



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:

| | |
|------------------|--|
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| 17.05.070 | Establishment of Channels, Turning Basins, Etc. |
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| 17.05.130 | Permits Nontransferable. |

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)