

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 19th Street. He believes that the City has taken away a great public access when they put the “No Fishing” signs on the 19th 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

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>

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 15th 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

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, 4TH 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 , 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 , 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 11th 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 or (949) 633-5154.

Thank you,

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

cc Daine Dixon (ddixon@newportbeachca.gov)
Aaron Harp (aharp@newportbeachca.gov)
Paul Blank (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
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> 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 | Phone: (949) 644-3313 | Fax: (949) 644-3020

From: Tom LeBeau <tlebeau@accretiverealty.com>

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

To: Jacobs, Carol <cjacobs@newportbeachca.gov>

Cc: Harp, Aaron <aharp@newportbeachca.gov>; Blank, Paul

<pblank@newportbeachca.gov>; Dixon, Diane <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: 19th Street, 15th 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

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



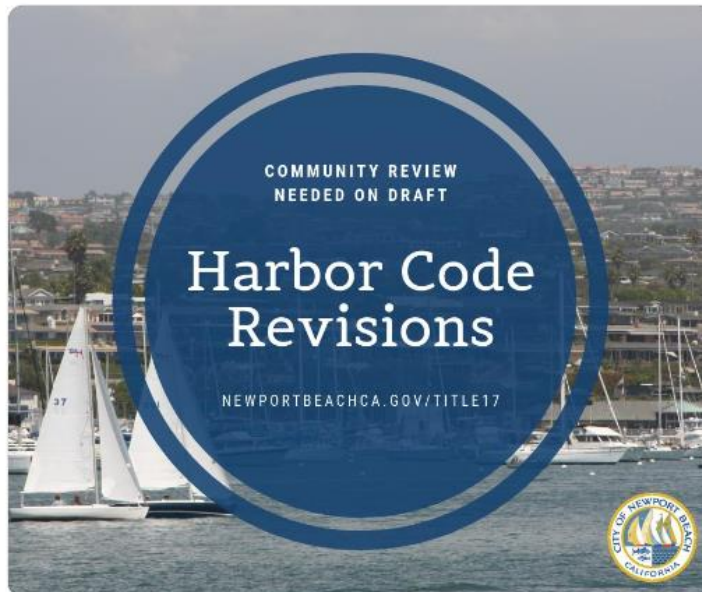
1

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



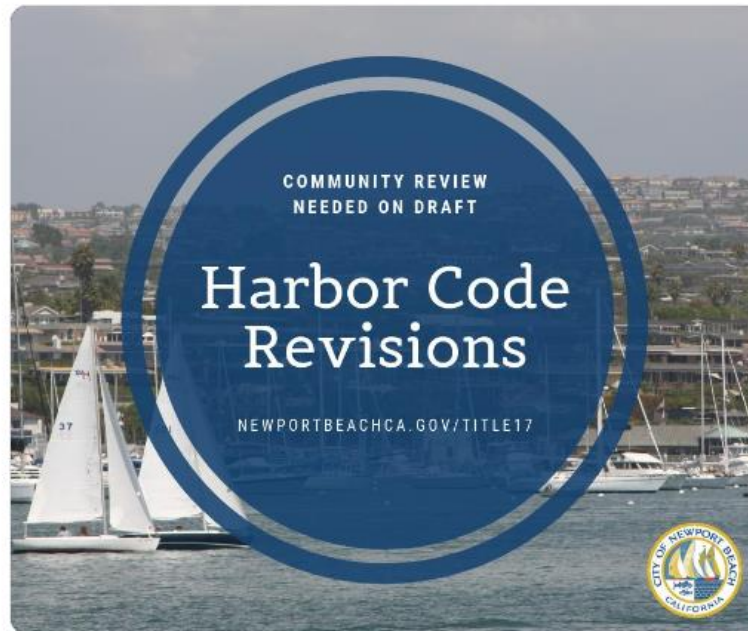
1

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



3

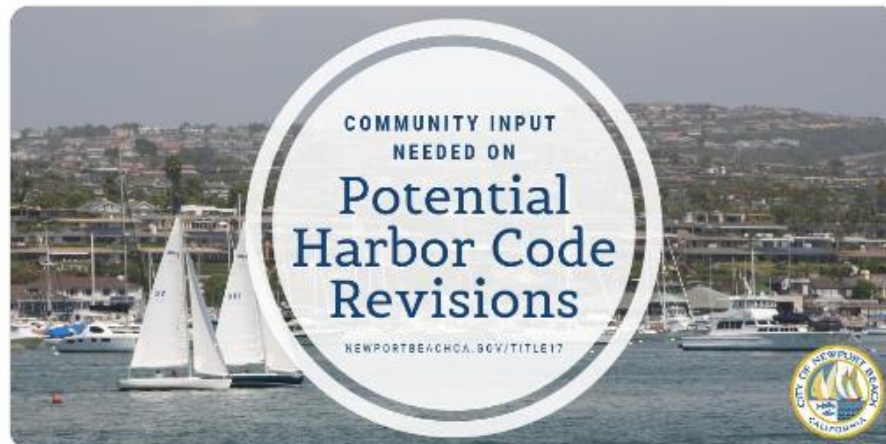
2



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



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



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

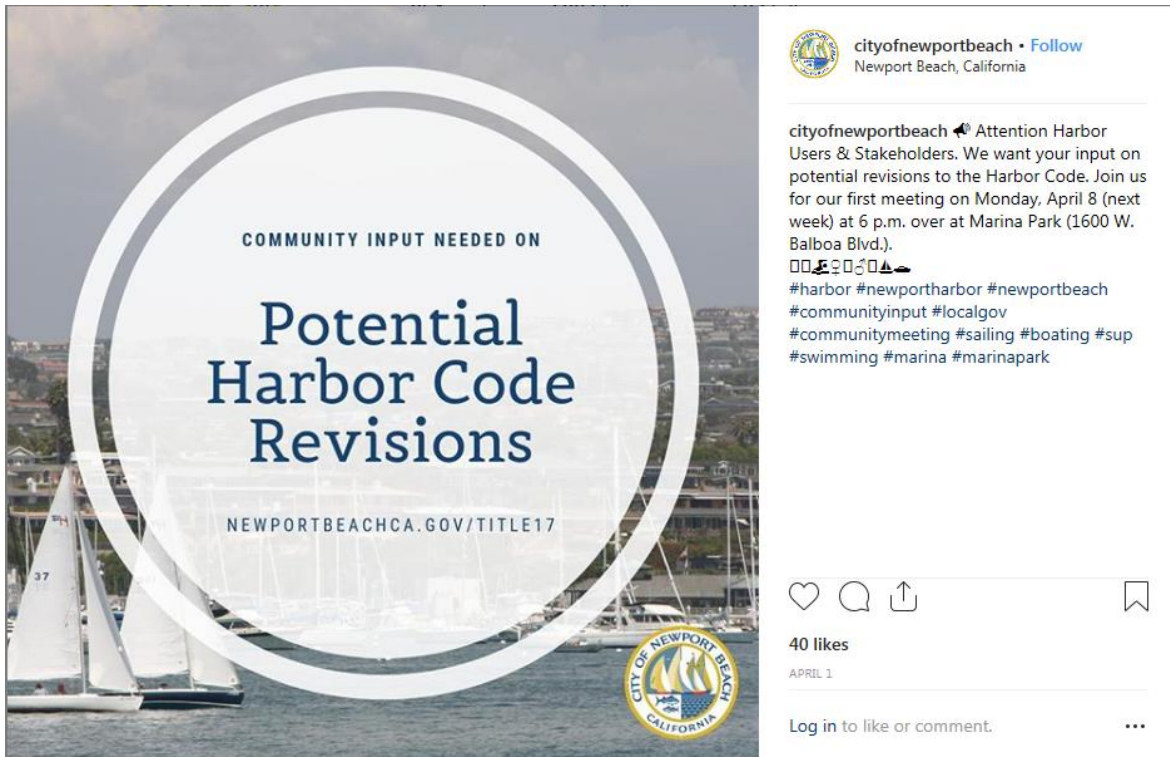


30 likes

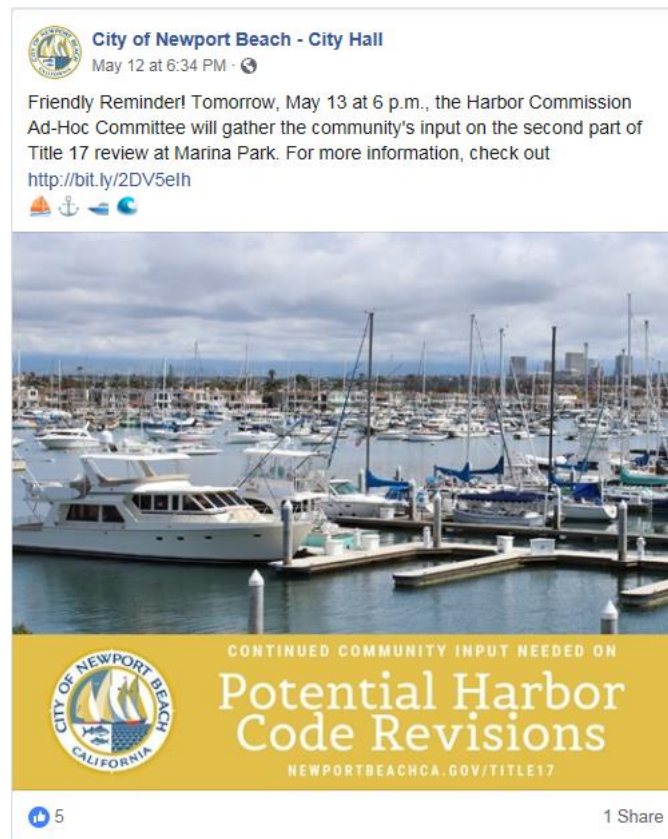
6 DAYS AGO


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>



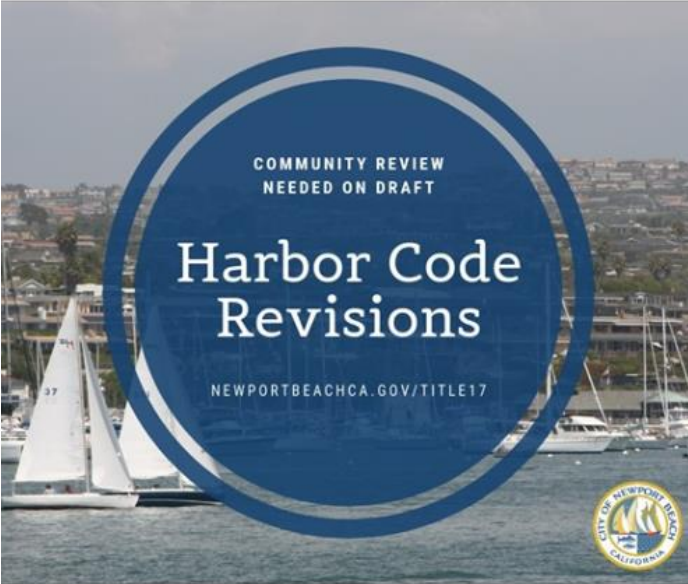
 CONTINUED COMMUNITY INPUT NEEDED ON
Potential Harbor Code Revisions
NEWPORTBEACHCA.GOV/TITLE17


👍 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>

🚢 ⚓ 🌊 🌬️





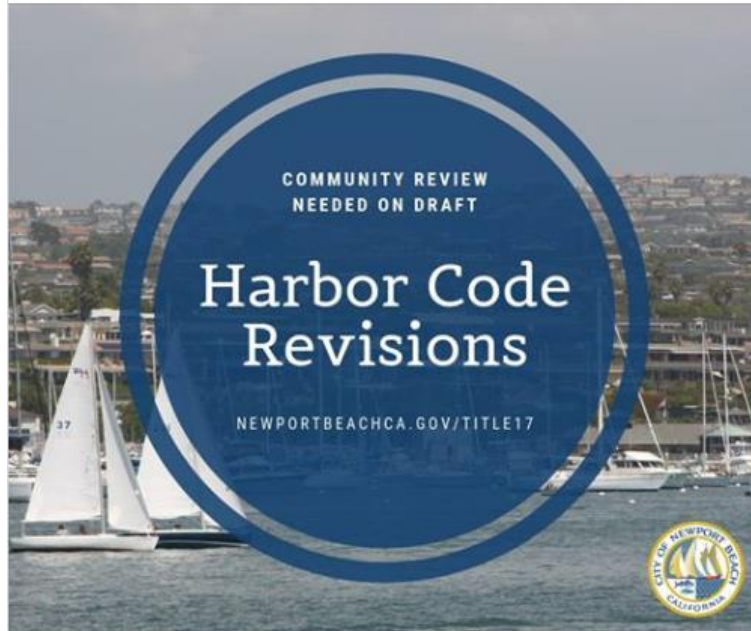
👍 2



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>



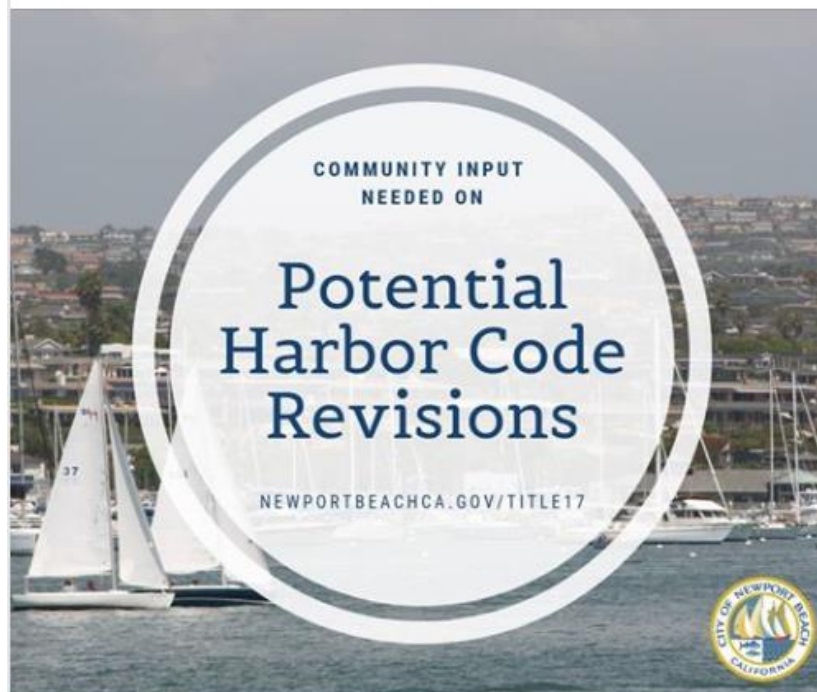
1 Share

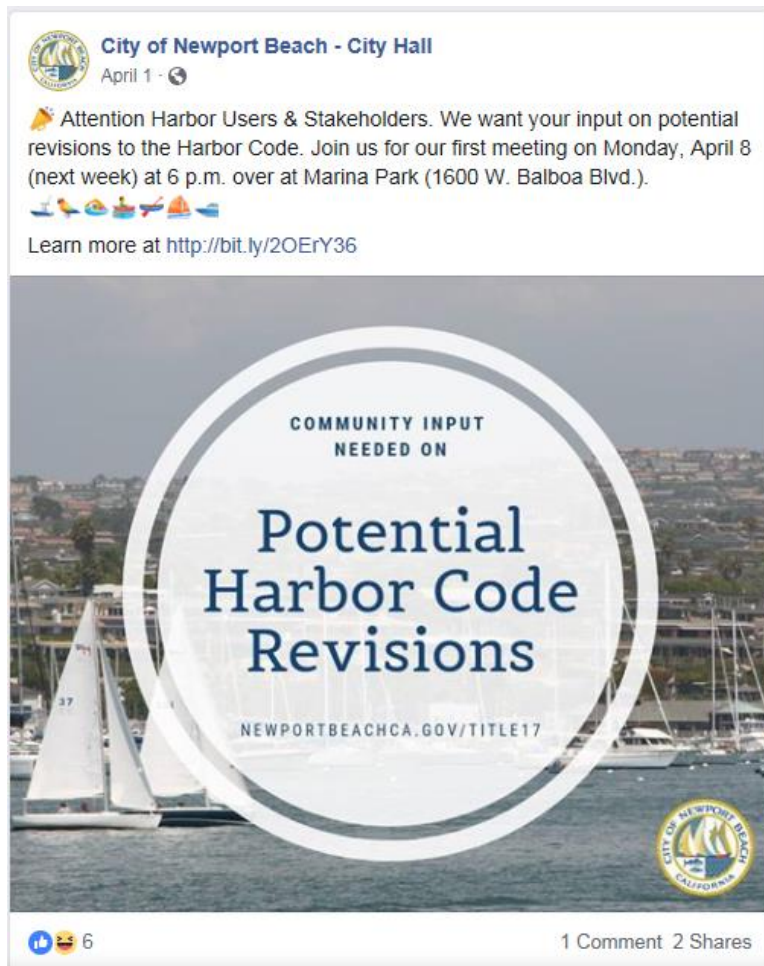


City of Newport Beach - City Hall

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>





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.

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 & DILLION 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

City Manager's Office
City of Newport Beach
100 Civic Center Drive
2nd Floor, Bay E
Newport Beach, CA 92660
gleung@newportbeachca.gov
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").)ⁱ 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.)

1333 N. CALIFORNIA BLVD
SUITE 600
WALNUT CREEK, CA 94596
T 925 988 3200
F 925 988 3290

895 DOVE STREET
5TH FLOOR
NEWPORT BEACH, CA 92660
T 949 854 7000
F 949 854 7099

3800 HOWARD HUGHES PKWY
SUITE 700
LAS VEGAS, NV 89169
T 702 777 7500
F 702 777 7599

see also Full Agenda Packet, City Council Regular Meeting (Feb. 13, 2018).ⁱⁱ 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].)ⁱⁱⁱ Those changes include considerable substantive modifications to various permit, lease, appeal, and enforcement provisions in Sections 17.40 through 17.70.^{iv} (*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
Aaron Harp, Esq.

1951.008 / 8225515.1

ⁱ (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).)

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

ⁱⁱⁱ (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>.)

^{iv} (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