week) at 6 p.m. over at Marina Park (1600 W. Balboa Blvd.). For more info, check out [bit.ly/2IXDbLv](https://bit.ly/2IXDbLv)



3

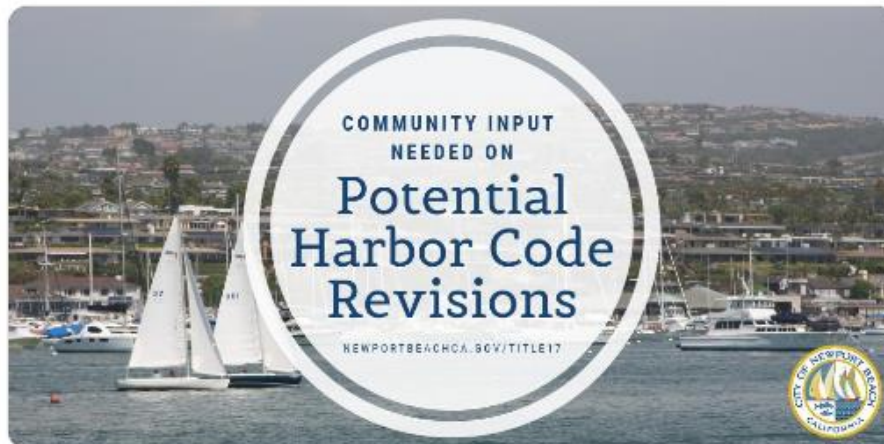
2



**CityofNewportBeach** @newportbeachgov · Apr 7

Reminder! We are having our first Harbor Code revisions meeting tomorrow, April 8, at 6 p.m. over at Marina Park (1600 W. Balboa Blvd.). 🚤🚤🚤🚤 See you there!

Learn more at [bit.ly/2OEY36](https://bit.ly/2OEY36)



1

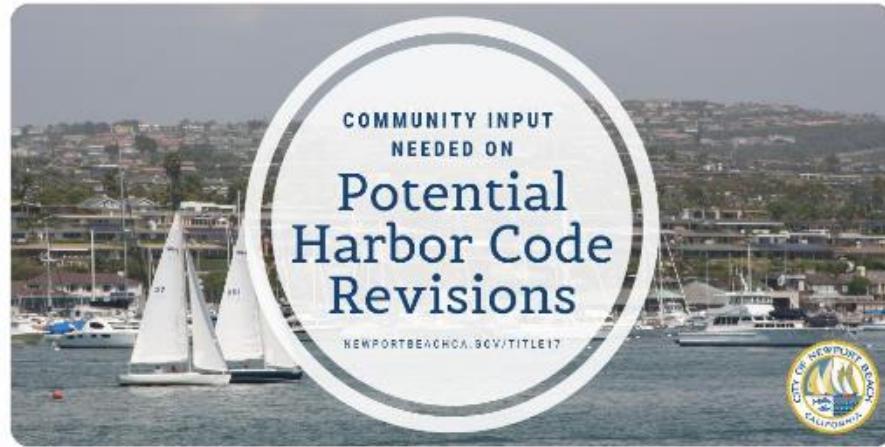


**CityofNewportBeach** @newportbeachgov · Apr 1

📢 Attention Harbor Users & Stakeholders. We want your input on potential Harbor Code revisions. Join us for our first meeting on Monday, April 8 (next week) at 6 p.m. over at Marina Park (1600 W. Balboa Blvd.).



Learn more at [bit.ly/2OErY36](https://bit.ly/2OErY36)



## 2 Instagram Posts



CONTINUED COMMUNITY INPUT NEEDED ON  
**Potential Harbor  
Code Revisions**  
NEWPORTBEACHCA.GOV/TITLE17



cityofnewportbeach • Follow  
Marina Park

cityofnewportbeach The Harbor Commission Ad-Hoc Committee is getting ready to review the second half of the Harbor Code! Join them at Marina Park on Monday, May 13 at 6 p.m. to provide comment and input on part two of the Harbor Code and review two newly proposed sections. #harbor #community #newportbeach #newportharbor #civicengagement #harborcode



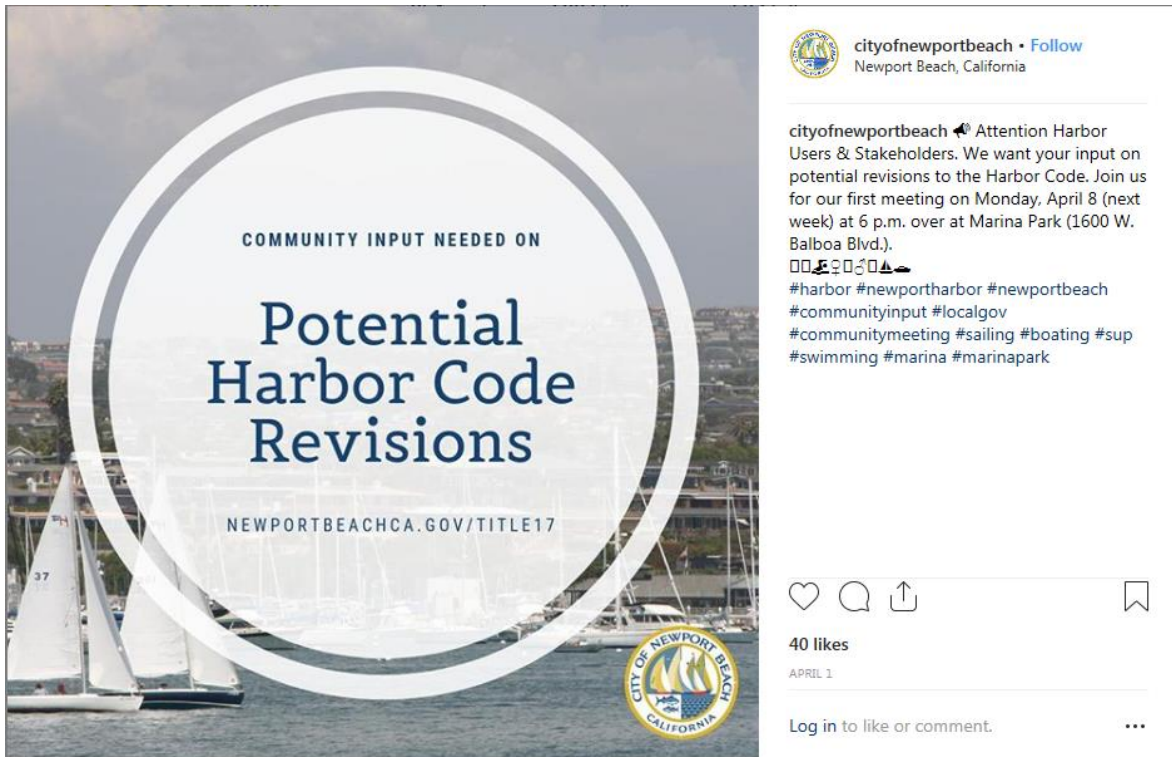
30 likes

6 DAYS AGO

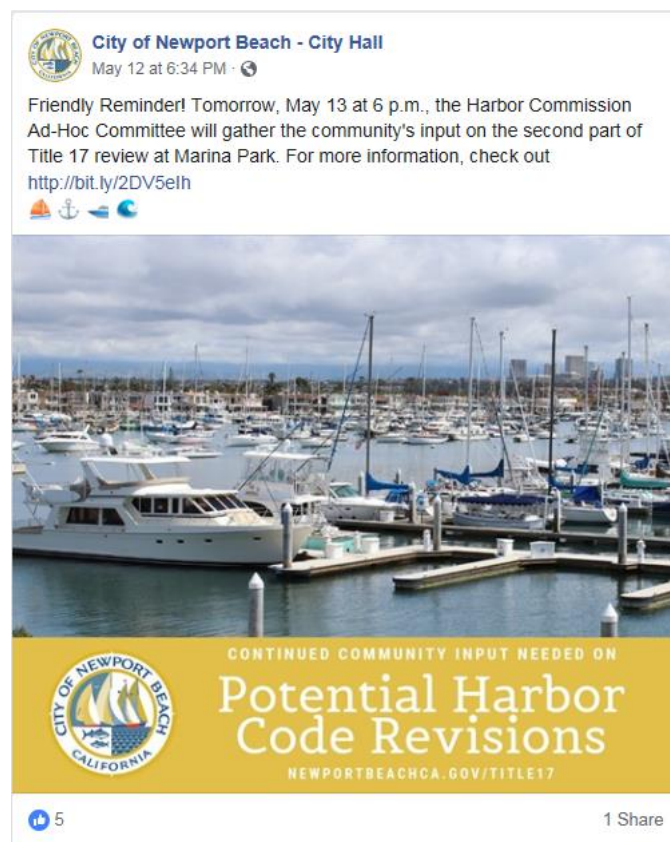
Log in to like or comment.









6 Facebook Posts (Normal Post + Reminder the day before)







 **City of Newport Beach - City Hall**  
May 7 at 7:19 PM · 🌐

The Harbor Commission Ad-Hoc Committee is getting ready to review the second half of the Harbor Code! Join them at Marina Park on Monday, May 13 at 6 p.m. to provide comment and input on part two of the Harbor Code and review two newly proposed sections. For more information, visit <http://bit.ly/2Lv1bIH>



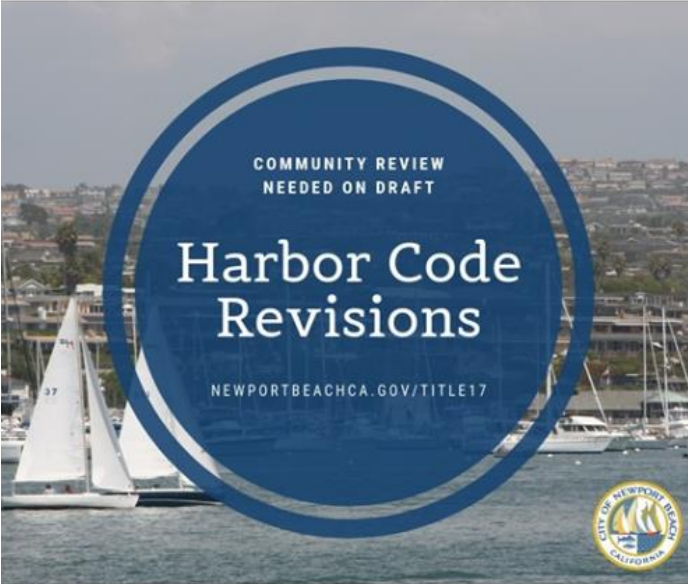
 CONTINUED COMMUNITY INPUT NEEDED ON  
**Potential Harbor Code Revisions**  
NEWPORTBEACHCA.GOV/TITLE17


👍 2 1 Share

 **City of Newport Beach - City Hall**  
May 5 at 6:03 PM · 🌐


Friendly Reminder! Tomorrow, May 6 at 6 p.m., the Harbor Commission Ad-Hoc Committee will be going over the first part of Title 17 draft revisions at Marina Park. For more information, check out <http://bit.ly/2IMDfhY>

🚢 ⚓ 🌊 🌬️



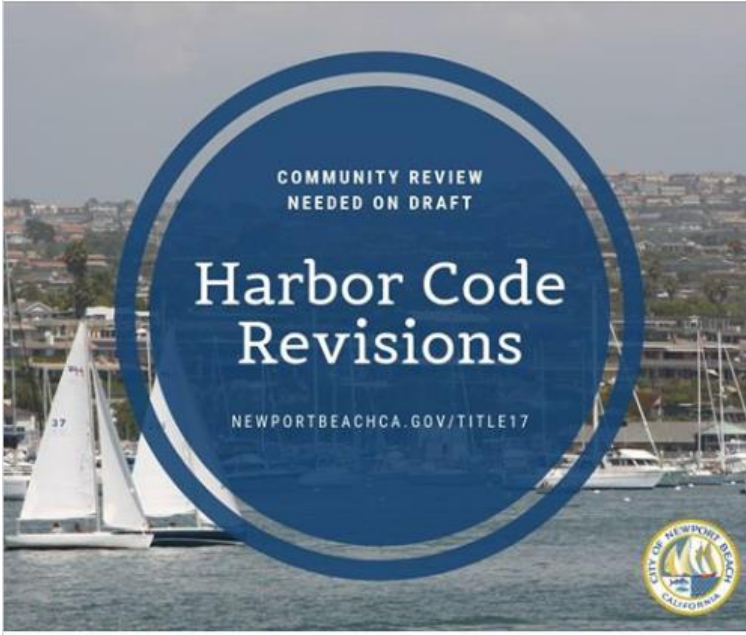


👍 2

 **City of Newport Beach - City Hall**  
April 28 at 6:03 PM · 🌐

🚢 Attention Harbor Users & Stakeholders! We want your continued input on the draft revisions to the Harbor Code. Join us for our second meeting on Monday, May 6 (next week) at 6 p.m. over at Marina Park (1600 W. Balboa Blvd.). For more information, check out <http://bit.ly/2IMDfhY>


🚢 ⚓ 🌊 🌊




COMMUNITY REVIEW  
NEEDED ON DRAFT

# Harbor Code Revisions

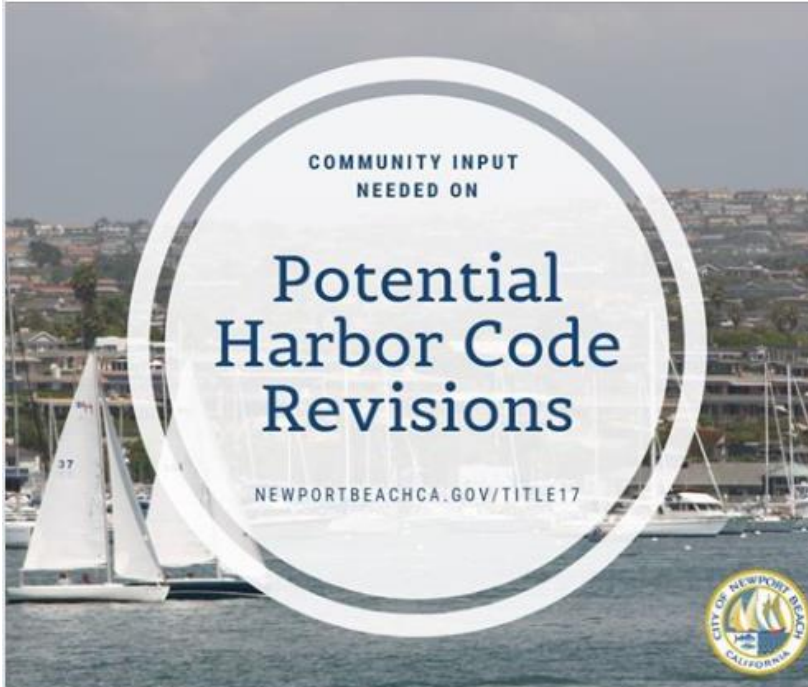
NEWPORTBEACHCA.GOV/TITLE17



1 Share

 **City of Newport Beach - City Hall**  
April 7 · 🌐


🚢 Reminder! Our first Harbor Code revision meeting is tomorrow at 6 p.m. over at Marina Park (1600 W. Balboa Blvd.). 🚢 ⚓ 🌊 🌊 See you there! Learn more at <http://bit.ly/2OErY36>

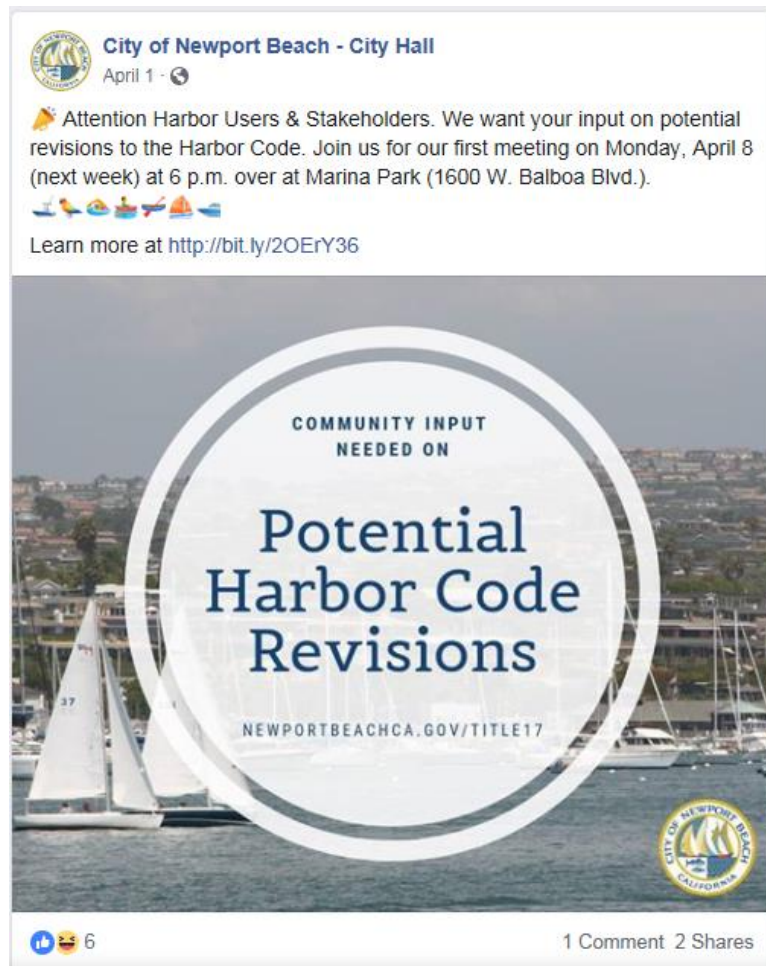


COMMUNITY INPUT  
NEEDED ON

# Potential Harbor Code Revisions

NEWPORTBEACHCA.GOV/TITLE17





### LinkedIn Post





## NextDoor Post

**New event: Title 17 Harbor Code Review**

Public Information Officer/Management Analyst Mary Locey · 3 Apr

APR  
8Title 17 Harbor Code Review  
Mon, Apr 8, 6:00 PM

1

3 Apr · Subscribers of City of Newport Beach in Events

## Title 17 Harbor Code Review

**Title 17 Harbor Code Review**

Mon, Apr 8, 6:00 PM - 7:30 PM

Marina Park Community Center/ Sailing Center/ Harbormaster

Going? ▾

...

1 Going

## Event details

The Harbor Commission Ad-Hoc Committee seeks public input on revisions to the City's Municipal Code, Title 17 Harbor Code. The Committee is holding a series of meetings to thoroughly review Title 17. During the April 8 and May 6 meetings, the following sections will be reviewed:

- 17.01 Definitions
- 17.05 General Provisions
- 17.20 Vessel Launching and Operations
- 17.25 Berthing, Mooring and Storage
- 17.30 Harbor Use Regulations
- 17.35 Harbor Development Regulations

A working draft of potential revisions to these sections of Title 17 is available for viewing in red-line format. Please note: These are preliminary revisions and do not represent recommendations of the Harbor Commission. Your feedback, comments, and suggestions are invited and encouraged.

Learn more at [newportbeachca.gov/title17](http://newportbeachca.gov/title17).

## City News

### Community Input Needed for Potential Harbor Code Revisions

The Harbor Commission (Commission) has initiated a process for reviewing Title 17, the Harbor Code section of the Newport Beach Municipal Code. The Commission recently formed an Ad-Hoc Committee to conduct a thorough [review of Title 17](#) and to identify potential modifications. Gathering community input is an essential part of this review process.

To help facilitate public input, the Ad-Hoc Committee has divided Title 17 into three sections to allow an in-depth and thoughtful examination of the entire code. A series of meetings has been scheduled to review each section. The full meeting schedule is available [here](#).

The Ad-Hoc Committee will examine each section twice. The first meeting is intended to garner feedback and solicit comments from community members. The second meeting will allow for a review of the draft revisions prior to presentation to the full Commission. The first meeting will be held on Monday, April 8, at 6 p.m., at Marina Park. Marina Park is located at 1600 W. Balboa Blvd.

Once the Ad-Hoc Committee has completed its work, the Harbor Commission will then review and consider the draft revisions. Should the Commission approve of any or all of the proposed revisions, the recommended changes will be forwarded to the City Council for its review and consideration.

[Return to full list >>](#)

## City News

### Community Invited to the Second Review of Title 17

The Harbor Commission (Commission) is continuing the process for reviewing Title 17, the Harbor Code section of the Newport Beach Municipal Code. The Commission recently formed an Ad-Hoc Committee to conduct a thorough [review of Title 17](#) and to identify potential modifications. Gathering community input is an essential part of this review process.

To help facilitate public input, the Ad-Hoc Committee has divided Title 17 into three sections to allow an in-depth and thoughtful examination of the entire code. A series of meetings has been scheduled to review each section. The full meeting schedule is available [here](#).

The Ad-Hoc Committee will examine each section twice. Please join us for our second meeting regarding sections 17.01, 17.05, 17.20, 17.25, 17.30 and 17.35, allowing for a review of the draft revisions prior to presentation to the full Commission. The meeting will be held on Monday, May 6, at 6 p.m., at Marina Park, located at 1600 W. Balboa Blvd.

- [Second working draft of sections 17.01, 17.05, 17.20, 17.25, 17.30 and 17.35.](#)
- [Public Comments from April 8](#)

Once the Ad-Hoc Committee has completed its work, the Harbor Commission will then review and consider the draft revisions. Should the Commission approve of any or all of the proposed revisions, the recommended changes will be forwarded to the City Council for its review and consideration.

[Return to full list >>](#)

## City News

### Community Input Invited on Harbor Code

Thank you to the community members who joined us in reviewing the first portion of Title 17. The Harbor Commission's Ad-Hoc Committee is eager to continue obtaining the community's input on the second portion of Title 17.

The first meeting reviewed sections 17.40, 17.45, 17.50, 17.55, 17.60, 17.65, 17.70. On Monday, May 13 at 6 p.m., newly proposed sections 17.01.030 and 17.60.040 will be reviewed at Marina Park, 1600 W. Balboa Blvd.

---

The Harbor Commission (Commission) continues reviewing Title 17, the Harbor Code section of the Newport Beach Municipal Code. The Commission formed an Ad-Hoc Committee to conduct a thorough [review of Title 17](#) and to identify potential modifications. Gathering community input is an essential part of this review process.

To help facilitate public input, the Ad-Hoc Committee has divided Title 17 into three sections to allow an in-depth and thoughtful examination of the entire code. A series of meetings has been scheduled to review each section. The full meeting schedule is available [here](#).

The Ad-Hoc Committee will examine each section twice. The first meeting garnered feedback and solicited comments from community members. The second meeting will allow for a review of the draft revisions prior to presentation to the full Commission.

Once the Ad-Hoc Committee has completed its work, the Harbor Commission will then review and consider the draft revisions. Should the Commission approve of any or all of the proposed revisions, the recommended changes will be forwarded to the City Council for its review and consideration.

*[Return to full list >>](#)*



NEWMAYER & DILLON LLP  
ATTORNEYS AT LAW

CHARLES S. KROLIKOWSKI  
Charles.Krolikowski@ndlf.com

File No.:  
1951.008

June 6, 2019

**VIA E-MAIL & CERTIFIED MAIL**

Attn: City Clerk & Harbor Commission  
City of Newport Beach  
100 Civic Center Drive  
Bay 1B-D  
Newport Beach, CA 92660  
[Title17review@newportbeachca.gov](mailto:Title17review@newportbeachca.gov)

City Manager's Office  
City of Newport Beach  
100 Civic Center Drive  
2<sup>nd</sup> Floor, Bay E  
Newport Beach, CA 92660  
[gleung@newportbeachca.gov](mailto:gleung@newportbeachca.gov)  
[cjacobs@newportbeachca.gov](mailto:cjacobs@newportbeachca.gov)

Re: Proposed Revisions to Title 17 of the Municipal Code

Dear Clerk and Commissioners:

This office represents Thomas LeBeau, an interested property and business owner directly impacted by the City of Newport Beach's ("City") proposed revisions to Title 17 ("Proposed Revisions") of the Newport Beach Municipal Code ("NBMC"). The City must revisit the Proposed Revisions in an open and public forum, with the opportunity for meaningful written comment and public participation in the deliberative process. Without doing so, the Proposed Revisions remain subject to future challenge.

In addition to detailing Mr. LeBeau's concerns, this letter also serves as Mr. LeBeau's request for all public records, including communications, related to the Proposed Revisions from January 1, 2017, to present. The scope of this request is further detailed below.

**1. Background on the Proposed Revisions.**

For context, it appears that the City of Newport Beach Harbor Commission ("Commission") is currently in the process of reviewing and revising Title 17 of the NBMC, also referred to as the Harbor Code. (See City, Harbor Comm'n, Title 17 Review ("Title 17 Review").)<sup>i</sup> As a general matter, the Commission exercises the authority to make such revisions pursuant to the City Council's delegation under Section 700 of the City Charter. (See Ord. No. 2013-14.) Like the City's Planning Commission, the Harbor Commission exercises limited authority over approvals within the City of Newport Harbor. (Ord. No. 2013-14.)



see also Full Agenda Packet, City Council Regular Meeting (Feb. 13, 2018).<sup>ii</sup> The task of reviewing Title 17 is also formally recognized in the Commission’s 2018 goals and objectives, which ask the Commission to “[r]eview and update City Municipal Codes, Title 17, Harbor Policies 1-5 and Marine Activities Permits[.]” (*Ibid.*)

Based on a review of the limited information available, the Proposed Revisions present what appear to be all-encompassing changes that will result in significant impacts to the environment and surrounding community. (See Title 17 Review, *supra* [discussing scope of changes, not impacts].)<sup>iii</sup> Those changes include considerable substantive modifications to various permit, lease, appeal, and enforcement provisions in Sections 17.40 through 17.70.<sup>iv</sup> (*Ibid.*) But, more importantly, the City broke down its review of the Proposed Revisions into three parts. (*Ibid.*) Per the City, it appears that each part will have its own set of meetings, with the first meeting soliciting comment and the second meeting incorporating the solicited comments into a working draft of Title 17. (*Ibid.*)

Here, the first part has already occurred and addressed proposed revisions to Sections 17.01, 17.05, 17.20, 17.25, 17.30, and 17.35. (See Title 17 Review, *supra*.) The “Ad-Hoc Committee” engaged a selection of the public to participate and provide comments at meetings held on April 8, 2019, and May 6, 2019. (*Ibid.*) The second part covers Sections 17.10, 17.40, 17.45, 17.50, 17.55, 17.60, 17.65, and 17.70. (*Ibid.*) This portion of the review covers marine activities permits, live-aboard, sanitation, harbor development permits, dredging permits, harbor permits, leases, appeals, and enforcement. (*Ibid.*) The Commission, via the Ad-Hoc Committee, already solicited a selection of the public’s comment on May 13, 2019. (*Ibid.*) The second meeting incorporating those comments into a final working draft is currently scheduled for June 24, 2019. (*Ibid.*) The dates for the third part of the Proposed Revisions are still to be determined, although it appears that the third part will address the new Sections 17.01.030 and 17.60.040. (*Ibid.*)

## **2. The Commission’s Analysis of the Proposed Revisions Should Include Environmental Impacts under the California Environmental Quality Act.**

Because the Commission is essentially taking action and considering the Proposed Revisions without a concurrent analysis of the environmental impacts, the City also faces potential issues under the California Environmental Quality Act (“CEQA”).

As the Commission is aware, CEQA compliance must occur before the City approves a project because when a public agency gives a project “approval” it “commits to a definite course of action in regard to a project.” (CEQA Guidelines, 14 Cal. Code Regs., § 1532, subd. (a).) In *Save Tara v. City of West Hollywood* (2008) 45 Cal.4th 116, 130–132, for example, the Court struck down a project finding that the city violated CEQA because it had impermissibly committed itself before completing an adequate CEQA review. Similarly here, a court may express concern given the extensive revision work that the Commission has done without proper compliance.

Moreover, given the substantive nature of these changes to Title 17, particularly with respect to duration of live-aboard permits and enforcement, an Environmental Impact Report (“EIR”) will likely be required. Again, an EIR is at the heart of the environmental control process established by CEQA. A proper EIR provides the public and governmental decision-makers with detailed information on a project’s likely environmental effects, describes the ways of minimizing such effects, and considers potential alternatives to a project. (Pub. Resources Code, §§ 21002.1, 21061, 21100.) Any consideration of such extensive Proposed Revisions should consider this environmental analysis.

**Ultimately, the City is responsible for the failure to prepare an adequate EIR.**  
(*Mission Oaks Ranch, Ltd. v. County of Santa Barbara* (1998) 65 Cal.App.4th 713, 723-724.)

### **3. The City’s Serial Meetings on the Proposed Revisions Violate the Brown Act.**

The Ralph M. Brown Act (“Brown Act”) (Gov. Code, §§54950–54963) requires meetings of “legislative bodies” of public agencies to be open and public. (See Gov. Code, § 54953, subd. (a).) Subject to a limited number of exceptions, meetings regulated by the Brown Act must be conducted in public and afford the public the opportunity to speak on every item on the agenda, as well as any item within the subject matter jurisdiction of the legislative body. (See Gov. Code, §§54953, subd. (a), 54954.3, subd. (a).)

In enacting the Brown Act, the Legislature declared the existence of governing bodies like the City Council and the Commission to be contingent on its ability “to aid in the conduct of the people’s business.” (Gov. Code, § 54950.) For that reason, the Brown Act’s declared intent is to ensure that such legislative bodies deliberate openly. (*Ibid.*) Indeed, the Legislature understood that public agencies exist to conduct the people’s business. (*Ibid.*) In full, the Legislature found as follows:

In enacting this chapter, the Legislature finds and declares that the public commissions, boards and councils and the other **public agencies in this State exist to aid in the conduct of the people’s business. It is the intent of the law that their actions be taken openly and that their deliberations be conducted openly.**

**The people of this State do not yield their sovereignty to the agencies which serve them. The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know. The people insist on remaining informed so that they may retain control over the instruments they have created.**

(*Ibid.* [emphasis added].)

**A. The Commission's Ad-Hoc Committee is a Legislative Body Subject to the Brown Act.**

The Brown Act applies only to “legislative bodies,” which may include the Commission’s Ad-Hoc Committee. Generally, the City Council or other governing body, as well as other subsidiary decision-making bodies and advisory committees such as planning commissions, parks and recreation commissions, and even blue ribbon committees created by formal action of the legislative body, are all considered “legislative bodies” within the meaning of the Brown Act. (See Gov. Code, § 54952.) Occasionally, a legislative body may convene a temporary committee composed of less than a quorum or the minimum number of members that must be present to make the proceedings valid. Such “ad hoc” subcommittees are not “legislative bodies” subject to the Brown Act unless the ad hoc committee is (1) a standing committee of a legislative body, and (2) retains continuing subject matter jurisdiction *or* (3) a meeting schedule fixed by charter, ordinance, resolution, or formal action of a legislative body. (See Gov. Code, § 54952, subd. (b).) Government Code section 54952, subdivision (b) provides for the following, in full:

(b) A commission, committee, board, or other body of a local agency, whether permanent or temporary, decisionmaking or advisory, created by charter, ordinance, resolution, or formal action of a legislative body. However, advisory committees, composed solely of the members of the legislative body that are less than a quorum of the legislative body are not legislative bodies, except that standing committees of a legislative body, irrespective of their composition, which have a continuing subject matter jurisdiction, or a meeting schedule fixed by charter, ordinance, resolution, or formal action of a legislative body are legislative bodies for purposes of this chapter.

*(Ibid.)*

Here, the Ad-Hoc Committee need not be comprised of the majority of the Commission for the Brown Act to apply because “irrespective of [its] composition” it has “continuing subject matter jurisdiction” over the initial red lines and working drafts of the Proposed Revisions, as well as a “meeting schedule fixed by charter, ordinance, resolution, or formal action of a legislative body. . . .” (See Gov. Code, § 54952, subd. (b).) Specifically, as noted above, the Ad-Hoc Committee has broken down its Title 17 review into three parts. (See Title 17 Review, *supra*.) Each part contains its own set of meetings, with the first meeting soliciting comment and the second incorporating the solicited comments. (*Ibid.*) Here, the first part addressed proposed revisions to Sections 17.01, 17.05, 17.20, 17.25, 17.30, and 17.35 on April 8, 2019, and May 6, 2019, respectively. (*Ibid.*) The second part covering Sections 17.10, 17.40, 17.45, 17.50, 17.55, 17.60, 17.65, and 17.70 already had the first meeting on May 13, 2019, and the second meeting is currently scheduled for June 24, 2019. (*Ibid.*) The dates for the third part, a review of Sections 17.01.030 and 17.60.040, are still to be determined. (*Ibid.*)

Given that this amounts to a regular meeting schedule, the Brown Act applies irrespective of the Ad-Hoc Committee's composition. As such, the Ad-Hoc Committee is considered a legislative body for purposes of the Brown Act regardless of the fact that it is a "subcommittee comprised of less than a majority of the Harbor Commission[.]" (City's Letter, at p. 1.)

**B. Serial Meetings Soliciting Public Comment on the Proposed Revisions Must Be Open and Public under the Brown Act.**

The Brown Act broadly defines what "meetings" must be open and public. (Gov. Code, § 54952.2, subd. (a).)

(a) As used in this chapter, "meeting" means any congregation of a majority of the members of a legislative body at the same time and location, including teleconference location as permitted by Section 54953, to hear, discuss, deliberate, or take action on any item that is within the subject matter jurisdiction of the legislative body.

(*Ibid.*) Because allowing for serial meetings would render this requirement meaningless, the Brown Act prohibits using a "series of communications of any kind, directly or through intermediaries, to discuss, deliberate, or take action on any item of business that is within the subject matter jurisdiction of the legislative body." (Gov. Code, § 54952.2, subd. (b)(1).) The prohibition on serial meetings excepts communications with City staff "if that person does not communicate to members of the legislative body the comments or position of any other members or members of the legislative body." (Gov. Code, § 54952.2, subd. (b)(2).)

Here, the Ad-Hoc Committee engaged in serial meetings resulting in a violation or violations of the Brown Act. Effectively, the opinions of members of the Commission, several of whom make up the Ad-Hoc Committee, are being communicated to each other and to a selection of the public, both in the red lines, working drafts, and collected public comment incorporating revisions into Title 17. (See Gov. Code, § 54952, subd. (b); with City's Letter; Title 17 Revisions.) As distinguished from stakeholder meetings where public input is merely being passively received, here members of the Commission are acting and deliberating on a matter within the Commission's jurisdiction, the Proposed Revisions, without going through the proper public process. (City's Letter; Title 17 Revisions [listing redlines and working drafts, as well consolidated public comment from first part of revisions].)

Thus, the Ad-Hoc Committee's conduct amounts to serial meetings in violation of the Brown Act. Accordingly, the Commission should consider providing a properly open and public meeting that acknowledges the procedural due process rights of impacted business and property owners.

**4. Commissioner Blank's Potential Conflict of Interest as a Mooring Permittee.**

In addition to the issues raised above, problems are also present with respect to Commissioner Blank's conflict of interest. While the Commission asserts that Commissioner

Blank has “recused himself from those discussions every time the issue has come up” (see City’s Letter, at p. 3), this response is shortsighted.

The Political Reform Act of 1974 (Gov. Code, §§81000–91014) governs disclosure of campaign contributions, spending, lobbying, and ethical rules by which state and local government officials must abide. Passed by statewide initiative, the people found and declared that their public officials *must* act in an impartial manner free from bias caused by competing financial interests:

**(b) Public officials, whether elected or appointed, should perform their duties in an impartial manner, free from bias caused by their own financial interests or the financial interests of persons who have supported them[.]**

(Gov. Code, § 81001, subd. (b) [emphasis added].) The requirements of the Political Reform Act are to be “liberally construed to accomplish its purposes.” (Gov. Code, § 81003.) This purpose includes a mandate against financial bias infiltrating local government decision-making. (Gov. Code, § 87100.)

Specifically, Government Code section 87100 requires that no local government official “shall make, participate in making or in any way attempt to use his official position to influence a governmental decision in which he knows or has reason to know he has a financial interest.” (Gov. Code, § 87100.) An official has a financial interest in a decision when it is “reasonably foreseeable” that the decision will have a material financial effect on his investments, property or income. (Gov. Code, § 87103.) The conflict of interest laws operate without regard to actual corruption or interest; instead, the laws establish an objective and preventive standard that acts upon tendencies as well as prohibited results. (*Commission On Cal. State Gov. Org. & Econ. v. Fair Political Practices Com.* (1977) 75 Cal.App.3d 716, 723 [142 Cal.Rptr. 468, 472] [citing *United States v. Mississippi Valley Generating Co.* (1961) 364 U.S. 520, 549-551 [81 S.Ct. 294, 309, 5 L.Ed.2d 268]; *Stigall v. City of Taft* (1962) 58 Cal.2d 565, 569 [25 Cal.Rptr. 441, 375 P.2d 289]; *People v. Watson* (1971) 15 Cal.App.3d 28, 37-39 [92 Cal.Rptr. 860].)

A violation occurs not only when the official participates in the decision, but when he or she directly or indirectly influences it. (*Ibid.* [citing Gov. Code, § 87100; *Stigall v. City of Taft*, *supra*, 58 Cal.2d at p. 569].) The fact that a commission is advisory does not automatically exempt it from the statutory provisions described above. The statutory exemption is limited only to those boards and commissions that are *exclusively* advisory. (*Commission On Cal. State Gov. Org. & Econ. v. Fair Political Practices Com.*, *supra*, 75 Cal.App.3d at p. 724; see also Gov. Code, § 1090 [codifying similar requirements to avoid such conflicts in contracts].)

Of course, a public official may express opinions on subjects of community concern without tainting his or her vote on such matters. (*Clark v. City of Hermosa Beach* (1996) 48 Cal.App.4th 1152, 1172 [56 Cal.Rptr.2d 223], *as modified on denial of reh'g* (Sept. 11, 1996).) But, conflicts may arise for a variety of reasons, including where voting or acting on an item as would affect a member’s personal interests. (*Id.* at pp. 1172–1173.) For example, in *Clark*, the

Court found a councilmember interested and potentially biased in part because “the specific project before the Council, if approved, would have had a direct impact on the quality of his own residence.” (*Id.* at p. 1173; see also *Cohan v. City of Thousand Oaks* (1994) 30 Cal.App.4th 547, [35 Cal.Rptr.2d 782] [invalidating a city council decision to reverse a planning commission decision after the council appealed the planning commission's decision to itself]; *Nasha v. City of Los Angeles* (2004) 125 Cal.App.4th 470, [22 Cal.Rptr.3d 772] [holding the prehearing bias of one planning commission member was enough, by itself, to invalidate a planning commission decision that had overruled a city planning director's approval of a project]; *Woody's Group, Inc. v. City of Newport Beach* (2015) 233 Cal.App.4th 1012, 1016–1017 [183 Cal.Rptr.3d 318, 320–321] [concluding the trial court erred in not granting Woody's request for an administrative writ of mandate restoring the original planning commission's grant of its application].)

Similarly, here, Commissioner Blank faces a potential conflict as a mooring permittee because it creates a personal financial interest in the Proposed Revisions. This includes the fact that the Proposed Revisions may enact a 300% increase in overnight usage available to those with mooring permits, like Commissioner Blank. As a mooring permittee, Commissioner Blank stands to gain a substantial economic benefit by approving this particular increase in overnight usage. The “reasonably foreseeable” standard governing such financial conflicts of interest directly contemplates this type of issue. (See Gov. Code, §§ 87100, 87103.) To interpret it otherwise would run contrary to the statutory scheme, moving away from a preventive standard that acts upon tendencies toward a prophylactic one that focuses solely on prohibited results. (Cf. *Commission On Cal. State Gov. Org. & Econ. v. Fair Political Practices Com.*, supra, 75 Cal.App.3d at p. 723 [citing *United States v. Mississippi Valley Generating Co.* (1961) 364 U.S. 520, 549-551 [81 S.Ct. 294, 309, 5 L.Ed.2d 268]; *Stigall v. City of Taft* (1962) 58 Cal.2d 565, 569 [25 Cal.Rptr. 441, 375 P.2d 289]; *People v. Watson* (1971) 15 Cal.App.3d 28, 37-39 [92 Cal.Rptr. 860].)

Thus, the Commission should avoid this and other such conflicts at all stages of the public process.

#### **5. Request for All Public Records Related to the Proposed Revisions from January 1, 2018, through the Date of Production.**

As noted above, the Commission's serial meetings and other conduct give rise to Brown Act violations. Accordingly, we seek all public records, including information, documents, and communications, related to the Proposed Revisions from January 1, 2017, through the date of production. We hope that this stated purpose will aid the City in “identify[ing] records and information that are responsive to the request or to the purpose of the request, if stated.” (See Gov. Code, § 6253.1, subd. (a).)

Specifically, pursuant to the California Public Records Act (Government Code sections 6250, et seq.), we request that the City provide (1) all documents or communications related to the Proposed Revisions from January 1, 2017, through production; and (2) all other documents or communications referenced in evaluating this letter that have been construed as outside of the scope of category (1). The abovementioned writings are considered “public records” within the

meaning of the description in Government Code section 6252, subdivision (e). (Gov. Code, § 6252, subd. (e).)

We request that you provide the responsive information within ten (10) days of receipt of this letter, or earlier, if possible. Should you deny any part of this request, please provide a written response describing the legal authority or authorities on which you relied for your determination to deny the request. Please also describe where the requested records are located and provide suggestion for overcoming any practical basis for denying access to the records or information sought. If the records are located with another public agency, please forward a copy of this request to that department and advise of same.

Finally, please provide me with the anticipated cost of duplicating the requested records. We are prepared to pay up to \$100 of the applicable copying charges for the requested documents upon demand from the City. Should copying costs exceed \$100, please contact the undersigned for approval.

## **6. Conclusion.**

In sum, the Commission has rushed this process without respect for the proper procedure. As a result, it should revisit the work done on the Proposed Revisions thus far. In addition to the concerns laid out above, the City should also continue to investigate what information is contained in the City's commercial leases and permits, potential issues related to inconsistency with the Local Coastal Program, and existing violations that remain unabated.

Nothing in this written comment should be construed as a waiver of any right or defense in favor of Mr. LeBeau.

Thank you in advance for your anticipated cooperation.

Very truly yours,



Charles S. Krolikowski

SLT:vrf

Cc: Client  
Newport Beach City Council [citycouncil@newportbeachca.gov](mailto:citycouncil@newportbeachca.gov)  
Aaron Harp, Esq.

1951.008 / 8225515.1

---

<sup>i</sup> (Copy on file, but also available at <https://www.newportbeachca.gov/government/departments/harbor/harbor-commission/title-17-update> (last accessed May 30, 2019 at 7:25 AM PST).)

<sup>ii</sup> (Copy on file, although the City confirmed that the correspondence became part of the public record.)

---

<sup>iii</sup> (Copies on file, but the first and second working drafts of the Proposed Revisions to sections 17.01, 17.05, 17.20, 17.25, 17.30 and 17.35, are available at <https://www.newportbeachca.gov/home/showdocument?id=62891> and <https://www.newportbeachca.gov/home/showdocument?id=64086>.)

<sup>iv</sup> (The first working draft of the second set of Proposed Revisions to sections 17.40, 17.45, 17.50, 17.55, 17.60, 17.65, and 17.70 is available at <https://www.newportbeachca.gov/home/showdocument?id=64160>.)



**From:** Wade Womack  
**To:** [Title 17 Review](#)  
**Subject:** dye tablet ordinance  
**Date:** Saturday, May 18, 2019 7:48:10 AM

---

Hi,

Sorry I missed the last meeting when this was likely discussed. In case the committee is looking for good verbiage/language for the dye tablet aspect, I found this on the City of Avalon Website:

<http://www.cityofavalon.com/content/3182/3209/3230.aspx>

(h) In order to enforce the provisions of this section and to safeguard and protect City waters from contamination, the owner and/or other person in charge of any boat or vessel entering City waters shall, as a condition of entering and/or remaining the City waters, allow City personnel to board the vessel and place dye tablets into the vessel's marine sanitary device, and to perform a test or tests to ensure that the marine sanitary device is in such a condition as to prevent any contaminants from being discharged into City waters. It shall be unlawful to any person to deny City personnel access to a vessel for purposes of placing dye tablets in the marine sanitary device, to refuse or interfere with testing of the marine sanitary device by City personnel, to tamper with or remove while in City waters any dye tablet placed in a marine sanitary device by City personnel, or to place any substance in the marine sanitary device with the intent to interfere with the enforcement of this section. Violation of the provisions of this subsection shall be punishable as a misdemeanor. In addition to the penalties prescribed herein and in subsection (i), the Harbor Master shall have the authority to order any owner or person in charge of any boat or vessel upon which any act or omission specified herein has occurred, to immediately remove such vessel from City waters.

Perhaps it is worth borrowing some of their wording. Not a big deal, just thought the committee might find it useful if it's members had not already reviewed it.

Thank you for working to make the harbor a better place.

Sincerely,  
Wade Womack  
1865 Port Abbey Pl  
Newport Beach, CA  
949-292-1165



## Memorandum

Date: June 11, 2019  
To: Harbor Commission  
From: Carol Jacobs, Assistant City Manager  
Subject: Revision to Attachment A of Proposed Changes to Title 17 – Harbor Code Sections 17.01 (Definitions), 17.05 (General Provisions), 17.20 (Vessel Launching and Operation), 17.25 (Berthing, Mooring and Storage), 17.30 (Harbor Use Regulations), 17.35 (Harbor Development Regulations)

---

Attachment A to the above referenced staff report did not include all of the redline changes proposed by the Harbor Commission Subcommittee on this issue.

Attached is the corrected redline version of the Attachment. Please contact me if you have any questions.

## **Chapter 17.01**

### **DEFINITIONS**

#### **Sections:**

**17.01.010 Effect of Chapter.**

**17.01.020 Rules for Construction of Language.**

**17.01.030 Definition of Terms.**

#### **17.01.010 Effect of Chapter.**

For the purposes of this title, the words and phrases herein defined shall, unless the context clearly indicates otherwise, have the meanings herein set forth in this chapter. (Ord. 2008-2 § 1 (part), 2008)

#### **17.01.020 Rules for Construction of Language.**

In addition to the general provisions of the Municipal Code, the following rules of construction shall apply:

- A. The particular shall control the general.
- B. Unless the context clearly indicates the contrary, the following conjunctions shall be interpreted as follows:
  1. “And” indicates that all connected words or provisions shall apply.
  2. “Or” indicates that the connected words or provisions may apply singly or in any combination.
  3. “Either...or” indicates that the connected words or provisions shall apply singly but not in combination.
- C. In case of conflict between the text and a diagram, the text shall control.
- D. All references to departments, commissions, boards, or other public agencies are to those of the City of Newport Beach, unless otherwise indicated.
- E. All references to public officials are to those of the City of Newport Beach, unless otherwise indicated. (Ord. 2008-2 § 1 (part), 2008)

#### **17.01.030 Definition of Terms.**

- A. Definitions: A.
  1. Abutting Upland(s) Property. The term “abutting uplands property” or “abutting upland(s)” shall mean the adjacent bordering property held in fee or by lease. In instances, such as on Balboa Island, where a City-owned public walkway exists between the pier and the adjacent bordering property, the “abutting uplands property” or “abutting upland(s)” shall mean the property adjacent to and

abutting the property held in fee or by lease on the landward side of the walkway.

2. Anchorage or Anchorage Area. The terms “anchorage” and “anchorage area” shall mean any portion of Newport Harbor ~~outside of navigation channels~~ which has been designated pursuant to law and approved by the Federal Government for the temporary anchorage of vessels, using the vessel’s own anchoring tackle.

3. Applicant. The term “applicant” shall mean a person applying for a permit under this title. ~~the owner of the business, property or vessel, an authorized representative of the owner or a person as defined further herein.~~

4. Assigned Vessel. The term “assigned vessel” shall mean a vessel lawfully registered, owned or documented to a permittee to occupy a designated mooring or berthing location in Newport Harbor.

B. Definitions: B.

1. Back Bay. See Upper Newport Bay.

2. Bareboat Charter. The term “bareboat charter” shall mean any vessel not inspected by the United States Coast Guard under Title 46 of the Code of Federal Regulations and which has been chartered for consideration.

3. Beach. The term “beach” shall mean the expanse of sand, gravel, cobble or other unconsolidated material that extends landward from the low water line to the place where there is distinguishable change in physiographic form, or to the line of permanent vegetation. The seaward limit of a beach (unless specified otherwise) is the mean low water line.

4. Beam. The term “beam” shall mean the width of a vessel. Vessel beams are generally critical at two locations of the boat; i.e., at the water line where the boat directly interfaces the dock, as well as at the walking deck; i.e., the widest point of the vessel. For the purpose of compliance with any measurement requirements, the beam shall be interpreted as the widest point of the vessel.

5. Berth. The term “berth” shall mean any location such as a floating dock, slip, side tie, mooring

6. Reserved.

7. Breakwater. The term “breakwater” shall mean a structure or barrier protecting a shore area, harbor, anchorage, or basin from waves, usually constructed as a concrete or riprap (rock wall) structure.

8. Building Official. The term “Building Official” shall mean the Building Manager/Chief Building Official of the City’s Community Development Department, or his or her designee.

9. Bulkhead or Seawall. The term “bulkhead” or “seawall” shall mean the retaining wall that separates dry land areas and water areas.

10. Bulkhead Line. The term “bulkhead line” shall mean the harbor land/water perimeter lines established in Newport Harbor by the Federal Government which define the permitted limit of filling or solid structures that may be constructed in the Harbor. The establishment of bulkhead lines does not necessarily allow the property owner to build to the limits of the bulkhead line due to potential environmental considerations established by the State of California and/or the Federal Government.

11. Business or Business Activity. The terms “business” and “business activity” shall mean all activities, whether the activity is non-profit or for profit, engaged in for gain, benefit, advantage or livelihood to any person, directly or indirectly, including, but not limited to, any profession, trade, occupation, employment or calling engaged in trade, commerce, the exchange of goods, services, or property of any kind, transportation of persons as well as goods, communication, renting or leasing real or personal property or that provides any service, ~~regardless if such business activities are associated with a nonprofit or for profit.~~

C. Definitions: C.

1. Caulerpa. The term “Caulerpa” shall mean an invasive Mediterranean seaweed (*Caulerpa taxifolia*) introduced to southern California in 2000 that has a potential to cause severe ecological damage to coastal and nearshore waters.

2. Certified Charter. The term “certified charter” shall mean any vessel inspected by the United States Coast Guard under Title 46 of the Code of Regulations and which has been chartered for consideration.

3. Channel. The term “channel” shall mean a water area in Newport Harbor designated for vessel navigation with necessary width and depth requirements, and which may be marked or otherwise designated on Federal navigation charts, as well as in other sources.
  4. Chartered for Consideration. The term “chartered for consideration” shall mean any vessel which has been hired or leased by the owner, directly or through an authorized representative, to any person for a voyage in exchange for the payment of money, the receipt of something of value, or the forgiveness of a debt.
  5. City. The term “City” shall mean the City of Newport Beach.
  6. City Council. The term “City Council” shall mean the City Council of the City of Newport Beach.
  7. City Manager. The term “City Manager” shall mean the City Manager of the City of Newport Beach or his or her respective designee.
  8. City Tide and Submerged Land. The term “City tide and submerged land” shall mean that area within Newport Harbor granted to the City by the State of California.
  9. Coastal Access. The term “coastal access” shall mean the ability of the public to reach, use or view the shoreline of coastal waters or inland coastal recreation areas and trails.
  10. Coastal Commission. The term “Coastal Commission” shall mean the California Coastal Commission, the State agency established by State law responsible for carrying out the provisions of the Coastal Act and for review of coastal permits on appeal from local agencies.
  11. Coastal-Dependent Development or Use. The terms “coastal-dependent development” or “coastaldependent use” shall mean any development or use which requires a site on, or adjacent to, the sea to be able to function at all (from California Public Resources Code, Section 30101).
  12. Code. The term “code” shall mean the Newport Beach Municipal Code.
  13. Commercial. The term “commercial” shall mean any business activity whether the business activity is nonprofit or for profit. Commercial activities shall include, but are not limited to, marinas, charter facilities, yacht clubs, yacht sales, rental facilities, boat yards, pier rentals and any other business activity.
  14. Commercial Fishing Vessel. The term “commercial fishing vessel” shall mean a vessel registered by the Department of Fish and ~~Game-Wildlife~~ pursuant to Section 7880 *et. seq.* or successor provision of the Fish and ~~Game Game-Wildlife~~ Code of the State of California, when operating under the authority of the fish and game permit ~~or license~~.
  15. Community Development Director. The term “Community Development Director” shall mean the Community Development Director of the City of Newport Beach or his or her designee.
  16. Current. The term “current” shall mean a flow of water in a particular direction. Such flows can be driven by wind, temperature or density differences, tidal forces, and wave energy. Currents are often classified by location, such as longshore current, surface current or deep ocean currents. Different currents can occur in the same general area resulting in different water flows. For example, a rip current can flow perpendicular to the shore through the surf zone, a long shore current may flow southerly, parallel to the coast and seasonal deep water current may flow to the north.
- D. Definitions: D.
1. Design Criteria. The term “design criteria” refers to “Waterfront Project Guidelines and Standards, Harbor Design Criteria—Commercial and Residential Facilities” adopted by the City of Newport Beach, and as amended from time to time, as minimum standards for design whenever harbor permits are required. The City may require additional requirements, based on the specific details of a particular application and project.
  2. Dinghy or Tender. The term “dinghy” or “tender” shall mean a vessel no longer than fourteen (14) feet in overall length.
  3. Dock. The term “dock” shall mean a structure generally linked to the shoreline to which a vessel may be secured. A dock may be fixed to the shore or fixed on pilings, or may float in the water.
  4. Dolphin. The term “dolphin” shall mean a multi-pile structure that is used for mooring large boats

that generally cannot be accommodated by floating docks.

5. Dry (Boat) Storage. The terms “dry storage” or “dry boat storage” shall mean all on-land storage of vessels, including vessels normally stored in open or enclosed rack structures, on trailers, on cradles, on boat stands, or by other means.

E. Definitions:

1. Eelgrass. The term “eelgrass” shall mean a marine flowering plant (*Zostera marina*) that is found primarily in coastal bays and estuaries on soft substrate.

2. Encroachment. The term “encroachment” shall mean the extension of a building, structure or other improvement, or part thereof, on the property or domain of another.

3. End Tie. The term “end tie” shall mean berths located on the outermost end of a floating dock structure where the dock is alongside only one side of the boat. The boats associated with an end tie may be situated beyond the pierhead line along the channel.

4. Erosion. The term “erosion” shall mean the wearing away of land by natural forces. On a beach, erosion is the carrying away of beach material by wave action, currents or wind.

5. Estuary. The term “estuary” shall mean the region near a creek or river mouth in which the fresh water of the river mixes with the salt water of the sea.

F. Definitions:

1. Fairway. The term “fairway” shall mean an area of water adjacent to slips ~~or mooring ball-buoy locations~~ that feeds into a channel, and which is used for direct access to slips ~~or moorings~~. ~~When associated with built slips, the fairway water area is defined as lying between the outer end of a line of fingers and the nearest obstruction on the opposing side (i.e., other slips, bulkhead, vessels on side ties, etc.).~~ ~~When associated with a mooring area, the fairway water area is defined as lying between the outer end of the mooring balls-buoy on either side of the fairway.~~

2. Federal Channel. The term “Federal Channel” shall mean that area of the Lower Newport Bay described by the Army Corps of Engineers, Chief of Engineer to Congress on November 11, 1936, as recorded in the First Session of the Seventy-Fifth Congress in 1937.

3. Finance Director. The term “Finance Director” shall mean the Finance Director of the City of Newport Beach or his or her respective designee.

4. Finger. The term “finger” shall mean a portion of a floating dock section that is perpendicular to the walkways and is used for tying up and boarding vessels.

5. Fire Chief. The term “Fire Chief” shall mean the Fire Chief of the City of Newport Beach or his or her respective designee

6. Freeboard.

a. Dock System Freeboard. For the purposes of dock systems, the term “freeboard” shall mean the distance between the water surface and the walking surface of the dock system. Generally, two conditions are of interest when referring to freeboard: (i) dead load only freeboard, and (ii) dead plus live load freeboard. Dead load refers to the weight of all construction materials and equipment that may be permanently attached to the docks. Live load refers to the weight of all temporary loads such as pedestrians and berthing loads.

b. Vessel Freeboard. For the purposes of vessels, the term “freeboard” shall mean the vertical distance between the water line and the top of the deck.

7. Functional Capacity. In terms of wetlands and estuaries, the term “functional capacity” shall mean the ability of the wetland or estuary to be self-sustaining and to maintain natural species diversity.

G. Definitions: G.

1. Gangway. The term “gangway” shall mean a structure that provides pedestrian access from land to the floating docks. One end is generally attached to the bulkhead, fixed pier or landside with a hinge, and the other end rolls on gangway wheels or slide plates, which rest directly on the dock surface. The word “brow” is synonymous with “gangway.”

2. Graywater. The term “graywater” shall mean all water and other fluids used on a vessel for any



purpose whatsoever, including but not limited to, 1) that used for washing or cleaning clothing, linens, towels, bedding, and other linens; 2) that used for cooking equipment and eating utensils, and serving ware; 3) that used for bathing, showering and cleansing; 4) that used for washing and/or cleaning all or any portion of the interior of a vessel, including but not limited to, heads, kitchens, engine room, floors, windows, furniture, equipment and other portions of the interior of the vessel.

4.3. Groin. The term “groin” shall mean a shoreline protection structure built, usually perpendicular to the shoreline, to trap nearshore sediment or retard erosion of the shore. A series of groins acting together to protect a section of beach is known as a groin system or groin field. A structure that extends from a beach or bulkhead perpendicularly to the shoreline into tidal waters is intended to trap and retain and/or reduce the erosion of sand and retard the general erosion of the shoreline and undermining of shore protection structures (bulkheads, riprap slopes, etc.).

H. Definitions:

1. Harbor Commission. The term “Harbor Commission” shall mean the Harbor Commission of the City of Newport Beach.

2. Harbor Department. The term “Harbor Department” shall mean the Harbor Department of the City of Newport Beach. Any provision within this Code or any uncodified ordinance or resolution referring to the Harbor Resources Division shall mean the Harbor Department.

3. Harbor Lines. The term “harbor lines” shall mean all established bulkhead, pierhead, and project lines as defined within Newport Harbor by the Federal, State, County and City Governments. The harbor lines in Lower Newport Bay have been established by an act of the U.S. Congress and can only be modified by an act of Congress.

4. Harbor Maintenance Uses, Equipment and Facilities. The terms “harbor maintenance uses, equipment and facilities” shall mean all uses and their related equipment, vessels, docking, and land storage facilities and access which provide: dredging and beach replenishment; demolition, repair and new construction of docks, piers, bulkheads, and other in and-over-water structures; mooring maintenance and repair; waterborne debris and pollution control, collection, and removal. This category also includes environmental, survey, or scientific vessels and related equipment based, or on assignment, in Newport Harbor. All vessels under this definition may also be referred to as “work boats.”

5. Harbormaster. The term “Harbormaster” shall mean the Harbormaster of the City of Newport Beach, or his or her designee. Any provision within this Code or any uncodified ordinance or resolution referring to the Harbor Resources Manager shall mean the Harbormaster.

6. Harbor Regulations. The term “harbor regulations” refers to Title 17.

7. Harbor Structures. The term “harbor structures” refers to any pier, float, piling, bulkhead, seawall, reef, breakwater or any other structure in, upon or over the waters of Newport Harbor or the Pacific Ocean or any other water where the tide ebbs and flows within the City of Newport Beach or adjoining waters.

8. Habitat. The term “habitat” shall mean the locality, including the physical and biological environment, in which a plant or animal lives.

9. Headwalk. The term “headwalk” shall mean that portion of a dock that serves as a primary pedestrian access to mainwalks, fingers, and slips. Fingers may be attached directly to headwalks. Headwalks are generally parallel to the bulkhead. The term “marginal walk” is synonymous with “headwalk.”

10. Houseboat. The term “houseboat” shall mean any vessel or structure on or in any waterway, floating or nonfloating, which is designed or fitted out as a place of habitation and is not principally used for transportation.

I. Definitions: L.

1. Launching Facility. The term “launching facility” shall mean a generic term referring to any

location, structure (ramps, docks), and equipment (cranes, lifts, hoists, etc.) where vessels may be placed into and retrieved from the harbor waters.

2. LCP. See Local Coastal Program.

3. Live-Aboard. The term “live-aboard” shall mean the use or occupancy of a vessel as a domicile for a period exceeding seventy-two (72) hours in any thirty (30) day period.

4. Local Coastal Program (LCP). The term “Local Coastal Program” shall mean a local government’s: (a) land use plans, (b) zoning ordinances, (c) zoning district maps, and (d) within sensitive coastal resources areas, other implementing actions which, when taken together, meet the requirements of, and implement the provisions and policies of the Coastal Act at the local level.

5. Longshore. The term “longshore” shall mean parallel to and near the shoreline.

6. Lower Newport Bay. The term “Lower Newport Bay” shall mean the area of the bay southerly of the Coast Highway.

J. Definitions: M.

1. Maintenance Construction. The term “maintenance construction” shall mean the construction work relating to no more than twenty (20) percent of the total replacement value of the dock, as well as other criteria as stated in subsequent sections of this title. Construction estimates and the total value of work on any given project is based on pre-determined values of various work on record and established by the City of Newport Beach. Maintenance construction only requires City of Newport Beach approval.

2. Mainwalk. The term “mainwalk” shall mean that portion of a dock that serves as a primary pedestrian access to fingers and slips. Fingers are generally attached directly to mainwalks. Mainwalks are generally perpendicular to the bulkhead and headwalk, and may connect directly to a headwalk.

3. Marina. The term “marina” shall mean a commercial berthing facility (other than moorings, anchorage or noncommercial pier) in which vessels are continuously wet-stored (in water) and/or drystored (on land/racks). ~~for more than thirty (30) calendar days.~~

4. Marine Activity Permittee. The term “marine activity permittee” shall mean any person, or persons, partnership, corporation, or other entity holding a permit issued pursuant to the provisions of Chapter 17.10 of the Newport Beach Municipal Code.

5. Marine Sales and Services, Uses and Vessels. The term “marine sales and services, uses and vessels” shall mean related business activities which provide repair, maintenance, new construction, parts and supplies, fueling, waste removal, cleaning, and related services to vessels berthed in, or visiting, Newport Harbor. ~~Typical service uses include, but are not limited to, all uses and vessels described under Section 20.05.050 20.70.020 and 21.70.020 of the City of Newport Beach Municipal Code.~~

6. Mean High Water. The term “mean high water” shall mean the nineteen (19) year average of the higher high water heights (for diurnal tides, high water and higher high water are the same).

7. Mean Higher High Water. The term “mean higher high water” shall mean the nineteen (19) year average of only the higher high water heights.

8. Mean Low Water. The term “mean low water” shall mean the nineteen (19) year average of the lower low water heights (for diurnal tides, low water and lower low water are the same).

9. Mean Lower Low Water (MLLW). The term “mean lower low water” shall mean the nineteen (19) year average of only the lower low water heights. MLLW ~~has been used as a refers to the datum used to~~ define elevations of structures within the bay and along the coastline. ~~To convert MLLW elevations to NAVD88, add 2.62 feet.~~ For landside developments using an MSL (mean sea level) datum, add two and ~~seventy-six hundredths (2.76) feet eighty-two hundredths (2.82) feet~~ to MSL elevations to equate to MLLW elevations.

10. Mono Pile. The term “mono pile” shall mean a normally large diameter pile that is used for mooring large boats that generally cannot be accommodated by floating docks. Generally, mono piles and dolphin piles are used for similar purposes.

11. Mooring. The term “mooring” shall mean a device consisting of a floating buoy or other object that is secured to the harbor bottom by an anchor system for purposes of securing a vessel. The term



“mooring” shall mean any appliance used to secure a vessel in Newport Harbor other than a pier, which is not carried aboard such vessel as regular equipment when under way.

12. Mooring Area. The term “mooring area” shall mean an area designated for a group of moorings.

13. Motorboat. The term “motorboat” shall mean any vessel being propelled by machinery.

14. Mud Line. The term “mud line” shall mean the highest elevation of accumulated sediments adjacent to the structure in question.

15. Multiple Vessel Mooring System. The term “multiple vessel mooring system” shall mean a floating platform secured to a single ~~or double anchor system point mooring only~~ which allows multiple vessels to be secured that are shorter in overall length than the side of the platform to which the vessels are to be moored.

K. Definitions: N.

1. New Construction. The term “new construction” shall mean the construction work relating to fifty (50) percent or more of the total replacement value of the dock, as well as other criteria as stated in subsequent sections of this title. Construction estimates and the total value of work on any given project is based on pre-determined values of various work on record and established by the City of Newport Beach. New construction requires City, State and Federal approvals.

2. Newport Bay. The terms “Newport Bay” and “Newport Harbor” are often used interchangeably. The term “Newport Bay” shall mean the estuary consisting of the Lower Newport Bay and the Upper Newport Bay.

3. Newport Harbor. See also Newport Bay. The term “Newport Harbor” shall mean the water area within the Lower Newport Bay and within the Upper Newport Bay, exclusive of the Upper Newport Bay Marine Park.

4. Nonprofit Organization. The term “nonprofit organization” shall mean an entity designated as tax exempt by the Internal Revenue Service or the State Franchise Tax Board.

L. Definitions: O.

1. Offshore Mooring. The term “offshore mooring” shall mean a mooring that is located bayward of the pierhead line and is comprised of a single or double buoy, weight and chain installed for the purpose of berthing a vessel as provided by Chapter 17.25, or any successor statute.

2. Onshore Mooring. The term “onshore mooring” or “shore mooring” shall mean a mooring for vessels which is located in the nearshore perimeter of the harbor and its islands, perpendicular to the shoreline. One end of the mooring line is attached to a point on or adjacent to the bulkhead, and the other end is attached to a single buoy, weight and chain installed for the purpose of berthing a vessel as provided by Chapter 17.25, or any successor statute.

3. Open Coastal Waters. The term “open coastal waters” shall mean the area composed of submerged lands at extreme low water of spring tide extending seaward to the boundaries of the exclusive economic zone (twelve (12) to two hundred (200) miles). This includes navigation channels, turning basins, vessel berthing, anchorage and mooring areas of Newport Bay.

4. Operable. The term “operable” shall mean capable of ~~safely and consistently~~ maneuvering under the vessel’s own power from the mooring to a demarcation line designated by the appropriate authority and generally to be defined as the line between the seaward ends of the harbor entrance jetties and back to the mooring.

5. Operator. The term “operator” shall mean the person who operates or who has charge of the navigation or use of the vessel.

M. Definitions: P.

1. Pacific Ocean. The term “Pacific Ocean” shall mean the waters off of the City of Newport Beach from the beach, as defined in Section 17.01.030(B)(3), seaward three nautical miles.

2. Passenger. The term “passenger” shall mean every person other than the operator and a member of the crew or other persons employed or engaged in any capacity on board a vessel in the business of that vessel.

3. Permittee(s). The term “permittee(s)” shall be the person or entity who holds a validly issued permit under any provision of this title.

4. Person. The term “person” shall mean an individual, proprietorship, firm, partnership, joint venture, syndicate, business trust, company, corporation, association, committee or any other legally recognized entity.

5. Pier. The term “pier” shall mean any fixed or floating structure for securing vessels, loading or unloading persons or property, or providing access to or over the water. A pier includes wharf, dock, slip gangway or float, or any other landing facility and floating dry dock.

a. Commercial Pier. The term “commercial pier” shall mean a pier adjacent to commercially or nonresidentially zoned property with single or multiple berths which are rented or leased, including any pier used in connection with marinas, charter facilities, yacht clubs, yacht sales, rental facilities and boat yards. For purposes of this chapter, multiple piers which are adjacent to a lot or parcel of land occupied by a multifamily dwelling or dwelling units that are income generating, and structures adjacent to commercially zoned uplands that are business or income generating in nature, shall be deemed commercial.

b. Noncommercial Pier. The term “noncommercial pier” shall mean a pier used for private recreational purposes by the owner(s), occupant(s), guest(s) or lessee(s) of the abutting residentially zoned upland property.

c. Public Pier. The term “public pier” shall mean a pier used for public recreational purposes provided by a public agency.

6. Pierhead Line. The term “pierhead line” shall mean the harbor water area perimeter lines established in Newport Harbor by the Federal Government that define the permitted limit of fixed pier, floating dock and other in-water structures which may be constructed in the harbor. The pierhead line typically shall define the limit of pier and floating dock structures and defines the limit of construction except as otherwise approved by the Harbor Commission-City Council. Vessels may extend channelward of the pierhead line by no more than the maximum-beam of the vessel.

7. Police Chief. The term “Police Chief” shall mean the Chief of Police of the City of Newport Beach or his or her respective designee or by the City Council.

8. Project Lines. The term “project lines” shall mean the harbor water area channel lines of the improvements constructed by the Federal Government in 1935-1936, ~~and as shown on navigation charts of Newport Harbor. Also referred to as the “Federal channel”~~ (see City of Newport Beach Waterfront Project Guidelines and Standards, Harbor Design Criteria—Commercial and Residential Facilities).

9. Property Owner. The term “property owner” shall mean the owner of the abutting upland property who has obtained a permit to place a structure in Newport Harbor pursuant to Chapter 17.50.

10. Public Trust Lands. The term “public trust lands” shall mean all lands subject to the common law public trust for commerce, navigation, fisheries, recreation, and other public purposes. Public trust lands include tidelands, submerged lands, the beds of navigable lakes and rivers, and historic tidelands and submerged lands that are presently filled or reclaimed and which were subject to the public trust at any time (from California Code of Regulations, Section 13577; see tidelands and submerged lands).

11. Public Works Director. The term “Public Works Director” shall mean the Public Works Director of the City of Newport Beach, or his or her designee.

N. Definitions: R.

1. Residential. The term “residential” shall mean those properties that are designated by the Zoning Code for a residential use, as opposed to commercial.

2. Rhine Wharf. The term “Rhine Wharf” shall mean the area at the terminus of the Rhine Channel where vessels may load and unload supplies directly to and from the wharf while tied directly to the wharf.

3. Rhine Wharf Public Pier. The term “Rhine Wharf public pier” shall mean the pier and long float parallel to the Rhine Wharf, and which is used for public recreational purposes provided by a public agency.

4. Riprap. The term “riprap” shall mean a protective layer or facing of rock, concrete blocks or quarry stone, placed to prevent erosion, scour, or sloughing of an embankment or bluff.

5. Risk Manager. The term “Risk Manager” shall mean the Risk Manager of the City of Newport Beach, or his or her designee.

O. Definitions: S.

1. Sail Area. The term “sail area,” as defined for the purposes of structural analysis or berthing facilities and structural pilings, shall mean the area of a boat, above the water line, that is exposed to wind under tied/berthed conditions.

2. Sailing Club. The term “sailing club” shall mean an organization operating from a fixed location and principally engaged in the coordination or facilitation of the use of sailing club-operated boats by its membership.

3. Seaworthy. The term “seaworthy” shall mean that the vessel ~~is~~ is operable, not leaking fluids overboard, e and its hull, keel, decking, cabin and mast are structurally sound and generally free from dryrot and not leaking fluids.

4. Shore. The term “shore” shall mean the narrow strip of land in immediate contact with the sea, including the zone between high and low water. A shore of unconsolidated material is usually called a beach.

5. Shoreline. The term “shoreline” shall mean the intersection of the ocean or sea with land; the line delineating the shoreline on National Oceanic and Atmospheric Administration (NOAA) Office of Coast Survey nautical charts and surveys approximates the mean low tide water line from the time the chart was prepared.

6. Reserved.

7. Side Tie. The term “side tie” shall mean a berth where the dock is alongside only one side of the boat.

8. Slip. The term “slip” shall mean a berth where the boat has a finger on one side and either another finger or adjacent boat on the other side.

9. Sport Fishing Charter. The term “sport fishing charter” shall mean a vessel chartered solely for sport fishing outside of Newport Harbor.

10. Submerged Lands. The term “submerged lands” shall mean lands which lie below the line of mean low tide (from California Code of Regulations, Section 13577).

11. Sub-Permits.

~~Sub-Permits—Long Term. The term “longterm sub permit” shall Shall be defined as those mooring sub permits issued by the City for the temporary use of a deemed vacant or a noticed vacant mooring, for a period of between one month to twelve (12) months.~~

- ~~The term~~ Sub-Permits—~~Short Term. The term “shortterm sub permit” shall Sshall be defined as mean~~ those mooring ~~sub~~ permits issued by the City for a temporary use of a deemed vacant or noticed vacant mooring for any period of time less than thirty (30) days as determined by the Harbormaster.

P. Definitions: T.

1. Tidelands. The term “tidelands” or “public tidelands” shall mean all lands that were granted to the City by the State of California, including, but not limited to, submerged lands and/or lands that are located between the lines of mean high tide and mean low tide.

2. Tidelands Trust. The term “tidelands trust” shall mean all tidelands and submerged lands granted to the City of Newport Beach by State or Federal legislation and the terms and conditions of any such legislative grant.

3. Turning Basin. The term “turning basin” shall refer to an area, often designated on nautical charts, that is connected to a channel which is large enough to allow vessels to maneuver or turn around. The term “turning basin” shall mean that portion of any channel which has been so designated pursuant

to law and approved by the Federal Government, for the purpose of permitting vessels to turn around or permitting their course or direction to be altered therein.

Q. Definitions: U.

1. Upper Newport Bay. The terms “Upper Newport Bay” and “Back Bay” are often used interchangeably. The term “Upper Newport Bay” shall mean the area of the bay northerly of the Coast Highway Bridge.

2. Upland. The term “upland” shall mean land with a shared property line with and immediately adjacent to Newport Harbor.

R. Definitions: V.

1. Vessel. The term “vessel” shall mean and include every description of watercraft used or capable of being used as a means of transportation on water. This includes all vessels of any size homeported, launched/retrieved, or visiting in Newport Harbor, arriving by water or land, and registered or unregistered under State or Federal requirements, except a seaplane on the water. “Vessel” shall also mean and include human-powered vessels and windpowered vessels.

a. Human-Powered Vessel. The term “humanpowered vessel” shall mean a vessel that is being propelled by the human body through the use of oars, paddles, or the like and without the use of wind, a motor, or other machinery.

b. Wind-Powered Vessel. The term “wind-powered vessel” shall mean a vessel that is being propelled by the wind through the use of sails and without the use of a motor or other machinery.

~~1-2.~~ Vessel Length/Width. The term “vessel length/width” are terms to described as follows: the overall vessel length (LoA) and overall vessel width (WoBeam) that include all vessel attachments such as boarding and/or swim steps, bow extensions, sprits, rub rails, etc.

3. Aa) Documented/Registered Length which is the length listed on the vessels USCG Documentation Certificate, State of California or other official registration document and is the length used to determine the required mooring size for a mooring permittee

Bb) Length Overall (LOA) which is the length including all vessel attachments which may include bowsprits, swim steps or stern mounted dinghies. LOA is used to determine the maximum vessel length that can fit in any particular slip or side-tie.

Cc) Width which includes all vessel attachments including boarding steps, rub rails, etc...

~~2.~~

~~2-4.~~ Vessel Owner. The term “vessel owner” shall mean the owner of the vessel as shown on current registration with the Department of Motor Vehicles or the United States Coast Guard. If the vessel is recently purchased, the vessel owner must obtain registration from the Department of Motor Vehicles or United States Coast Guard within six months.

S. Definitions: W.

1. Walkway. The term “walkway” shall mean a walkway on a wide portion of the floating dock system that is used for pedestrian access. A walkway can refer to the headwalk, mainwalk and/or fingers.
2. Waters of Newport Harbor. The term “waters of Newport Harbor” shall mean all waters of Newport Harbor in which the tide ebbs and flows, whether or not the ordinary or mean high tide line of the Pacific Ocean has been fixed by ordinance, statute, court action or otherwise and whether or not the lands lying under the tidal water are privately or publicly owned.

T. Definitions: Z.

1. Zostera Marina. See Eelgrass. (Ord. 2018-18 § 1, 2018; Ord. 2018-17 §§ 3—6, 2018; Ord. 2017-8 §§ 1, 2, 2017; Ord. 2017-7 §§ 1, 2, 2017; Ord. 2013-27 § 1, 2013; Ord. 2013-11 §§ 124—131, 2013; Ord. 2013-1 §§ 2, 3, 4, 5, 2013; Ord. 2011-6 §§ 1, 2, 2011; Ord. 2010-26 §§ 1, 2, 3, 2010; Ord. 2009-2

§ 1, 2009; Ord. 2008-2 § 1 (part), 2008)

## **Chapter 17.05**

### **GENERAL PROVISIONS**

#### **Sections:**

<b>17.05.010</b>	<b>Title.</b>
<b>17.05.020</b>	<b>Purpose.</b>
<b>17.05.030</b>	<b>Applicability.</b>
<b>17.05.040</b>	<b>Administrative Authority.</b>
<b>17.05.050</b>	<b>Duties of the City Manager.</b>
<b>17.05.055</b>	<b>Duties of the Harbormaster.</b>
<b>17.05.060</b>	<b>Duties of the Public Works Director.</b>
<b>17.05.065</b>	<b>Duties of the Harbor Commission.</b>
<b>17.05.070</b>	<b>Establishment of Channels, Turning Basins, Etc.</b>
<b>17.05.080</b>	<b>Public Trust Lands.</b>
<b>17.05.090</b>	<b>Local Coastal Program.</b>
<b>17.05.100</b>	<b>Coordination with Resource Agencies.</b>
<b>17.05.110</b>	<b>Rules for Interpretation.</b>
<b>17.05.120</b>	<b>Payment of Fees.</b>
<b>17.05.130</b>	<b>Permits Nontransferable.</b>

#### **17.05.010 Title.**

This title shall be known as the “City of Newport Beach Harbor Code” and referred to as the “Harbor Code.” (Ord. 2008-2 § 1 (part), 2008)

#### **17.05.020 Purpose.**

- A. Preserve the diverse uses of the harbor and the waterfront that contribute to the charm and character of Newport Bay, and that provide needed support for recreational boaters, visitors, and residents with regulations limited to those necessary to protect the interests of all users;
- B. Maintain and enhance public access to the harbor water and waterfront areas;
- C. Enhance the water quality and protect the marine environment in the harbor;
- D. Preserve and enhance the visual character of the harbor;
- E. Preserve and enhance historical resources of the harbor;
- F. Provide for the ongoing administration and maintenance of the harbor;
- G. Recover the costs of service provided to tidelands users and the fair market value where appropriate;
- H. Administer the use of public trust lands in a manner consistent with the tidelands trust, the California Constitution, the certified Local Coastal Program, and applicable laws;
- I. Implement the policies of the General Plan and certified Local Coastal Program. (Ord. 2008-2 § 1 (part), 2008)

#### **17.05.030 Applicability.**

The provisions of this title, and any rules and regulations adopted pursuant to this title, shall be applicable to and within Newport Harbor and all public trust lands under the jurisdiction of the City of Newport Beach, except where otherwise provided in this title. Any activity or action or use of the harbor is prohibited unless specifically permitted by the provisions of this Code, or the tidelands trust. (Ord. 20082 § 1 (part), 2008)

**17.05.040 Administrative Authority.**

The responsibility for the administration of the provisions of this title is delegated to the City Manager, or officers or employees of a department or departments of the City designated by him or her; provided, however, that some or all of the duties necessary to be performed in the administration may be performed by the Harbormaster. (Ord. 2018-17 § 7, 2018; Ord. 2013-11 § 132, 2013; Ord. 2008-2 § 1 (part), 2008)

**17.05.050 Duties of the City Manager.**

The City Manager shall be authorized to:

- A. Carry out the orders of the City Council and to enforce all harbor regulations, ordinances and tidelands trust requirements;
- B. Order any vessel improperly berthed to change its position or location as he or she may designate, and in case his or her orders are not complied with, or the vessel is unattended, to cause such vessel to be so moved, and to collect the cost thereof from the vessel, or owner thereof;
- C. Promptly report to the appropriate Federal agency any violation of the laws of the United States for the protection of navigation and the preservation of navigable waters, particularly any encroachment on the waterway by the building of illegal structures, illegal filling or dumping of material of any sort into the waterway, or throwing overboard or setting adrift or allowing to be set adrift anything that is or might become obstructive or dangerous to navigation. (Ord. 2013-11 § 133, 2013; Ord. 2008-2 § 1 (part), 2008)

**17.05.055 Duties of the Harbormaster.**

It shall be the duty of the Harbormaster to:

- A. Act for and assist the City Manager in administering the provisions of this title, coordinating with appropriate department directors for services falling within their respective functions as defined in Title 2, and coordinating as required with other governmental agencies and with interested civic associations;
- B. Act as the head of the Harbor Department and supervise and assist the City staff assigned to the Harbor Department to carry out the purposes of this title, or any successor title;
- C. Administer the harbor-related policies adopted by the City Council and the Harbor Commission, and to recommend to the City Manager appropriate changes and modifications to harbor related policies; and
- D. Conduct regular inspections of both public and private facilities and structures located upon or over the waters of Newport Harbor or the Pacific Ocean or any other water where the tide ebbs and flows within the City, and to recommend action to the City Manager to ensure compliance with this title. (Ord. 2018-17 § 8, 2018)

**17.05.060 Duties of the Public Works Director.**

It shall be the duty of the Public Works Director to:

- A. Maintain files and records of all pier permits issued by the City;
- B. Perform such duties as assigned to the Public Works Director by this title, or any successor title; and

Issue approvals in concept for development located on tidelands or submerged lands that did not involve



a discretionary action authorized by Title 20 or Title 21 where the authority is specifically assigned to the City Council, Planning Commission, Community Development Director, or Zoning Administrator. (Ord. 2018-17 § 9, 2018: Ord. 2013-  
~~11~~ ~~11~~ § 134, 2013; Ord. 2008-2 § 1 (part), 2008)

~~+~~ **17.05.065 Duties of the Harbor Commission.**

It shall be the duty of the Harbor Commission to:

- A. Advise the City Council in all matters pertaining to the use, control, operation, promotion and regulation of all vessels within Newport Harbor;
- B. Approve, conditionally approve, or disapprove applications on all permits where the City of Newport Beach Municipal Code assigns the authority for the decision to the Harbor Commission;
- C. Serve as an appellate and reviewing body for decisions of the City Manager on permits, leases, and other harbor-related administrative matters where the City of Newport Beach Municipal Code assigns such authority to the Harbor Commission;
- D. Advise the City Council on proposed harbor related improvements;
- E. Advise the Planning Commission and City Council on land use and property development applications referred to the Harbor Commission by the City Council, Planning Commission, or the City Manager;
- F. Make recommendations to the City Council for the adoption of regulations and programs necessary for the ongoing implementation of the goals, objectives, and policies of the Harbor and Bay Element of the General Plan. (Ord. 2008-2 § 1 (part), 2008)

**17.05.070 Establishment of Channels, Turning Basins, Etc.**

All channels, turning basins, anchorage areas, and pierhead and bulkhead lines in Newport Harbor shall be as established by the Federal Government or by the City Council upon recommendation of the Harbor Commission. A map thereof shall be kept on file in the offices of the City Clerk and the Harbor Department for public inspection. (Ord. 2018-17 § 10, 2018: Ord. 2013-11 § 135, 2013: Ord. 2008-2 § 1 (part), 2008)

~~+~~ **17.05.080 Public Trust Lands.**

- A. Applicability. Public trust lands include tidelands, submerged lands, the beds of navigable lakes and rivers, and historic tidelands and submerged lands that are presently filled or reclaimed and which were subject to the public trust at any time.
- B. Limits on Uses. Public trust lands are subject to the common law public trust, which limits uses to navigation, fishing, commerce, public access, water oriented recreation, open space and environmental protection.
- C. Exceptions. State legislation has modified public trust restrictions for the historic tidelands in Beacon Bay, the Balboa Bay Club, and Harbor Island.
  - 1. Beacon Bay. The Beacon Bay Bill (Chapter 74, Statutes of 1978) and Senate Bill 573 (Chapter 317, Statutes of 1997) allow the residential lots of Beacon Bay located within State tidelands to be leased for residential purposes until June 27, 2043.
  - 2. Balboa Bay Club. The Beacon Bay Bill (Chapter 74, Statutes of 1978) and Assembly Bill 3139 (Chapter 728, Statutes of 1994) allow Parcel D of the Balboa Bay Club to be leased for residential purposes until December 31, 2044.
  - 3. Harbor Island. Chapter 715, Statutes of 1984, allows the filled or reclaimed land on Harbor Island to be leased for nonpermanent recreational and landscaping purposes. (Ord. 2008-2 § 1 (part), 2008)

~~+~~ **17.05.090 Local Coastal Program.**

A. Discretionary applications shall be reviewed to insure conformity with the policies and regulations of the certified Local Coastal Program.

B. All uses of the marine environment shall be carried out in a manner consistent with sustaining the biological productivity of coastal waters and to support populations of all species of marine organisms adequate for long-term commercial, recreational, scientific, and educational purposes.

C. Where applicable, development in Newport Harbor shall:

1. Protect, and where feasible, expand and enhance vessel-launching facilities in Newport Harbor;
2. Protect, and where feasible, expand and enhance low-cost public launching facilities, such as trailer launch ramps, boat hoists, commercial landing facilities, and organized recreational boating launch facilities;
3. Provide a variety of berthing opportunities reflecting State and regional demand for slip size and affordability throughout Newport Harbor;
4. Protect, and where feasible, enhance and expand marinas and dry boat storage facilities;
5. Protect shore moorings and offshore moorings as an important source of low-cost public access to the water and harbor;
6. Protect, and where feasible, enhance and expand dinghy docks, guest docks at public facilities, yacht clubs and at privately owned marinas, restaurants and other appropriate locations;
7. Protect, and where feasible, expand and enhance facilities and services for visiting vessels, including public mooring and docking facilities, dinghy docks, guest docks, club guest docks, pumpout stations and other features through City, County, and private means;
8. Protect, and where feasible, expand and enhance facilities necessary to support vessels berthed or moored in the harbor, such as boat haulout facilities;
9. Protect, and where feasible, expand and enhance existing harbor support uses serving the needs of existing waterfront uses, recreational boaters, the boating community and visiting vessels;
10. Support private sector uses, such as vessel assistance, that provide emergency, environmental enhancement and other services that are not provided by the public sector and that are essential to the operation of a harbor;
11. Provide, expand and enhance, where feasible, existing recurring and year-round harbor special permits and special purpose uses such as boat shows and boating festivals, boat sales displays and delivery/commissioning facilities. (Ord. 2008-2 § 1 (part), 2008)

#### **17.05.100 Coordination with Resource Agencies.**

In carrying out the provisions of this title, coordination with the California Coastal Commission, the Army Corps of Engineers, California Department of Fish and Game, U.S. Fish and Wildlife Service, National Marine Fisheries Service, other resource management agencies, and private organizations, as applicable, shall be required in the review of development applications in order to ensure the protection of marine resources.

Continue to cooperate with the State and Federal resource protection agencies and private organizations to protect marine resources. (Ord. 2008-2 § 1 (part), 2008)

#### **17.05.110 Rules for Interpretation.**

Where uncertainty exists regarding the interpretation of any provision of this Code or its application to a specific site, the Harbormaster shall determine the intent of the provision and issue a written administrative interpretation. An interpretation by the Harbormaster may be appealed to the Harbor Commission, as provided in Chapter 17.65. (Ord. 2018-17 § 11, 2018; Ord. 2008-2 § 1 (part), 2008)



~~1.~~ **17.05.120 Payment of Fees.**

Any application for a permit or other approval required by this title shall not be considered complete and will not be processed for approval unless accompanied by payment of all applicable fees established by resolution of the City Council. All fees shall be established and paid in compliance with this section and Chapter 3.36 of this Code.

A. Date. All fees required to be paid under any provision of this title shall be due and payable on a schedule established by the Finance Director.

B. Revenue. The revenue resulting from the administration of this title shall be accounted for separately and used exclusively for the purposes authorized to be used for public trust lands.

C. Penalty for Failure to Pay Fees. Any owner or permit holder who fails to pay any fee required by this title after same is due shall be subject to a penalty in the amount established in Chapter 3.36, or any successor chapter. Failure to pay the fee, plus any accrued penalty, within one hundred twenty (120) days of when the fee was due, shall constitute grounds for revocation of the permit by the Harbormaster.

D. Administration. The Harbormaster and/or Public Works Director shall administer the provisions of this title, except for the collection of fees, which shall be the responsibility of the Finance Director. (Ord. 2018-17 §§ 12, 13, 2018; Ord. 2013-11 §§ 136, 137, 2013; Ord. 2008-2 § 1 (part), 2008)

**17.05.130 Permits Nontransferable.**

Unless otherwise authorized in this title, any permit, license or approval issued under this title is personal to the person receiving such permit, license or approval and may not be transferred or assigned to any other person without the express written consent of the issuing official or body in compliance with the provisions for issuance of such permit, license or approval. (Ord. 2008-2 § 1 (part), 2008)

**Chapter 17.20**

**VESSEL LAUNCHING AND OPERATION**

**Sections:**

**17.20.010 Vessel Launching and Hauling**

**17.20.040 Trespass or Injury to Vessel**

**17.20.050 Abandoned or Unattended Vessels and Property.**

**17.20.060 Air and Water Propulsion Vessels Prohibited**

**17.20.070 Vessel Races**

**17.20.010 Vessel Launching and Hauling.**

A. Where Permitted. No person shall launch or remove any vessel from the waters of Newport Harbor over any public seawall, sidewalk, street end or public property, except at locations where a regular business, as authorized under Title 20, of launching and hauling vessels is conducted or at launching sites designated by resolution of the City Council.

B. Any person who uses a City Council designated boat launch site shall comply with all of the following:

1. Designated boat launching locations may be used only between the hours of ~~eight~~ seven a.m. and ~~eight p.m.~~ sunset.

2. The use of motors on any vessel or watercraft being launched or recovered shall not be permitted within ~~two hundred (200)~~ one hundred (100) feet of such launching sites when swimmers are present.

3. Only ~~hand-carried~~ human/wind powered vessels or watercraft may be launched from designated sites.

4. No ~~trailers, dollies, rollers or other~~ mechanical devices may be used for purposes of launching

any vessel or watercraft at such locations, or for transporting them on beaches. (Ord. 2008-2 § 1 (part), 2008)

#### **17.20.020 Vessel Operation.**

A. Speed Limit. No owner, operator or person in command of any vessel, except a public officer or employee in the performance of his or her duty, shall operate the same or permit the same to be operated in any portion of Newport Harbor or the water in the present or prior channel of the Santa Ana River within the City at a rate of speed in excess of five nautical miles per hour, or at any speed which creates a wake that may cause damage to moorings of vessels or floating structures, except as hereinafter provided.

B. Designation of Closed Areas. Whenever the City Manager finds that public safety so requires, he or she may designate any water area or tidelands or filled lands in or upon which harbor improvement work is being performed as a closed area and shall cause the areas to be posted accordingly. Except for persons actually engaged in such harbor improvement work or public officers in the performance of their duty, no person shall enter or remain within or drive or operate any vessel or watercraft into or within any area which has been so designated as a closed area and which has been posted or marked with appropriate signs giving notice thereof.

1. The channel between Bay Island and Balboa Peninsula is designated as a closed area from and including June 1st through September 15th of each year; no person shall operate any motorboat into or through such channel.

2. The Grand Canal is designated as a closed area from and including June 1st through September 15th of each year; however, the closure shall not apply to vessels berthed at residential piers or moorings located along or within the Grand Canal. Human powered vessels are allowed in the Grand Canal year round.

C. Restriction of Water Traffic. For such time as necessary preceding, during and after any ~~race activity, regatta, parade~~ or other event ~~held~~ on the waters of Newport Harbor, or at any other time when the City Manager deems it necessary for the safety of persons, vessels or other property, he or she shall have authority to restrict or prohibit waterborne traffic in the harbor, and it shall be unlawful to willfully fail or refuse to comply with any order, signal or direction of the City Manager, his or her deputies or agents. For purposes of this section, waterborne traffic shall mean any object, structure or vessel in contact with the water.

D. Towing. It is unlawful for any person operating a vessel to tow any object, structure or vessel at a distance in excess of seventy-five (75) feet astern of the towing vessel.

E. No person owning, leasing, occupying or having charge or possession of any vessel shall anchor such vessel on the Pacific Ocean unless the vessel is continuously occupied by a person during: (1) any nighttime hours (~~dusk to dawn~~ sunset to sunrise); (2) any time period when a Small Craft Advisory or greater has been issued by the National Oceanic and Atmospheric Administration; and (3) during daylight hours, except for one shore excursion daily for no more than three hours. (Ord. 2018-18 § 2, 2018; Ord. 2013-11 § 145, 2013; Ord. 2008-2 § 1 (part), 2008) (Ord. No. 2009-2, § 2, 1-27-2009)

#### **17.20.040 Trespass or Injury to Vessel.**

A. Damage to Property. No person shall willfully or carelessly destroy, damage, disturb, deface or interfere with any buoy, float, life preserver, sign, notice, navigational marking, or other similar property under the jurisdiction of the City, County, or other governmental agency.

B. Boarding Vessel Without Permission. No person shall climb into or upon any vessel moored, docked or anchored in Newport Harbor, without the consent of the owner or other person having charge thereof, except for those authorized by the Harbormaster.

C. Tampering with Vessel. No person shall willfully injure or tamper with, or break or remove any

part of or from, any vessel in the City, or tamper with the lines securing any such vessel, without the consent of the owner or other person having charge thereof, except for those authorized by the Harbormaster.

D. Tampering with Moorings. No person shall tamper with any mooring or anchorage in the City whether or not the same is occupied by a vessel, except for those authorized by the Harbormaster for the maintenance of harbor operations. (Ord. 2018-17 §§ 22, 23, 2018; Ord. 2013-11 § 146, 2013; Ord. 2008-2 § 1 (part), 2008)

#### **17.20.050 Abandoned or Unattended Vessels and Property.**

All stray, unattended or abandoned vessels, timber or any other personal property found in the water or on the shore of Newport Harbor or the Pacific Ocean, not in the lawful possession or control of some person, shall be immediately reported to the Harbormaster. Any such property shall be dealt with as provided in the appropriate provisions of Chapter 1.20, or Section 510 et seq. of the California Harbors and Navigation Code, as the same now read or may hereafter be amended. Proceeds of any sale of such property shall be deposited in the general fund of the City. For purposes of this section, any vessel on the Pacific Ocean shall be deemed to be stray, unattended and abandoned if the vessel is unoccupied by a person during: any nighttime hours (dusk to dawn); any time period when a Small Craft Advisory or greater has been issued by the National Oceanic and Atmospheric Administration; or daylight hours for more than three hours. (Ord. 2018-17 § 24, 2018; Ord. 2008-2 § 1 (part), 2008) (Ord. No. 2009-2, § 3, 1-27-2009)

#### **17.20.060 Air and Water Propulsion Vessels Prohibited.**

A. No person shall operate any vessel on the waters of Newport Harbor if the vessel is powered or maneuvered by means of mechanical air or water propulsion above the surface of the water.

B. The provisions of this section do not apply to the operation of any vessel by any public agency or any person responding to an emergency on behalf of any public agency. (Ord. 2017-2 § 1, 2017; Ord. 2015-13 § 1, 2015; Ord. 2008-2 § 1 (part), 2008)

#### **17.20.070 Vessel Races.**

A. The Harbormaster may issue a permit to a person, as defined in Chapter 17.01, or any successor chapter, that would allow individuals operating a human-powered vessel, wind-powered vessel, or vessel providing support services to a human or wind-powered vessel as part of the person's special event (e.g., race) or organized practice to exceed the speed limit provided in Section 17.20.020(A), or any successor subsection. Notwithstanding the foregoing, no person shall operate any vessel in an unsafe, uncontrolled, or unseaman-like manner, and in no event at a speed that endangers the safety of persons or property.

B. The Harbormaster has discretion to determine if a permit shall be associated with a single event or multiple events; however, no permit shall be valid for more than six months from the date of issuance.

C. Permits issued under this section are non-transferrable and shall be in addition to any license, permit or fee required under this Code or any other provision of law.

D. The Harbormaster may impose conditions on a permit to protect persons and property and to assure that the activity allowed under the permit will not create a nuisance or interfere with the reasonable use of Newport Harbor by other vessels or persons. At a minimum, every permit issued under this section shall be conditioned to require permittees to: (1) obtain, provide, and maintain at their own expense, for the full period of time for which the permit is granted, policies of insurance with such limits and coverage as established by the City Risk Manager that clearly identify the activity and vessel(s) covered; (2) indemnify, defend and hold harmless the City, County of Orange, and the State of California for all

liability, injury or damage that relates to or arises from permittee's event/activity; and (3) otherwise comply with this Code, California Harbors and Navigation Code, and the Federal Inland Navigation Rules.

- E. Any permit issued under this section may be immediately revoked at any time, without notice, by the Harbormaster, if: (1) the permittee fails to comply with the conditions contained within the permit; (1) an individual participating in the permittee's special event or organized practice operates a vessel in an unsafe, uncontrolled, or unseamanlike manner or at a speed that endangers persons or property; or (3) an individual participating in the permittee's special event or organized practice fails to comply with the lawful instructions of the Harbormaster, or any other person authorized by the City to enforce rules and regulations within Newport Harbor.
- F. Any decision of the Harbormaster under this section may be appealed pursuant to Chapter 17.65, or any successor chapter. (Ord. 2018-18 § 3, 2018)

## **Chapter 17.25**

### **BERTHING, MOORING AND STORAGE**

#### **Sections:**

#### **17.25.10 Docking Regulations.**

#### **17.25.020 Anchorage, Berthing and Mooring Regulations.**

#### **17.25.030 Storage Regulations.**

#### **17.25.010 Docking Regulations.**

##### **A. Docking Permission Required.**

1. No person having charge of any vessel shall make the same fast to any pier in Newport Harbor, or permit the same to remain at such location after finishing loading or unloading such vessel, without the consent of the owner, agent, or person in charge of any such pier.

2. No person shall make fast any vessel to any other vessel already occupying any pier, either public or private, without first obtaining a special event permit as required in Chapter 11.03, or any successor chapter. At the Rhine Wharf, the Harbormaster shall have the authority to authorize this activity, via a Rhine Wharf permit, under either of the following conditions: (a) a commercial fishing vessel is loading or unloading, and no other mooring or berthing space is available in the harbor for this purpose; or (b) a vessel is taking refuge from inclement weather and no other mooring or berthing space is available in the harbor for this purpose. In no event shall more than one vessel be made fast to the dockside vessel and no other vessel shall be made fast to the outboard vessel. Both vessels shall have operators aboard at all times.

3. No person holding a harbor development permit issued under the terms of Chapter 17.50 or having care, custody, control or use of any pier in Newport Harbor shall permit or allow a vessel to be made fast to any other vessel which is occupying any pier over which the permit holder has control, except as provided in the exceptions found in subsection (A)(2) of this section.

- B. Obstruction Prohibited. No person shall intentionally obstruct the free access to and departure from any portion of any pier.

C. Time Limits and Rules.

1. Public piers and other harbor facilities may be maintained by the City for the purpose of loading and unloading passengers, supplies, and boating gear and for similar purposes. It is the policy of the City to maintain such facilities in a manner that will permit the greatest public use and avoid continuous occupancy, congestion or blocking thereof. Where necessary to achieve public use and to avoid extended occupancy, congestion or blocking thereof, the Harbormaster is authorized and directed to post the following dock markings or signs limiting the time during which a vessel may be tied up or secured, or supplies or gear may be placed at or on any such pier or facility. The dock markings shall have the meanings as herein set forth:

- a. Blue markings shall mean vessels tied up or secured for twenty (20) minutes maximum.
- b. Green markings shall mean vessels tied up or secured for three hours maximum.
- c. Black markings shall mean vessels tied up or secured for twenty-four (24) hours maximum.
- d. Yellow markings shall mean vessels tied up or secured for seventy-two (72) hours maximum.

e. Red markings shall mean vessels shall not be tied up or secured for any amount of time.

~~e.f. XXX markings shall mean vessels tied up or secured for twelve (12) hours maximum.~~

~~f.g. Orange markings shall mean the maximum length vessel permitted to be tied up or secured is nine feet.~~

~~Public piers, docks, and harbor facilities are not intended for the longterm storage of vessels. As such, vessels tied up or secured in marked areas designated for either twelve (12), twenty-four (24) hours or seventy-two (72) maximums may not continue to use that same dock area beyond those established periods by relocating the vessel to another section of that dock, or securing the line associated with that vessel to another tie off location on that dock. Instead, Any vessels which have that has occupied space in either of these locations (a twelve, twenty-four hour or seventy-two hour marked area sections), must be removed from this same public pier, dock or facility after the expiration of time allowed and may not -minimum of twenty four hours prior to re-occupying the dock for a subsequent tie up period sooner than twenty-four hours following expiration of the time allowed.~~

2. The Rhine Wharf, adjacent to the Rhine Wharf public pier, shall not be used by vessels for any purpose except with a valid Rhine Wharf permit issued by the Harbormaster, and subject to the following conditions:

- a. Vessels may be tied or secured to the Rhine Wharf for four hours maximum;
- b. The Harbormaster shall have the authority to limit the size of vessels using the Rhine Wharf;
- c. Vessels using the Rhine Wharf shall be in the actual process of loading, unloading or engaged in temporary repairs; and
- d. The Harbormaster may authorize an extension of the four-hour period where special circumstances dictate such an extension.

3. When dock markings and signs are posted giving notice of the time limits and size restrictions in subsections (C)(1)(a) through (f) of this section, no person shall tie up or secure a vessel at any such facility for a period of time in excess of that period, exceed the maximum permitted vessel length, or permit any supplies or gear to remain on such facility for a period in excess of that posted on the sign.

4. The Rhine Wharf public pier ~~-or dock~~ shall be closed between the hours of 12:00 a.m. and 6:00 a.m. daily.

- D. Vessel Tie-Up Method. Every vessel tied up and secured at any pier in Newport Harbor shall be fastened in such a manner as to assure the security of such vessel fore (bow) and aft (stern) at a minimum with the exception of dinghies which may tie up bow only at public piers.
- E. Direct Fueling Prohibited. No person shall fuel any vessel with any petroleum product directly from a tank wagon or truck.

- F. Gangway Required—Lights. Every vessel used for hire while loading or unloading passengers or crew from a pier or from another vessel shall be provided with a gangway with manropes or railings, and from sunset until sunrise any such gangway shall be lighted adequately to provide visibility as long as such gangway is or may be used.
- G. Dockside Steam Engine Spark Prevention. No person shall use any donkey engine or other steam engine on any pier or vessel within Newport Harbor in loading or unloading vessels or otherwise without a bonnet or spark arrestor attached to the smokestack of such engine so as to prevent sparks from coming into contact with the pier or vessel. (Ord. 2018-17 §§ 25—27, 2018; Ord. 2011-6 § 3, 2011: Ord. 2008-2 § 1 (part), 2008)

**17.35.10      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 the 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 (I) 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. It is unlawful and a public nuisance for any person owning, leasing, occupying or having charge or possession of any vessel to: (a) berth or anchor the same in Newport Harbor except within the designated areas; or (b) anchor a vessel 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 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 projection of the property lines of the property to which the pier is connected in accordance with Section 17.35.020, or any successor section.
  - 2. Any boat berthed at a pier or slip shall not extend bayward a distance of more than the maximum width of its beam beyond the end of the pier or slip. 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 from 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 holds a current and valid permit



except with the permission of the Harbormaster for temporary use, as herein provided.

F. Chains and Fastenings.

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

2. All mooring lines on buoys shall be so arranged that, when dropped, they will immediately sink. 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.

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

I. Mooring, Anchoring and Vessel Condition Requirements.

1. Mooring Anchoring. 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 using moorings in Newport Harbor shall be firmly anchored to a mooring from bow and stern in such a manner as to prevent the vessels from swinging, turning or drifting, except in areas designated by the Harbormaster as single mooring areas. Vessels in single mooring areas shall be tied from the bow. 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—Seaworthiness and Operability. Vessels assigned to a mooring by permit must be maintained in an operable and seaworthy 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 seaworthy and operable, the Harbormaster shall give written notice in accordance with the service requirements of Section 1.05.030, or any successor section, to the permittee requesting a demonstration that the vessel is 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 seaworthy or operable. In the event that the Harbormaster determines that vessel is not seaworthy or operable, the permittee shall: (a) commence repairs within thirty (30) days upon service of the written notice of such determination and complete repairs within ninety (90) 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) days of service of the written notice of such determination and request assignment of a different vessel that is seaworthy and operable to the mooring within sixty (60) 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. It is unlawful and a public nuisance for any person owning, leasing, occupying or having charge or possession of any vessel in the City to 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, and boxes that is visible aboard the vessel or stored inside the vessel in such a way 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 and health, such as, but not limited to: propagation of

vermin, rats, insects, unsanitary conditions from the accumulation of fecal materials;

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

g. Operation of its mechanical or electrical systems creates excess 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 of Newport Beach;

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, (ii) continues after a written or oral request to terminate the conduct, (iii) is offensive to a considerable number of people;

j. Anchorage in an area controlled by the City without adequate anchor(s) rope and 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 and impedes safe navigation in the bay; and

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

In the event that the City of Newport Beach determines that a vessel is a public nuisance, the City of Newport Beach may commence public nuisance abatement per Chapter 10.50, or any successor chapter.

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, or any successor section, 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 and the permittee shall: (a) take any and all necessary action to employ and maintain appropriate sea lion deterrent measures; or (b) remove the vessel. 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. ~~Should the City be unable to reach the permittee within the seven day time frame, the Harbormaster shall have the authority to may install temporary deterrent measures as needed and bill to recover the City's cost of compliance the deterrents. he mooring permittee for such deterrents.~~

5. With the exception of the sea lion deterrence requirements, the requirements of this section are not applicable to vessels used in marine construction or marine contracting services.

J. Specifications. Specifications for the size of chains required on moorings and weights of moorings shall be adopted by resolution of the City Council.

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 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), or any successor section, 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 dealing with moorings and buoys, except the revocation of permits by the Harbor Commission and collection of all fees hereafter. (Ord. 2018-17 § 28, 2018; Ord. 201311 §§ 147—150, 2013; Ord. 2010-5 §§ 1, 2, 2010; Ord. 2009-2, §§ 4, 5, 1-27-2009; Ord. 2009-1 § 1, 127-2009; Ord. 2008-2 § 1 (part), 2008)

#### **17.25.30 Storage Regulations.**

A. Vessel or Trailer Storage on Beaches Prohibited—Exceptions. No person shall store any vessel, watercraft, trailer or other similar object on any public beach in the City except as provided in subsection (A)(1) of this section. As used in this section, the term “store” shall mean to leave or permit to remain unattended for a period of ~~two~~three hours or more and not in the possession or control of the owner or user.

1. Vessels, watercraft and equipment directly related to the use of the vessel or watercraft (related equipment) may be stored on a public beach as follows:

a. Any vessel(s), watercraft and/or related equipment owned and maintained by the City or its contractors which is (are) used in conjunction with recreation programs offered by the City;

Any vessel(s), watercraft and/or related equipment that cannot feasibly be berthed or moored at a privately owned pier or mooring and is (are) used by a nonprofit corporation for noncommercial purposes provided a vessel storage permit has been approved by the Harbormaster. A vessel storage permit shall be approved only if there is substantial evidence that the permit would not adversely affect the health, safety or welfare of those who use, enjoy or own property near the waters of Newport Bay. Vessel storage permits are subject to the following standard conditions as well as any additional conditions imposed by the Harbormaster:

i. The permittee shall not cause or permit any unreasonable noise that would adversely affect the use or enjoyment of public or private property in the vicinity of the vessel, watercraft or equipment;

ii. The permittee shall not engage in, or permit, any activity that unreasonably interferes with the use of the beach or adjoining waters by the public;

iii. The permit shall not cause or permit any activity that pollutes any public or private property of the waters of Newport Bay;

iv. The permittee may be revoked by the Harbormaster, without cause, at any time, upon thirty (30) days’ written notice to the permittee.

- b. Any vessel for which a mooring permit has been issued by the City pursuant to Section 17.60.040, or any successor section, provided the vessel remains on the beach only to the extent necessary to load or unload. (Ord. 2018-17 § 29, 2018; Ord. 2008-2 § 1 (part), 2008)

### **Chapter 17.30 HARBOR USE REGULATIONS**

#### **Sections:**

**17.30.010 Landing of Aircraft.**

**17.30.020 Loading or Unloading Hazardous Materials.**

**17.30.030 Live Bait.**

**17.30.010 Landing of Aircraft.**

No person shall land or take off from the waters of Newport Harbor with any aircraft without first obtaining a permit from the City Council. Such permit may be issued if the City Council determines that, under the circumstances, the proposed landing or takeoff will not create a hazard to life or property. In granting such permit, the City Council may impose such conditions on the exercise thereof as it deems appropriate. (Ord. 2008-2 § 1 (part), 2008)

#### **17.30.020 Loading or Unloading Hazardous Materials.**

No person shall load or unload any hazardous materials to or from any vessel from or upon any pier or other vessel in Newport Harbor without first obtaining a permit from the Fire Chief pursuant to Chapter 9.04, Fire Code, of Title 9 of this Code. (Ord. 2008-2 § 1 (part), 2008)

#### **~~17.30.30~~ 17.30.030 Live Bait ~~and~~ Sea Life.**

- A. Live Bait ~~and/or~~ Sea Life Receivers Defined. A live bait or sea life receiver is an object for confining live bait or sea life such as those receivers fostering growth of sea life under the water, which is afloat in the waters of Newport Harbor or the Pacific Ocean, either moored to a pier, bulkhead or sea wall, or moored by means of an anchor or other weight to the bottom of the harbor or ocean; provided, however, that a live bait and/or sea life receiver shall not be deemed to be a “structure” within the meaning of Chapter 17.50.
- B. Requirements for Live Bait Receivers. All live bait or sea life receivers used within the waters of Newport Harbor shall be ~~provided~~ fitted with screen trays in the bottom thereof so as to retain all dead bait or sea life and other debris within the receiver which can be raised to dispose of the dead bait, sea life and other debris. All live bait receivers within the City shall also have a screen or solid cover which fits closely unless the receiver is completely covered by a roof.
- C. Nonconforming Bait and/or Sea Life Receivers. Storage of live bait or sea life other than in a receiver conforming to the requirements hereof is prohibited. After three calendar days’ written notice, served in accordance with Section 1.05.030, to the owner of a nonconforming receiver, it may be removed by the Harbormaster and stored at the expense of the owner.
- D. Commercial Bait Boats, ~~and~~ Bait and Sea Life Receivers. All boats used to catch or furnish live bait or sea life ~~or~~ receivers shall, at all times, have aboard a covered receptacle in which shall be placed all dead bait and other debris. No person shall commercially operate a bait boat, ~~or a~~ bait or sea life receiver without first obtaining a marine activities permit pursuant to Chapter 17.10. Bait tanks on such boats when containing bait shall be covered at all times when in Newport Harbor by a cover which fits closely over the top except while bait is actually being transferred to or from the tank.
- D-E. Disposal of Bait. No person shall place or allow to be placed any live or dead bait in the unconfined waters of Newport Harbor except when it is attached to a hook or hooks in the act of fishing.
- E-F. Transfer of Live Bait. No person shall transfer live bait from one vessel to another vessel or sell the same at retail from a vessel within the limits of Newport Harbor, except when all vessels involved are moored to a pier and are within the pierhead line, except that during a period of adverse conditions of sea or beaches causing the transfer from offshore receivers to be hazardous, a location inside the harbor may be used with the approval of the Harbormaster. (Ord. 2018-17 §§ 30, 31, 2018; Ord. 2013-11 § 151, 2013; Ord. 2008-2 § 1 (part), 2008)

### **Chapter 17.35**

#### **HARBOR DEVELOPMENT REGULATIONS**

**Sections:**

- 17.35.010 General Provisions for Harbor Structures.**
- 17.35.020 Piers.**
- 17.35.030 Bayward Location of Piers and Floats.**
- 17.35.040 Other Structures.**
- 17.35.050 Bulkheads.**
- 17.35.060 Balboa Island—Noncommercial Piers.**
- 17.35.070 Areas with Special Harbor Permit Regulations.**
- 17.35.080—Parking Requirements.**
- 17.35.090—Signs.**

**17.35.010 General Provisions for Harbor Structure**

**B.A.** Design of harbor structures shall conform to the “Waterfront Project Guidelines and Standards, Harbor Design Criteria—Commercial and Residential Facilities” as adopted by resolution of the City Council and as may be amended from time to time. The applicant may submit an alternative design for review and potential approval of the City prior to the issuance of a harbor development permit using the “Alternate Material or Method of Construction” appeals process.

**C.B.** Protection of Coastal Access and Resources. All harbor structures, including remodels of and additions to existing structures, shall be designed and sited to current standards so as not to obstruct public lateral access and to minimize impacts to coastal views and coastal resources.

**D.C.** Appearance. All structures permitted to encroach into open coastal waters, wetlands and estuaries shall be designed and sited to harmonize with the natural appearance of the surrounding area.

**E.D.** Eelgrass Protection. The use of materials in pier and dock construction design, materials and methods shall consider minimal impacts to eelgrass and marine habitat.

**F.E.** Docking Facilities. Docking facilities shall be designed and sited in relationship to the water’s depth and accessibility.

**G.F.** Protection of Traffic. Adequate provisions shall be made for the protection of the traveling public. Barricades shall be placed on streets with lights at night, also flagmen employed, all as may be required by the particular work in progress. The permittee shall not attempt to forbid the full and free use by the public of all navigable waters at or adjacent to the work or structure. If the display of lights and signals on any work authorized is not otherwise provided by law, as may be prescribed by the U.S. Coast Guard, they shall be installed and maintained at the expense of the permittee.

Structures shall be so constructed as not to obstruct, interfere with or prevent the free use of adjacent harbor structures or passage of any sidewalks, street, alley, public way or navigable channel.

**H.G.** Liability for Damages. The permittee is responsible for all liability for personal injury or property damage which may arise out of work herein permitted, or which may arise out of the use or possession of such works, and in the event any claim is made against the City of Newport Beach or any department, officer, or employee thereof, though, by reasons of, or in connection with such work, permittee shall defend, indemnify and hold them and each of them, harmless from such claim.

**I.H.** Repairs. The permittee shall keep the structures in good repair at all times. Failure to repair,

when written notice has been given by the ~~Harbor Resources Division~~ City, shall be cause for the revocation of the permit.

~~J.I.~~ J.I. Pollution Control. The permittee shall maintain the area delineated on the harbor development permit free and clear from beached or floating rubbish, debris or litter at all times. Adequate safeguards shall be maintained by the permittee to avert any other type of pollution of Newport Harbor from recreational and/or commercial use of the tidelands. Failure to comply with the provisions of this section shall be cause, after written notice has been given to the permittee by the City, for the revocation of the permit. When unusual circumstances arise with respect to the collection of debris or litter, the City Manager may authorize by the use of City forces or by contract, the removal of such debris. Cost for such pollution control will be borne by the permittee

~~K.J.~~ K.J. Rights to Impose Rental or Other Charges. The approval of permits or leases by the City of Newport Beach shall not constitute a waiver of any rights or requirements which it may now have or hereafter have to impose rental or other charges in conjunction with the maintenance or use of the proposed facility and user of the same.

~~L.K.~~ L.K. Special Event Permits. If a permittee proposes a use of the harbor other than that allowed by the Newport Beach Municipal Code, he or she must first obtain a "special event permit," as provided by Chapter 11.03 of the Newport Beach Municipal Code. Upon issuance of the special event permit, the City of Newport Beach may impose conditions on the permit to assure that the proposed use does not affect the health, safety or welfare of the residents of Newport Beach. (Ord. 2017-8 § 3, 2017; Ord. 201311 § 152, 2013; Ord. 2013-1 § 6, 2013; Ord. 2008-2 § 1 (part), 2008)

#### ~~17.35.20~~ **17.35.020 Piers.**

##### A. Use Regulations.

1. No permits will be granted to persons other than the owners or long-term lessee of the abutting upland properties.
2. The permit application must be signed by the fee owners or long-term lessee of all abutting upland property having access to the pier.
3. Shore-connected piers bayward of residential zoned areas shall be controlled by the permittee. Vessels moored at residential piers shall not create a nuisance with regard to vehicle parking, vessel waste, or noise disturbances to adjoining residents.
4. Shore-connected piers bayward of commercial-zoned areas may be rented pursuant to the provisions of this title.
5. Only piers and certain patio decks authorized under subsection (D) of this section and their appurtenances shall be permitted bayward of the bulkhead.
6. No private piers shall be permitted at street ends.
7. In single-unit and two-unit residential districts, only a single pier and slip shall be permitted bayward of each parcel or lot. For multi-unit or mixed-use districts, only a single pier and slip shall be permitted bayward of each parcel or lot unless permitted by the Harbor Commission or Planning Commission as appropriate.
8. No new, noncommercial piers on Balboa Island shall be permitted, unless approved pursuant to Section 17.35.060.
9. The City shall provide harbor lines, parcel lines, parcel information, utility easements, and other pertinent information associated with the permitting process, via the City of Newport Beach website at: <http://www.newportbeachca.gov>.
10. Permits may be granted for joint ownership piers at the prolongation of common lot lines. The permit for joint ownership piers 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 permit.

B. Setbacks.

1. All piers and slips for residential properties shall be set back a minimum of five feet from the prolongation of the property line.
2. With the prior approval of the City, piers and slips for commercial properties may extend past the prolongation of the property line.
3. The prolongation of the property line bayward of the same bearing from the bulkhead shall generally be used in determining the allowable setbacks for piers and slips. Because there are certain physical conditions which preclude the strict application of this policy without prejudice to adjoining properties, special consideration will be given to areas where precise prolongation of the property line has not been determined and the following conditions exist:
  - a. Where property lines are not approximately perpendicular to the bulkhead line;
  - b. Where curves or angles exist in the bulkhead line;
- c. Where bridges, topography, street ends or publicly owned facilities adjoin the property.
4. Setbacks apply to joint ownership piers with the exception that the slips, floats and piers may extend over the common property line.

C. Patio Decks. Patios are not permitted to extend over the waters of Newport Harbor unless the waters are adjacent to the upland property and outside the areas described in the tidelands trust, and provided the patio complies with the following conditions:

1. The maximum projection of patio decks encroachments beyond the bulkhead line shall be limited to five feet.
2. The minimum setbacks from the prolongations of the side property lines shall be five feet.
3. No float shall be permitted within one foot of the decks.
4. No permanent structure shall be permitted on the projecting portion of the patios except:
  - a. Planters and benches not over sixteen (16) inches in height;
  - b. Railings not over forty-two (42) inches in height with approximately ninety-five (95) percent open area.
5. A harbor and building permit has been obtained.

D. Storage Lockers. Storage lockers and boat boxes may be installed on shore-connected piers and floats subject to the following limitations:

1. The overall height shall not exceed thirty (30) inches when located bayward of residential property zones.
2. The overall height shall not exceed thirty (30) inches when located bayward of commercial and industrial property zones where the piers and floats are used primarily for the mooring of pleasure boats.
3. The overall height shall not exceed sixty (60) inches when located on facilities bayward of commercial and industrial zoned property where the use is not primarily for the mooring of pleasure boats.
4. The overall height shall be measured from the deck of the pier or float to the top of the storage locker and overall height to include the enclosed portion of the locker or box.

E. Safety Requirements.

1. All commercially operated boat docking facilities shall be equipped with firefighting facilities as specified by the Fire Code.
2. Any electrical service upon any pier, dock or float shall be installed under a permit obtained from the Community Development Department.
3. Any domestic water service upon any pier, dock, or float shall be installed under a permit obtained from the City of Newport Beach Community Development Department.
4. All commercial piers, floats or docks used for the loading of passengers shall be lighted in such a manner as to provide an illumination level of ~~five tenths (0.5)~~ three (3) foot candles for all areas used for the loading of such passengers.

F. Encroaching Piers and Floats. In areas where existing piers and floats encroach in front of abutting upland property owned by others, a new permit approved by the Harbor Commission shall be required upon:

1. Any change in type of existing use of the piers and floats;
2. Any change in type of existing use of the abutting upland property owned by the permittee;
3. Any change of existing ownership of the abutting upland property owned by the permittee or upon the death of the permittee;
4. Any destruction of the pier and float in which over sixty (60) percent of the replacement value of the pier and float has been destroyed.

Before the Harbor Commission acts on the new permit, the owner of the abutting upland property, in front of which the harbor facility encroaches, shall be notified in writing of the meeting in which the new permit will be considered.

G. Defective Piers. Upon learning that any pier is in a defective or dangerous condition, the Harbor Resources Manager shall immediately so notify the owner or other person having charge of the same in writing, requiring such person or persons to immediately repair it or to put up barriers to prevent persons from going upon it. If such person shall fail or neglect to do so, the Harbor Resources Manager may place barriers as necessary for the protection of the public and charge the cost thereof to such person, and it shall be a violation of this title for any person to interfere with any such barrier.

If any pier, or any portion thereof, or any material on such pier, shall fall into the waters of Newport Harbor, it shall be the duty of the owner, agent or lessee of such pier to forthwith remove the same from the waters of the harbor and, if they shall fail to do so, the Harbor Resources Manager may do so and the cost thereof may be recovered from the owner, agent, or lessee of such pier in a civil action. (Ord. 2013-27

§ 2, 2013; Ord. 2013-11 §§ 153, 154, 2013; Ord. 2008-2 § 1 (part), 2008)

#### **17.35.30 Bayward Location of Piers and Floats.**

A. Piers and floats may not extend beyond the pierhead line unless approved by Council policy as may be amended from time to time.

B. Piers and floats shall not be permitted on the north side of the channel south of Bay Island.

C. Piers and floats shall not be permitted in the beach area along the northerly side of Lido Isle between the easterly line of Lot 849 and the westerly line of Lot 493.

D. Piers and floats shall not be permitted in the beach area along the southerly side of Lido Isle between the easterly line of Lot 919 and the westerly line of Lot 457. (Ord. 2018-5 § 1, 2018; Ord. 2008-2 § 1 (part), 2008)

#### **17.35.40 Other Structures.**

A. Race Committee Platforms. Race committee platforms and instruction platforms may be constructed bayward of the bulkhead line at recognized yacht clubs and recognized sailing schools. All work shall require issuance of a Harbor Development Permit.

B. Floating Dry Docks ~~and/or Hydro Hoist~~ -Permits for floating dry docks may be approved by the ~~Harbor Resources Division~~ Public Works Department, subject to the following conditions:

1. The location is in waters bayward of commercial, manufacturing or unclassified zones;
2. The prior approval of a Harbor Use Permit by the Harbor Commission;
3. Permits for floating dry docks are issued for one location only. A new permit must be obtained to move a floating dry dock from one location to another location within the harbor. (Ord. 2008-2 § 1 (part), 2008)



#### **17.35.50 Bulkheads.**

A. All bulkheads in residential districts shall be installed on the established bulkhead line or at a location behind the bulkhead line that would preserve the design profile of the harbor. Any retaining or ornamental wall installed landward of the bulkhead line shall be considered a bulkhead if it also serves to contain the waters of the harbor and shall be processed in the same manner as if it were on the bulkhead line. The establishment of bulkhead lines does not necessarily allow the property owner to build to the limits of the bulkhead line, due to the potential environmental considerations established by the State of California and/or the Federal Government.

The ~~Harbor Resources Division~~ City may approve bulkheads located between U.S. Bulkhead Station Nos. 112 and 109, not to exceed the bayward side of the "Vacated East Bay Avenue." U.S. Bulkhead Station No. 104 for the addresses at 2209, 2223, 2227, 2231 and 2233 Bayside Drive: staff recommendation for a bulkhead at these properties shall not exceed a point bayward of the average high tide line established at a point forty (40) feet landward of the face of the bulkhead at the property at 2137 Bayside Drive, and then on a straight line from that point to the bayward most point of the bulkhead at the property at 2301 Bayside Drive.

~~E.B.~~ Bulkheads shall be at the existing height established for the area and shall be connected to adjacent bulkheads. In cases where no adjacent bulkhead or bulkheads exist, a wing wall or wing walls shall be constructed from the bulkhead landward adequate to contain the fill behind the bulkhead.

~~D.C.~~ The height and design of all bulkheads and wing walls shall be subject to the design and construction standards of the Community Development Department.

~~E.D.~~ All bulkhead construction permits shall be subject to a detailed construction drawing being approved by the Community Development Department. Drawings and substantially structural calculations shall be signed by a civil or structural engineer.

~~F.E.~~ The bulkhead shall not be used to support any structure on the abutting upland property unless the bulkhead has been properly designed to carry the additional loads.

~~G.F.~~ In areas where there is existing development and it is of direct benefit to the City to have a bulkhead constructed, the City may contribute one-third (1/3) of the cost of constructing a bulkhead across street ends.

~~H.G.~~ Bulkheads shall be designed and sited to protect the character of the existing shoreline profiles and avoid encroachment onto public tidelands.

~~I.H.~~ Maintenance or replacement of existing bulkheads is permitted when expansion or encroachment into coastal waters is limited to the minimum extent necessary to repair, maintain, or replace an existing bulkhead and the backfill is not used to create new usable residential land areas. (Ord. 2013-11 §§ 155, 156, 2013; Ord. 2008-2 § 1 (part), 2008)

#### **~~17.25.10~~ 17.35.060 Balboa Island—Noncommercial Piers.**

A. No new noncommercial piers on Balboa Island shall be approved unless determined by the ~~Harbor Resources Division~~ Public Works Department and Harbor Commission to be in the public interest. New noncommercial piers, if approved, shall be constructed in strict conformance with this section and the design criteria. Piers presently permitted may be maintained and repaired upon securing a maintenance permit. Any revision of an existing pier or float shall be in strict conformance with this section and shall not be approved if the addition or revision would, in comparison to the existing structure, further restrict or impair the public's use of the bay or beach in the vicinity of the pier or floats.

B. Revision to existing structures shall be limited to the following:

1. The overall square footage of the revised structure shall be equal to or less than the square footage of the permitted structure;
2. The revised structure does not extend beyond the City permit line (the U.S. pierhead line or such

other bayward extension of the permit area that is permitted by this section or the Council policy; and

3. The revised structure is wholly within the original permitted area as specified in the existing permit on file with the City.

- C. Whenever any application to install a new noncommercial pier is submitted to the Harbor Commission, all property owners (according to the latest equalized assessment roll prepared by the County of Orange and available to the City) within three hundred (300) feet of the exterior boundaries of the parcel for which the application is submitted shall be notified in writing by the ~~Harbor Resources Division~~ City of the pending application. The applicant shall provide the Harbor Commission with a list of property owners and envelopes addressed with postage prepaid. (Ord. 2008-2 § 1 (part), 2008)

~~17.35.90~~ **17.35.070 Areas with Special Harbor Permit Regulations.**

- A. Promontory Bay. The following conditions are to be placed on each harbor development permit when approved:
1. That the permittee shall be responsible and maintain the area delineated on the harbor development permit free and clear from floating rubbish, debris or litter at all times;
  2. That the permittee shall be responsible for all maintenance dredging, in accordance with the design profile for Promontory Bay, for the area between the bulkhead line and pierhead line as delineated by the harbor development permit.
- B. Grand Canal. There shall be no permits issued for shore moorings or pier platforms fronting on alleys, avenues or other public easements terminating on the canal. There shall be no new permits issued for shore moorings or pier platforms bayward of those lots at the extreme south end and north end of Grand Canal. The following conditions are to be in effect and placed on each harbor development permit for the Grand Canal:
1. The permittee shall be allowed either one pier platform, or in lieu thereof, two shore mooring type appurtenances per lot. Pier platforms and shore moorings shall be constructed according to the design criteria adopted by the City of Newport Beach.
  2. All vessels (maximum length eighteen (18) feet) moored in the Grand Canal shall be tied off to pier platform structures or shore moorings. Floating platforms or slips will not be allowed. Vessels tied to the bulkhead or by alternate methods not approved by the Harbor ~~Resources Division~~ Department shall be prohibited.
  3. The permittee shall be allowed no more than one vessel per shore mooring.
  4. Any shore mooring approved for the Grand Canal shall display a permit number issued by the Harbor ~~Resources Division~~ Department.
  5. Each vessel tied to any pier platform in the Grand Canal shall be anchored from the stern in such a method as to prevent the vessel from swinging into adjoining vessels or across bayward prolongations of private property lines. (Ord. 2008-2 § 1 (part), 2008)

**17.35.080 Parking Requirements.**

Parking shall be provided pursuant to Title 20 of this Code. (Ord. 2013-11 § 157, 2013; Ord. 2008-2 § 1 (part), 2008)

~~17.35.91~~**17.35.90 17.35.090 Signs.**

No sign permitted on the tidelands shall exceed four square feet in total area except signs permitted pursuant to a lease with the City or under a marine activities permit issued pursuant to Chapter 17.10. (Ord. 2008-2 § 1 (part), 2008)



## Biddle, Jennifer

---

**From:** Jacobs, Carol  
**Sent:** Tuesday, June 11, 2019 12:18 PM  
**To:** Biddle, Jennifer  
**Subject:** Fwd: Title 17 comments

**Follow Up Flag:** Follow up  
**Flag Status:** Completed

For the Commission

Carol Jacobs  
Assistant City Manager  
City of Newport Beach  
(949) 644-3313  
[cjacobs@newportbeachca.gov](mailto:cjacobs@newportbeachca.gov)

Begin forwarded message:

**From:** Jim Mosher <[jimmosher@yahoo.com](mailto:jimmosher@yahoo.com)>  
**Date:** June 11, 2019 at 12:09:08 PM PDT  
**To:** Carol Jacobs <[cjacobs@newportbeachca.gov](mailto:cjacobs@newportbeachca.gov)>  
**Subject:** Title 17 comments

Carol,

Thank you for posting the [updated redline](#) highlighting *all* the changes being proposed to Title 17 at the Harbor Commission's June 12, 2019, meeting.

Regarding the definitions, I think that in the body of the code it would be helpful, as some jurisdictions do, to permanently highlight defined terms in some way (for example by putting them in bold, italics or capital letters -- and ideally to hyperlink them to the definition). That would alert readers to terms that are intended to have a specialized meaning, and conversely give readers confidence that the remaining words were intended to be understood as in common usage.

I remain puzzled by the many definitions that are provided for words not used in Title 17.

\*\*\*

Among those are the definitions related to tidal height [datums](#) in **Subsections 17.01.30.J** ("6" through "9" on page 7 of the new 31 page PDF linked to above).

To put it charitably, they are all fouled up.

In "6" and "8", the parenthetical reference to "diurnal tides" is both irrelevant and confusing. California does not experience [diurnal tides](#) (with a single high and low per

day). We live, instead, in a part of the world with "mixed tides," having two highs and two lows (each of differing magnitude) each day.

"6" misstates the [definition](#) of "Mean High Water." It is not the "*average of the **higher** high water heights*" (one per day), but rather the "*average of the **high** water heights*" (two per day) over the 18.6 cycle of the National Tidal Datum Epoch ([currently](#) 1983-2001).

"8" likewise misstates the definition of "Mean Low Water." It is the average of the two **low** water heights per day, not the average of the single **lower** low water.

"9" mistates the conversions from MLLW to NAVD88, and from MLLW to MSL. According to NOAA's definitive [VDatum tool](#), a reading of 0 MLLW in Newport Harbor equates to approximately **-0.19 feet** NAVD88 (with an estimated [uncertainty](#) of about 8 centimeters [0.3 feet]) -- very different from the number to be ordained in the proposed text. And a reading of 0 MSL (more properly LMSL for "Local" Mean Sea Level) equates to approximately **+2.79 feet** MLLW (representing roughly half the tidal range in the harbor). I do not know where the numbers in the proposed code came from, but it should be understood that none of them are fixed -- indeed, they would be expected to change slightly when NOAA shifts to a new National Tidal Datum Epoch reflective of observations in a more recent 18.6 year period.

\*\*\*

My guess was these definitions are used in, and important to, the [Harbor Design Criteria for Commercial and Residential Facilities](#). However, I find only "MLLW" there, and it doesn't refer to Title 17.

Conversely, I am puzzled by the reference to those Design Criteria in the proposed definition of "Project Line" in "8" on page 9 of the new PDF. The Design Criteria provide nothing I could find to clarify the somewhat inscrutable definition being proposed.

Yours sincerely,

Jim Mosher



**CITY OF**

---

---

# **NEWPORT BEACH**

## **Harbor Commission Staff Report**

June 12, 2018  
Agenda Item No. 6.3

**TO:** HARBOR COMMISSION

**FROM:** Carol Jacobs, Assistant City Manager - 949-644-3313,  
cjacobs@newportbeachca.gov

**TITLE:** Proposed Amendment to Title 17, the Harbor Code, Regarding Offshore  
Mooring Extensions

---

**ABSTRACT:**

The Harbor Commission established their 2018 Goals and Objectives last year. Goal 3.2 is to “Establish policies for modifications to mooring sizes”. As part of this objective, an analysis of all mooring fields under City management was completed. As a result of that analysis, the Harbor Commission subcommittee is recommending changes to Title 17 to establish maximum lengths of vessels in each row of each mooring field.

**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, Chapter 3, because it has no potential for resulting in physical change to the environment, directly or indirectly.
- 2) Approve the proposed changes to the Newport Beach Municipal Code and recommend to the City Council for approval.

**FUNDING REQUIREMENTS:**

There is no fiscal impact related to this item.

**DISCUSSION:**

On July 1, 2017, the City took over the management of the City’s offshore and onshore mooring fields. The City manages over 1,200 moorings in the Harbor and approximately 800 are offshore moorings. Over the past several years, the Harbor Department has received a number of requests for mooring extensions and determined that the City’s Municipal Code did not have a process or method to grant a mooring extension request. This item requests that the Harbor

Commission review and recommend to the City Council adding Section 17.60.040(M) Extension of Length of Assigned Vessel to Offshore Moorings (Attachment A).

At the Harbor Commission meeting of October 10, 2018, the Harbor Commission received a report on the past practice of managing requests for mooring extensions within the City's managed mooring fields. The Commission created a subcommittee consisting of Commissioner Beer and Drayton to develop recommendations for requests for offshore moorings. The subcommittee worked with the City's Harbor Department and Information Technology staff to determine the existing mooring vessel configurations within each field and row. As the subcommittee discovered, there is no best practice for establishing maximum lengths and vessel mixes within mooring fields. In addition, mooring fields are often odd shaped and conditions in each field may vary based on field conditions.

The subcommittee's goals in establishing the maximum lengths is threefold: 1) to ensure the fields are safe and have adequate maneuverability; 2) to maximize the space within the mooring fields in the most effective manner possible and 3) provide staff and the community with guidance for mooring extension requests.

The subcommittee developed a general methodology to establish the maximum size vessels within each row of each mooring field. The maximum lengths were calculated allowing for approximately three boat lengths for maneuverability. Once those distances were determined, the subcommittee then reviewed those lengths with conditions in the fields and revised the three boat length methodology to suit field conditions. The proposed language is Attachment A.

In addition to the Ordinance change, staff has prepared a Harbor Policy that implements the language in the ordinance. The purpose of the policy is to give the Harbor Department and the community clear direction on how mooring extensions may be approved.

The draft policy (Attachment B) will require the Harbormaster to review each request to make a determination if the boat length extension is appropriate for each specific mooring. There are several places in the mooring fields in which the fairway within the field is very narrow, is irregular or the row is adjacent to a public beach or restricted navigational areas and the Harbormaster must use judgement to ensure the boat will not infringe on other mooring permittees.

As the proposed language is new to Title 17, should the Harbor Commission approve the changes, this will be incorporated into the full Harbor Commission recommendations to the City Council.

#### **ENVIRONMENTAL REVIEW:**

Staff recommends the Harbor Commission 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, Chapter 3, because it has no potential for resulting in physical change to the environment, directly or indirectly.

**NOTICING:**

The agenda item has been noticed according to the Brown Act (72 hours in advance of the meeting at which the Harbor Commission considers the item).

**ATTACHMENTS:**

Attachment A – Proposed Ordinance – Title 17

Attachment B – Harbor Policy

# AMENDED

## **FOR DISCUSSION PURPOSES ONLY**

### **Section 17.01.030(J)(12) Definition of Terms shall be amended as follows:**

Mooring Area or Mooring Field. The term “mooring area” or “mooring field” shall mean an area designated for a group of moorings.

### **Section 17.01.030(N)(6) Definition of Terms shall be added as follows:**

Row. A row is defined as a line of parallel or nearly parallel moored boats separated by a fairway.

Fairway. The space between a row of moored boats within a mooring field.

### **Section 17.60.040(M) Extension of Length of Assigned Vessel to Mooring shall be added as follows:**

#### **Extension of Length of Assigned Vessel to Mooring**

1. Request for Extension of Vessel Occupancy Length. If an mooring permittee wishes to moor a vessel other than the assigned vessel that is or will be longer than the assigned vessel, the Harbormaster may amend the existing mooring permit to extend the vessel occupancy length to accommodate a longer vessel up to a maximum of five (5) additional feet upon the terms and conditions set forth below; provided, however, that the Harbormaster may refer such applications to the Harbor Commission for consideration and final action. Applications for the extension of vessel occupancy length in excess of five (5) 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 subsection (M)(5) below.
2. Conditional Approval. An mooring permittee may submit an application to amend an existing mooring permit for a vessel that is known to be longer than the assigned vessel; or for a vessel that is expected to be longer than the assigned vessel if the mooring permittee does not at the time of making an application know the identification of the vessel for which an amendment to the existing mooring permit is being sought. Under either circumstance, the application shall include detailed information of such vessel including make, model, year, Length Overall (LOA), beam, dimension, vessel ID, and if the vessel identification is not known at the time of making an application, the LOA of the proposed vessel for which he or she seeks approval and shall otherwise comply with all of the other application requirements and findings. If the Harbormaster or the Harbor Commission, as applicable, approves an application for an amendment to the mooring permit under this section, such approval shall be conditional and contingent upon the following requirements:

# AMENDED

## Title 17 Revisions re: Mooring Length Extensions – DRAFT FOR DISCUSSION PURPOSES ONLY

Page: 2

- (a) The mooring permittee must occupy the mooring with the new vessel within twelve (12) months following the date of approval;
- (b) 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 following the date of occupancy of the mooring with the new vessel. The sale or transfer of said permit shall comply with the requirements of subsections (B)(3), (E) and (F) of Section 17.60.040.

Non-compliance with either of the foregoing requirements will constitute grounds for the Harbormaster to revoke the amendment to the mooring permit in accordance with Subsection 17.60.040(K). In the event that the Harbormaster determines that there are grounds to revoke the amendment to the mooring permit issued pursuant to this chapter, the Harbormaster shall proceed in the manner described by Section 17.70.020. Upon revocation, it shall be the duty of the mooring permittee to remove the moored vessel and, upon such revocation, to return the mooring area where vessel was assigned to its original length at the mooring permittee's expense within 30-days of written notification to do so. Rather than reverting back to the City upon such revocation, the mooring permittee may thereafter continue to use the mooring in accordance with all of the terms and conditions of the original mooring permit and subject to all of the terms and provisions of Title 17 applicable to mooring permits.

- 3. Filing and Review of Request. An mooring permittee shall file a written request for 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.
- 4. Application Requirements. An application for an extension of the vessel occupancy length shall include the following information in addition to such other information as may be required by the Harbormaster:
  - (a) The full identification of the applicant and the vessel for which an amendment to the existing mooring permit 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 appropriate 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;

# AMENDED

## Title 17 Revisions re: Mooring Length Extensions – DRAFT FOR DISCUSSION PURPOSES ONLY

Page: 3

- (b) Such plans and specifications as may be required by the Harbormaster for such mooring to accommodate the proposed longer vessel; and
  - (c) Evidence in support of the findings included in subsection 5, below.
- 5. Action on Extension Request. Upon receipt of a completed application for an extension of the assigned vessel occupancy length, the Harbormaster or the Harbor Commission, as applicable, may approve or conditionally approve an amendment to the mooring permit to allow the extension of the vessel occupancy length (in the event of an application for an unidentified vessel only a conditional approval may be obtained) only after first finding the following:
  - a. There have been no changes in the conditions or circumstances of the existing mooring permit so that there would have been grounds for denial of the original 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 will not: (i) impede or obstruct the fairways or channels or prevent or obstruct the passage of other vessels between or adjacent to 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) extend beyond the outer boundaries of the mooring area or row, (iv) exceed the intended vessel LOA established by the Harbor Commission for the row or mooring area in which the vessel will be moored, and (v) exceed the lesser of the maximum length of other vessels in the same row or one third the sum total of the width of the mooring row plus the widths of both adjacent fairways as adopted by resolution of the Harbor Commission. In the event there is only one adjacent fairway then such proposed extension will not exceed one third the sum total of the mooring row width plus two times the one adjacent fairway width as adopted by resolution of the Harbor Commission. However, the Harbor Commission has adopted certain exceptions that are set forth in Harbor Commission Policy based upon site conditions, which will be considered for determining mooring lengths.
  - c. In the event of a mooring transfer by a Permittee, the new Permittee's vessel LOA shall not exceed one third the sum total of the width of the mooring row plus the widths of both adjacent fairways as set forth above in subsection (M)(5)(b)(v), and conform with the provisions set forth in Section 17.60.040 (E), unless an exception has otherwise been set forth in the Harbor Commission Policy referenced above in subsection (M)(5)(b)(v).
  - d. The applicant and the assigned vessel have complied with all of the appropriate United States Coast Guard license, inspection, and certification requirements for



# AMENDED

Title 17 Revisions re: Mooring Length Extensions – **DRAFT FOR DISCUSSION PURPOSES ONLY**

Page: 4

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.

- e. The applicant agrees to cover all costs associated with modifying the length of the mooring, including, but not limited to, any costs associated with relocating mooring anchors and tackle, and any costs associated with re-sizing mooring tackle to meet applicable mooring standards (e.g. chain size).

DRAFT

## **PROPOSED ADDITION TO TITLE 17**

### **Section 17.01.030(J)(12) Definition of Terms shall be amended as follows:**

Mooring Area or Mooring Field. The term “mooring area” or “mooring field” shall mean an area designated for a group of moorings.

### **Section 17.01.030(N)(6) Definition of Terms shall be added as follows:**

Row. A row is defined as a line of parallel or nearly parallel moored boats separated by a fairway.

Fairway. The space between a row of moored boats within a mooring field.

### **Section 17.60.040(M) Extension of Length of Assigned Vessel to Offshore Mooring shall be added as follows:**

#### **Extension of Length of Assigned Vessel to Offshore Mooring**

1. Request for Extension of Vessel Occupancy Length. If an offshore mooring permittee wishes to moor a vessel other than the assigned vessel that is or will be longer than the assigned vessel, 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 (5) additional feet upon the terms and conditions set forth below; provided, however, that the Harbormaster may refer such applications to the Harbor Commission for consideration and final action. Applications for the extension of vessel occupancy length in excess of five (5) 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 subsection 5, below.
2. Conditional Approval. An offshore mooring permittee may submit an application to amend an existing offshore mooring permit for a vessel that is known to be longer than the assigned vessel; or for a vessel that is expected to be longer than the assigned vessel if the offshore mooring permittee does not at the time of making an application know the identification of the vessel for which an amendment to the existing offshore mooring permit is being sought. Under either circumstance, the application shall include detailed information of such vessel including make, model, year, Length Overall (LOA), beam, dimension, vessel ID, and if the vessel identification is not known at the time of making an application, the Length Overall (LOA) of the proposed vessel for which the applicant seeks approval and shall otherwise comply with all of the other application requirements and findings. 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:

- (a) The mooring permittee must occupy the mooring with the new vessel within twelve (12) months following the date of approval;
- (b) 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 following the date of occupancy of the mooring with the new vessel. The sale or transfer of said permit shall comply with the requirements of subsections (B)(3), (E) and (F) of Section 17.60.040.

Non-compliance with either of the foregoing requirements will constitute grounds for the Harbormaster to revoke the amendment to the mooring permit in accordance with Subsection 17.60.040(K). In the event that the Harbormaster determines that there are grounds to revoke the amendment to the mooring permit issued pursuant to this chapter, the Harbormaster shall proceed in the manner described by Section 17.70.020. Upon revocation, it shall be the duty of the mooring permittee to remove the moored vessel and, upon such revocation, to return the mooring area where vessel was assigned to its original length at the mooring permittee's expense within 30-days of written notification to do so. Rather than reverting back to the City upon such revocation, 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 Title 17 applicable to mooring permits.

- 3. Filing and Review of Request. An offshore mooring permittee shall file a written request for 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.
- 4. Application Requirements. An application for an extension of the vessel occupancy length shall include the following information in addition to such other information as may be required by the Harbormaster:
  - (a) The full identification of the applicant and the vessel for which an amendment to the existing offshore mooring permit 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 appropriate 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;
  - (b) Such plans and specifications as may be required by the Harbormaster for such mooring to accommodate the proposed longer vessel; and

(c) Evidence in support of the findings included in subsection 5, below.

5. Action on Extension Request. Upon receipt of a completed application for an extension of the assigned vessel occupancy length, 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) only after first finding the following:
  - 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 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) extend beyond the outer boundaries of the mooring area or row, (iv) exceed the intended vessel LOA established by the Harbor Commission for the row or mooring area in which the vessel will be moored, and (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.
  - d. The applicant agrees to cover all costs associated with modifying the length of the mooring, including, but not limited to, any costs associated with relocating mooring anchors and tackle, and any costs associated with re-sizing mooring tackle to meet applicable mooring standards (e.g. chain size).



# Newport Beach Harbor Department

## Policy and Procedure Manual

### REQUEST FOR MOORING EXTENSION

#### 1.0 Purpose

- 1.1 The purpose of this policy is to provide a fair and consistent process for reviewing requests for a mooring extension within the City's managed offshore mooring fields. This policy ensures implementation of the City of Newport Beach Municipal Code.

#### 2.0 Scope

- 2.1 This policy is for all moorings managed by the City of Newport Beach.

#### 3.0 Policy

- 3.1 It is the policy of the Harbor Department to maintain and manage the City's mooring fields. It is the responsibility of the Harbor Department to maintain an adequate supply of moorings at all vessel lengths to support the many recreational users in the Harbor.
- 3.2 It is the policy of the Harbor Department to ensure adequate maneuverability for all vessels located within the City's mooring fields.
- 3.3 It is the policy of the City of Newport Beach to best utilize the space within the mooring fields for use by mooring permittees and the public.

#### 4.0 Definitions

- 4.1 Row. A row is defined as a line of parallel or nearly parallel moored boats separated by a fairway.
- 4.2 Fairway. The space between a row of moored boats within a mooring field.
- 4.3 Length Overall (LOA) is the length including all vessel attachments, which may include bowsprits, swim steps or stern mounted dinghies. LOA is used to determine the maximum vessel length that can fit in any particular slip, mooring or side tie.
- 4.4 Maximum Vessel Length. The longest a vessel can be within any given row. This is established by the Harbor Commission upon recommendation by the Harbormaster.

#### 5.0 Procedures

- 5.1 A Mooring Permittee shall in writing complete a Request for Mooring Extension form providing all requested information.
- 5.2 The Harbormaster shall review the request for compliance with all Title 17 Regulations and the approved list of Maximum Vessel Lengths by Field and Row to determine if the request can be granted (Attachment A).
- 5.3 If the request does not exceed the maximum length in the mooring field row per Attachment A, the Harbormaster may approve up to a five-foot extension.
- 5.4 If the request is for more than five feet, and within the maximum vessel lengths, the Harbor Commission will decide the issue.
- 5.5 The decision of the Harbor Commission may be appealed to the City Council if denied.
- 5.6 The Harbor Commission may periodically review the Maximum Vessel Lengths set forth in Attachment A and update as necessary.
- 5.7 Exceptions may be made based on end-tie or proximity to the channel, public beaches and footprint of the mooring field and general navigational considerations.

## 6.0 Revision History

Date	Description of Change
-	Initial Release of Policy/Procedure
00/00/0000	Edit/Update to New Policy Format

## Appendix A



**CITY OF NEWPORT BEACH  
MAXIMUM VESSEL LENGTHS  
IN CITY MOORING FIELDS**

MOORING FIELD/ROW	MAXIMUM VESSEL LENGTH BASED ON 1/3 TOTAL WIDTH	MAXIMUM VESSEL LENGTH IN ROW AT 05/31/19	GUIDANCE FOR EXCEPTIONS TO MAXIMUM LENGTH BASED UPON SITE CONDITIONS
A-01	40	45	40
A-02	53	55	45
A-03	52	45	45
A-04	54	50	50
A-05	49	60	50
A-06	50	50	45
A-07	66	50	50
A-08	87	95	90
A-09	77	80	55
A-10	63	50	50
A-11	54	45	45
A-12	56	55	55
A-13	36	50	50
A-14	32	45	45
A-15	64	60	40
A-16	71	65	65
A-17	67	55	55
A-18	65	45	50
A-19	61	50	50
A-20	61	50	50
A-21	61	70	60
A-22	59	55	55
A-23	63	55	55
A-24	64	50	50
A-25	68	75	60
A-26	72	50	50
A-27	59	50	50
A-28	46	55	40





CITY OF NEWPORT BEACH  
MAXIMUM VESSEL LENGTHS  
IN CITY MOORING FIELDS

MOORING FIELD/ROW	MAXIMUM VESSEL LENGTH BASED ON 1/3 TOTAL WIDTH	MAXIMUM VESSEL LENGTH IN ROW AT 05/31/19	GUIDANCE FOR EXCEPTIONS TO MAXIMUM LENGTH BASED UPON SITE CONDITIONS
B-01	38	55	45
B-02	52	40	45
B-03	54	45	45
B-04	53	45	45
B-05	55	60	45
B-06	59	50	50
B-07	47	50	45
B-08	51	60	40
B-09	42	60	50
B-10	35	40	40
B-11	58	55	55
B-12	53	45	45
B-13	43	45	43
B-14	38	45	38
B-15	46	65	46
B-16	42	40	40
B-17	37	50	37
B-18	35	45	35
B-19	41	45	45



CITY OF NEWPORT BEACH  
MAXIMUM VESSEL LENGTHS  
IN CITY MOORING FIELDS

MOORING FIELD/ROW	MAXIMUM VESSEL LENGTH BASED ON 1/3 TOTAL WIDTH	MAXIMUM VESSEL LENGTH IN ROW AT 05/31/19	GUIDANCE FOR EXCEPTIONS TO MAXIMUM LENGTH BASED UPON SITE CONDITIONS
C-01	90	75	75
C-02	65	60	60
C-03	55	75	55
C-04	65	45	45
C-05	59	50	50
C-06	48	50	45
C-07	54	55	50
C-08	60	50	45
C-09	43	55	40



**CITY OF NEWPORT BEACH  
MAXIMUM VESSEL LENGTHS  
IN CITY MOORING FIELDS**

MOORING FIELD/ROW	MAXIMUM VESSEL LENGTH BASED ON 1/3 TOTAL WIDTH	MAXIMUM VESSEL LENGTH IN ROW AT 05/31/19	GUIDANCE FOR EXCEPTIONS TO MAXIMUM LENGTH BASED UPON SITE CONDITIONS
D-01	27	50	30
D-02	38	45	38
D-03	30	30	30
D-04	44	40	40
D-05	44	50	44
D-06	42	40	40
D-07	36	45	36
D-08	30	30	30
D-09	43	40	40
D-10	52	45	40
D-11	42	40	40
D-12	49	40	45
D-13	54	60	54
D-14	36	40	40
D-15	36	50	36
D-16	38	50	38
D-17	48	40	40
D-18	69	50	50
D-19	58	50	50
D-20	42	60	42
D-21	51	50	51
D-22	41	40	41
D-23	42	45	42
D-24	40	40	40
D-25	52	40	40
D-26	69	50	69
D-27	42	65	50



CITY OF NEWPORT BEACH  
MAXIMUM VESSEL LENGTHS  
IN CITY MOORING FIELDS

MOORING FIELD/ROW	MAXIMUM VESSEL LENGTH BASED ON 1/3 TOTAL WIDTH	MAXIMUM VESSEL LENGTH IN ROW AT 05/31/19	GUIDANCE FOR EXCEPTIONS TO MAXIMUM LENGTH BASED UPON SITE CONDITIONS
F-01	52	70	52
F-02	50	50	50
F-03	53	75	53
F-04	56	50	50
F-05	52	45	50
F-06	57	60	57
F-07	59	60	59
F-08	52	65	52
F-09	65	60	65
F-10	70	65	65



CITY OF NEWPORT BEACH  
MAXIMUM VESSEL LENGTHS  
IN CITY MOORING FIELDS

MOORING FIELD/ROW	MAXIMUM VESSEL LENGTH BASED ON 1/3 TOTAL WIDTH	MAXIMUM VESSEL LENGTH IN ROW AT 05/31/19	GUIDANCE FOR EXCEPTIONS TO MAXIMUM LENGTH BASED UPON SITE CONDITIONS
H-01	66	60	60
H-02	68	65	60
H-03	56	60	56
H-04	46	50	46
H-05	44	50	44
H-06	41	50	41
H-07	50	50	50
H-08	42	60	42



CITY OF NEWPORT BEACH  
MAXIMUM VESSEL LENGTHS  
IN CITY MOORING FIELDS

MOORING FIELD/ROW	MAXIMUM VESSEL LENGTH BASED ON 1/3 TOTAL WIDTH	MAXIMUM VESSEL LENGTH IN ROW AT 05/31/19	GUIDANCE FOR EXCEPTIONS TO MAXIMUM LENGTH BASED UPON SITE CONDITIONS
J-01	43	50	45
J-02	62	70	55
J-03	53	45	45
J-04	37	50	40
J-05	42	40	40
J-06	49	55	40
J-07	50	50	45
J-08	54	50	50
J-09	64	70	50
J-10	61	70	50
J-11	41	55	50



CITY OF NEWPORT BEACH  
MAXIMUM VESSEL LENGTHS  
IN CITY MOORING FIELDS

MOORING FIELD/ROW	MAXIMUM VESSEL LENGTH BASED ON 1/3 TOTAL WIDTH	MAXIMUM VESSEL LENGTH IN ROW AT 05/31/19	GUIDANCE FOR EXCEPTIONS TO MAXIMUM LENGTH BASED UPON SITE CONDITIONS
K-01	42	50	42
K-02	45	60	45
K-03	44	50	44
K-04	43	50	43
K-05	46	50	46
K-06	44	40	44
K-07	46	50	46
K-08	52	50	52
K-09	55	50	50
K-10	67	45	45
K-11	60	65	60



# **CITY OF NEWPORT BEACH**

## **Harbor Commission Staff Report**

June 12, 2019  
Agenda Item No. 6.4

**TO:** HARBOR COMMISSION

**FROM:** Carol Jacobs, Assistant City Manager, 949-644-3313  
[cjacobs@newportbeachca.gov](mailto:cjacobs@newportbeachca.gov)

**TITLE:** Consideration of Revision to Title 17 – Live-Aboard Definition

---

### **ABSTRACT:**

The City Council requested that the Harbor Commission Review Title 17- Harbor Code, of the Newport Beach Municipal Code in February of 2018. The Harbor Commission appointed an ad hoc subcommittee comprised of Commissioners Kenny, Blank and Yahn. The ad hoc subcommittee is requesting the Harbor Commission review the definition of live-aboard.

### **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, Chapter 3, because it has no potential for resulting in physical change to the environment, directly or indirectly.
- 2) Provide direction to staff on any recommendations to the City Council.

### **FUNDING REQUIREMENTS:**

There is no fiscal impact related to this item.

### **DISCUSSION**

At the request of City Council, the Harbor Commission was tasked with revising and updating Title 17- Harbor Code. The purpose of this revision was to review the code in light of the City's new Harbor Department and increased service levels.

The Harbor subcommittee held two public meetings during the review of Title 17 from Chapter 17.01 (Definitions) through 17.35 (Harbor Development Regulations). The meetings were held on April 8, 2019 and May 6, 2019.

At the first public meeting, the representation of those in attendance was heavily weighted toward mooring permittees. A healthy discussion ensued regarding the definition of a Live-Aboard. The



current definition is found in section 17.01.030 – Definitions of Terms – L3 – *“Live-Aboard. The term “live-aboard” shall mean the use or occupancy of a vessel as a domicile for a period exceeding seventy-two (72) hours in any thirty (30) day period.”*

Many of those in attendance thought that the three-night stay was too restrictive and many in the audience requested that they wanted more days to enjoy their boats on their moorings. The consensus was eleven or twelve nights per month, which would basically allow permittees to spend every weekend on their boats.

During the second outreach meeting, a number of homeowners raised concerns that permittees staying on their boats at night can cause issues and diminishes the quiet enjoyment of their homes.

When the subcommittee reviewed the comments from both perspectives, it was uncomfortable in making a recommendation to the Harbor Commission due to the very strong feelings of both the homeowners and permittees and believe this issue should be heard by the full Harbor Commission so that each side may express their concerns and issues on the subject.

#### **ENVIRONMENTAL REVIEW:**

Staff recommends the Harbor Commission find this action is not subject to the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment) and 15060(c)(3) (the activity is not a project as defined in Section 15378) of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, because it has no potential for resulting in physical change to the environment, directly or indirectly.

#### **NOTICING REQUIREMENT:**

The agenda item has been noticed according to the Brown Act (72 hours in advance of the meeting at which the Harbor Commission considers the item).



== CITY OF ==

# NEWPORT BEACH

## Harbor Commission Staff Report

June 12, 2019  
Agenda Item No. 6.5

**TO:** HARBOR COMMISSION

**FROM:** Kurt Borsting, Harbormaster, 949-270-8158  
[kborsting@newportbeachca.gov](mailto:kborsting@newportbeachca.gov)

**TITLE:** Harbor Commission 2018 Objectives: Ad Hoc Committee Updates

---

**ABSTRACT:**

Each ad hoc committee studying their respective Functional Area within the Commission's 2018 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, Chapter 3, because it has no potential for resulting in physical change to the environment, directly or indirectly.
2. Receive and file.

**FUNDING REQUIREMENTS:**

There is no fiscal impact related to this item.

**ENVIRONMENTAL REVIEW:**

Staff recommends the Harbor Commission find this action is not subject to the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment) and 15060(c)(3) (the activity is not a project as defined in Section 15378) of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, because it has no potential for resulting in physical change to the environment, directly or indirectly.

The agenda item has been noticed according to the Brown Act (72 hours in advance of the meeting at which the Harbor Commission considers the item).

**ATTACHMENTS:**

Attachment A – Harbor Commission 2018 Objectives



## City of Newport Beach

---

### Harbor Commission Purpose & Charter

Newport Harbor supports numerous recreational and commercial activities, waterfront residential communities and scenic and biological resources. The purpose of the Harbor Commission is to provide the City of Newport Beach with an advisory body representing these diverse uses of Newport Harbor and its waterfront.

1. Advise the City Council in all matters pertaining to the use, control, operation, promotion and regulation of all vessels and watercraft within Newport Harbor.
2. Approve, conditionally approve, or disapprove applications on all harbor permits where the City of Newport Beach Municipal Code assigns the authority for the decision to the Harbor Commission.
3. Serve as an appellate and reviewing body for decisions of the City Manager on harbor permits, leases, and other harbor-related administrative matters where the City of Newport Beach Municipal Code assigns such authority to the Harbor Commission.
4. Advise the City Council on proposed harbor-related improvements.
5. Advise the Planning Commission and City Council on land use and property development applications referred to the Harbor Commission by the City Council, Planning Commission, or the City Manager.
6. Make recommendations to the City Council for the adoption of regulations and programs necessary for the ongoing implementation of the goals, objectives, policies of the Harbor and Bay Element of the General Plan, the Harbor Area Management Plan, and the Tidelands Capital Plan.
7. Advise the City Council on the implementation of assigned parts of the Tidelands Capital Plan such as:
  - Dredging priorities
  - In-bay beach sand replenishment priorities
  - Harbor amenities such as mooring support service areas and public docks

### Harbor Commission - 2018 Objectives

The following objectives are intended to support the mission of the Harbor Area Management Plan and the two most essential responsibilities of the Harbor Commission: (1) Ensuring the long-term welfare of Newport Harbor for all residential, recreational, and commercial users; (2) Promoting Newport Harbor as a preferred and welcoming destination for visitors and residents alike.

These calendar year 2018 Objectives are subject to the review and approval of the Commission, and final approval by the Newport Beach City Council. Harbor Commission ad hoc committees, as established by the Commission, bear principal responsibility for coordinating the Commission's efforts, along with staff support, in achieving these Objectives.

**City of Newport Beach - Harbor Commission**  
**2018 Objectives**  
Updated July 12, 2018

2018 Objectives	Functional Area
<p><b>1.1 Identify sustainable low-cost solutions to dredge the deep-water channels throughout the harbor.</b></p> <p><b>1.2 Identify opportunities to streamline the RGP54 permit process.</b></p> <p><b>1.3 Evaluate options for near shore dredging. Establish a sustainable program that consistently nourishes harbor beaches on a yearly basis.</b></p>	<p><b>1.0 Harbor Dredging</b>  (<i>Cunningham</i>, Drayton)</p> <p><i>Advise the City Council on:</i></p> <ul style="list-style-type: none"> <li>○ <i>Dredging methodologies</i></li> <li>○ <i>Dredging priorities</i></li> <li>○ <i>Eelgrass protection</i></li> <li>○ <i>Beach re-nourishment</i></li> </ul>
<p><b>2.1 Evaluate current enforcement of applicable City codes throughout the harbor. Report back to Commission by July.</b></p> <p><b><u>Future Priorities</u></b></p> <ul style="list-style-type: none"> <li>A. Work with Harbormaster's office to evaluate mooring management and oversight.</li> <li>B. Identify and address derelict vessels in the harbor.</li> </ul>	<p><b>2.0 Harbor Operations and Management</b>  (<i>Drayton</i>, Beer &amp; Yahn)</p> <ul style="list-style-type: none"> <li>○ <i>Matters pertaining to use, control, operation, promotion, regulation of all vessels and watercraft.</i></li> </ul>
<p><b>3.1 Evaluate potential enhancements to city amenities provided to mooring permittees, residents and visitors.</b></p> <p><b>3.2 Establish policies for modifications to mooring size.</b></p> <p><b><u>Future Priorities</u></b></p> <ul style="list-style-type: none"> <li>A. Complete evaluation for establishing day moorings off Big Corona beach.</li> <li>B. Evaluate options to consolidate and reduce the footprint of current mooring fields.</li> </ul>	<p><b>3.0 Harbor Amenities and Capital Improvements (Mooring Fields, Shore Facilities, Docks)</b>  (<i>Beer</i>, Drayton)</p> <ul style="list-style-type: none"> <li>○ <i>Advise the City Council on proposed harbor-related improvements.</i></li> <li>○ <i>Advise the City Council on harbor amenities such as mooring support service areas and public docks.</i></li> </ul>
<p><b>4.1 Review and update City Municipal Codes, Title 17, Harbor Policies 1-5 and Marine Activities Permits.</b></p> <p><b>4.2 Secure California Department of Recreation approval for an amendment to the Harbor Code granting an exception to the harbor speed limit for sanctioned sail racing and human powered racing events. With such authorization, recommend a Harbor Code amendment to the City Council.</b></p>	<p><b>4.0 Harbor Policies, Codes, Regulations</b>  (<i>Kenney</i>, Blank &amp; Yahn)</p> <ul style="list-style-type: none"> <li>○ <i>Approve, conditionally approve, or disapprove applications on all harbor permits.</i></li> <li>○ <i>Serve as an appellate and reviewing body for decisions on harbor permits, leases, and other harbor-related administrative matters.</i></li> </ul>

**City of Newport Beach - Harbor Commission**  
**2018 Objectives**  
Updated July 12, 2018

2018 Objectives	Functional Area
<p><b>5.1 Establish a dialogue with representatives of the Harbor Charter Fleet industry, other commercial vessel operators and rental concessionaires to promote best practices for charter and commercial boat operations in Newport Harbor with particular attention to vessel specifications, noise and pollution control/compliance and long-range plans for berthing.</b></p> <p><b>5.2 Review current rental concessionaires for safety and regulatory compliance (e.g. unpermitted rental operations for SUP's).</b></p>	<p><b>5.0 Commercial, Recreational and Educational Activities</b>  (<i>Girling</i>, Kenney)</p> <ul style="list-style-type: none"> <li>○ <i>Matters pertaining to use, control, operation, promotion, regulation of all vessels and watercraft.</i></li> <li>○ <i>Serve as an appellate and reviewing body for decisions of the City Manager on harbor permits, leases, and other harbor-related administrative matters.</i></li> </ul>
<p><b>6.1 Draft a Harbor Plan that can be used independently or in conjunction with an update to the General Plan and/or Harbor Area Management Plan (HAMP). Specific attention should be paid to state requirements including conservation for harbors, MLPA/MPAs and fisheries and work previously done by the Harbor Commission related to preservation of marine related activities and businesses in Newport Harbor and the Harbor Financial Master Plan.</b></p> <p><b><u>Future Priorities</u></b></p> <p>A. Create a Vision Statement for the Harbor describing the purposes, uses and characteristics in the year 2050. Reference how that Vision aligns with the current two most essential responsibilities of the Harbor Commission: (1) Ensuring the long-term welfare of Newport Harbor for all residential, recreational, and commercial users; (2) Promoting Newport Harbor as a preferred and welcoming destination for visitors and residents alike.</p>	<p><b>6.0 Long Term Vision for Harbor</b>  (Harbor Strategic Planning)  (<i>Blank</i>, Cunningham)</p> <ul style="list-style-type: none"> <li>○ <i>Advise the City Council on the City General Plan.</i></li> </ul>



# CITY OF NEWPORT BEACH

## Harbor Commission Staff Report

June 12, 2019  
Agenda Item No. 6.6

**TO:** HARBOR COMMISSION

**FROM:** Kurt Borsting, Harbormaster, (949) 270-8158  
[kborsting@newportbeachca.gov](mailto:kborsting@newportbeachca.gov)

**TITLE:** Harbormaster Update – May 2019

---

### **ABSTRACT:**

The Harbormaster is responsible for on-water management of the City's moorings, the Marina Park Marina and code enforcement on the water. This report will update the Commission on the Harbor Department's activities for May, 2019.

### **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, Chapter 3, because it has no potential for resulting in physical change to the environment, directly or indirectly.
- 2) Receive and file.

### **FUNDING REQUIREMENTS:**

There is no fiscal impact related to this item.

### **DISCUSSION:**

#### **Public Docks - Public Information and Enforcement Efforts**

Public information and enforcement efforts continued with the local boating community at the Harbor's public docks. Informational sandwich boards were relocated to different docks at the start of May, to reach different Harbor users. These poster style displays are intended to inform users about posted dock time limits and use expectations. The displays also state that non-compliance with the posted time limits can result in vessel impounds.

Individual public dock time limit notices were affixed to 201 boats during the month of May (106 boats at 15<sup>th</sup> Street Dock; 60 boats at 19<sup>th</sup> Street Dock; and 35 boats at Fernando

Street Dock). Ninety-seven percent of the boats receiving these notices made use of the docks as intended, departing the docks within posted time limits. Six boats overstayed the posted time limits during the May enforcement period and were subsequently impounded by Harbor Department staff.

Approximately 24 linear feet at the 15<sup>th</sup> Street Public Dock, formerly designated as a “72 hour zone” was reallocated as a “24 hour zone”, following the approval of this modification at the May 2019 Harbor Commission meeting. Staff will be actively monitoring boat movement in this area to determine if the desired outcome (greater utilization of the dock) is being achieved.

### **Harbor Department – Expanded Summer Schedule**

On-water scheduling of Harbor Department staff was expanded effective May 1. Sunday through Wednesday coverage is now being scheduled until 7:30 p.m., and Thursday through Saturday coverage is being scheduled until 8:30 p.m.

This change results an additional seventeen (17) hours of weekly Harbor Department on-water coverage vs. the former winter/spring staffing schedule. The department’s Marina Park office hours remain unchanged, however customer service telephone lines are forwarded to field staff when the office closes at 5 pm each night.

### **Anchorage Raft-Up Activities**

Two raft-up events (each comprised of 10 to 12 participating vessels) took place in the Harbor’s anchorage area during the Memorial Day holiday weekend. Both events were successful, taking place without incident.

Scheduling two large-scale programs concurrently within the anchorage, during what was expected to be a busy weekend, allowed Harbor Department staff to evaluate a standing operational practice of hosting no more than two large raft-ups on any given day. This principle was originally established by the Orange County Sheriff’s Department during their tenure overseeing the anchorage, and has continued following the transition to the Harbor Department’s oversight.

Adverse weather conditions during the holiday weekend made it difficult to fully assess overall use of the anchorage between casual users and scheduled/permitted activities.

Harbor Department staff believe the practice of limiting the overall number of scheduled events held in the anchorage should continue unchanged, while additional monitoring also takes place.

### **Customer Satisfaction Survey**

During May 2019, twelve (12) customer satisfaction surveys were completed and returned to the Harbor Department office associated with visiting boaters at the Marina Park Guest Slips. A summary of the feedback/data received from these customers is attached as part of this report.



### **Community Service Project – Monofilament (Fishing Line) Recycling Bins**

On Thursday, May 30 2019, four middle-school students from Pasadena's Polytechnic School, presented the Harbor Department with three monofilament recycling bins, which they built as part of a class-related community service project. The students proposed this project to the Harbor Department, following one of them having observed fishing line regularly left on the public dock near their Newport Beach home. Because monofilament fishing line is non-biodegradable, improperly disposed of material can entangle and injury local wildlife and can damage vessel props within the Harbor. The three recycling bins will be installed on a trial basis at various locations in the Harbor.

### **Staff Recruitment Effort**

Part-time Harbor Department staff recruitment efforts were completed in late May, resulting in seven conditional offers of employment being extended. As of June 4, 2019, one of these new staff members has completed the City's on-boarding process and is now taking part in orientation and training activities. The remaining new team members are expected to complete their on-boarding within the next two weeks. A diverse set of qualified individuals were selected through this recruitment effort, many of whom bring with them familiarity of Newport Harbor, as well as customer service and operations experiences in various marine settings.

### **Code Enforcement Activity**

During May 2019, Code Enforcement staff opened 61 new cases and successfully resolved/closed 37 existing files.

### **ENVIRONMENTAL REVIEW:**

Staff recommends the Harbor Commission 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, Chapter 3, because it has no potential for resulting in physical change to the environment, directly or indirectly.

### **NOTICING:**

The agenda item has been noticed according to the Brown Act (72 hours in advance of the meeting at which the Harbor Commission considers the item).

### **ATTACHMENTS:**

Attachment A – Marina Park Guest Slip Customer Survey Results for May 2019  
Attachment B – Harbor Department Statistics, Fiscal Year through May 2019

**Marina Park Guest Slips**  
**Customer Satisfaction Survey**  
**Responses for May 2019**

**Question #1 - My experience was as a...**

Visiting Boater = 9 (75%)  
 Local Boater = 3 (25%)  
 Other = 0 (0%)

**Question #2 – Overall, I was satisfied with my stay...**

Strongly Agree = 11 (92%)	Somewhat Disagree = 0 (0%)
Agree = 1 (8%)	Strongly Disagree = 0 (0%)
Neutral = 0 (0%)	

**Question #3 – I received the quality and value I expected for the cost...**

Strongly Agree = 12 (100%)	Somewhat Disagree = 0 (0%)
Agree = 0 (0%)	Strongly Disagree = 0 (0%)
Neutral = 0 (0%)	

**Question #4 – I was pleased with the overall appearance and condition of the Marina Park Guest Slips...**

Strongly Agree = 12 (100%)	Somewhat Disagree = 0 (0%)
Agree = 0 (0%)	Strongly Disagree = 0 (0%)
Neutral = 0 (0%)	

**Question #5 – Please check all of the services that you used during your stay...**

Restrooms/Shower = 11 (92%)	Lighthouse Bayview Café = 10 (83%)
In-Slip Pump Out = 2 (17%)	On-Site Beach, Playground or Park Areas = 7 (58%)
On-Site Washer/Dryer = 0 (0%)	Nearby Dining, Entertainment or Commercial = 11 (92%)
Complementary Wi-Fi = 8 (67%)	

**Question #6 – The condition of the restroom/shower...**

Excellent = 9 (75%)	Below Par = 0 (0%)
Good = 2 (17%)	Unacceptable = 0 (0%)
Just OK = 0 (0%)	No Response = 1 (8%)

**Question #7 – The condition of the Marina Park facilities and grounds...**

Excellent = 12 (100%)	Below Par = 0 (0%)
Good = 0 (0%)	Unacceptable = 0 (0%)
Just OK = 0 (0%)	

**Question #8 – I was satisfied with the level of care and commitment shown by Harbor Department staff...**

Strongly Agree = 12 (100%)	Somewhat Disagree = 0 (0%)
Agree = 0 (0%)	Strongly Disagree = 0 (0%)
Neutral = 0 (0%)	

**Question #9 – I will return and/or recommend your facility to other boaters...**

Strongly Agree = 11 (92%)	Somewhat Disagree = 0 (0%)
Agree = 1 (8%)	Strongly Disagree = 0 (0%)
Neutral = 0 (0%)	

**Question #10 – Please tell us what you liked best about your stay at the Marina Park Guest Slips...**

- “Staff was very attentive, friendly”
- “We really appreciate the attention and attitudes of staff – specifically Ryan – always a pleasure”
- “The assistance provided by the harbor masters”
- “Helpful staff. Clean. Nice that you could lock the shower door. Very polite staff – acted like they enjoyed helping us.”
- “Employees are tops! Thank you.”
- “Friendly staff”
- “We came to Marina Park right after it opened – Ryan makes our stay very enjoyable – like always.”
- “We have stayed here numerous times since first opened. It is a favorite destination for us.”

**Question #10 – Please tell us what was not up to par about your stay...**

- “Toilet Paper Men’s Restroom”
- “Nothing”
- “I could not get my blow dryer to fit into your bathroom socket – not sure why...”
- “Slip 13 – the electrical was not working – so we plugged into #12 instead.”

**Question #11 – Comments / Suggestions**

- “Keep it up!”
- “Harbor Master was excellent! Ryan very helpful. Very hard worker, very pleasant.”
- “Ryan Sanford has done an amazing job and he provides stellar customer service. Marina Park is a great cruise for us and we are looking forward to our next visit.”
- “Keep things repaired and in working order.”
- “Men’s shower not being cleaned.”

## Harbor Department Statistics

### Fiscal Year 2018-19

	July	August	Sept.	Oct.	Nov.	Dec.	Jan.	Feb.	Mar.	April	May	June	July	YTD
Anchorage								5	8	-	-			13
Daily Anchorage Check	104	80	58	97	107	48	34	29	94	47	88			
Assisting Vessels under 20'	28	4	16	9	6	7	9	14	12	5	5			115
Assisting Vessels Over 20'	8	7	18	2	8	11	6	2		4	7			73
Bridge Jumpers	43	19	3	-	2	-	-	-	1	2	-			70
Mooring Assist	20	17	16	5	8	11	10	7	2	4	6			106
Mooring Check	17	19	20	37	62	73	73	67	51	26	82			527
Noise	1	3	1	-	-	1	-	-	-	-	-			6
Paddleboard/Kayak	156	135	77	25	32	2	5	3	13	5	8			461
Public Dock Enforcement	-	14	10	3	18	7	7	9	5	1	11			85
Public Contact	-	-	-	13	37	12	16	7	10	5	4			104
Rentals - Marina Park	158	147	106	99	74	69	38	39	110	105	99			1,044
# of nights	480	399	292	283	231	306	160	171	272	215	225			3,034
Rentals - MP Sand Lines	51	50	46	46	20	38	28	23	12	20	26			360
# of nights	174	194	164	176	126	192	191	187	75	67	52			1,598
Mooring Sub-permittee	102	128	100	110	106	150	142	115	93	50	38			1,134
# of nights	714	925	759	856	869	1,069	1,240	746	379	339	254			8,150
Swim Line	3	1	2	-	3	1	1	-	1	1	-			13
Sea Lions	10	55	51	27	12	3	7	10	17	25	13			230
<b>Code Enforcement</b>														
New Cases	43	46	88	36	47	169	42	70	76	72	61			750
Closed Cases	24	31	37	22	6	11	68	68	115	45	37			464
Discharge/Pollution	17	8	1	-	1	1	-	1	-	-	-			29
Dock/Pier/Bridge Issue	5	4	13	8	16	7	2	1	4	5	8			73
Emergency	2	-	-	-	3	1	-	-	-	-	-			6
General Assist	75	46	41	21	14	33	44	20	20	1	21			336
Hazards/Debris	52	1	12	4	22	2	15	29	12	4	1			154
Impound		17	11	16	22	22	6	3	2	12	8			119
Speeding	68	67	56	29	21	8	7	6	23	11	12			308
Trash	-	130	124	417	327	328	225	152	79	15	10			1,807
<b>Total</b>	<b>987</b>	<b>1,029</b>	<b>907</b>	<b>1,026</b>	<b>974</b>	<b>1,015</b>	<b>785</b>	<b>680</b>	<b>760</b>	<b>465</b>	<b>545</b>			<b>7,403</b>