

17.40 Live-Aboard

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17.40.010

#### **Chapter 17.40**

#### **LIVE-ABOARDS**

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#### **17.40.010 Purpose.**

The City Council of the City of Newport Beach finds and declares as follows:

A. This chapter will promote the public health, safety and welfare by regulating the number of persons living aboard vessels on offshore moorings and insuring, to the extent possible, that this residential use does not result in the discharge of human waste; activities that are disruptive or impede other parties use and/or enjoyment of the bay; or otherwise adversely impact the health, safety and welfare of those that visit, work around, or live near, the bay. (Ord. 2008-2 § 1 (part), 2008)

#### **17.40.020 Live-Aboards Prohibited.**

A. Live-aboards shall not be permitted at piers that are bayward of residentially zoned areas. No person shall live aboard any vessel on an onshore mooring.

B. Live-aboards are prohibited on moorings subject to long-term mooring sub-permits as noted in Section 17.60.040(G).

B.C. Commercial Marinas: Commercial Marinas shall be permitted to have a total of 7% of their slips available for live-aboards. Live-aboards are not permitted bayward of residentially owned properties.

C.D. Live-aboards may be permitted on moorings subject to short-term sub-permits according to Section 17.60.040(G). (Ord. 2010-26 § 4, 2010: Ord. 2008-2 § 1 (part), 2008).

#### **17.40.030 Permits Required.**

No person shall live-aboard any vessel assigned to an offshore mooring without first having obtained a live-aboard permit from the Harbormaster. No live-aboard permit shall be issued except to a person holding a valid mooring permit issued pursuant to Chapter 17.60, or any successor chapter. No permit shall be issued to any live-aboard which is not intended to serve as the principal residence of the permittee. For purpose of this section, principal residence shall mean to live-aboard for not less than eight months in any calendar year. (Ord. 2018-17 § 32, 2018: Ord. 2008-2 § 1 (part), 2008)

#### **17.40.040 Application for Live-Aboard Permit.**

An application for a live-aboard permit shall be filed with the Harbormaster upon forms provided by the City and shall contain the following information:

A. The name of the permittee and the name(s) of all individuals to be living aboard the vessel;

B. All pertinent information relative to the vessel, including but not necessarily limited to, the

name of the vessel, the registration number of the vessel assigned by the Department of Motor Vehicles or the United States Coast Guard, the make and model of the vessel, the length of the vessel;

C. The make, model, and holding tank capacity of the marine sanitation device installed in the vessel;

D. The address and phone number, emergency contact information and email address where the permittee or other adult living aboard can be contacted during regular work hours or when not occupying the vessel;

E. Other information the Harbormaster reasonably believes is necessary or helpful to the efficient administration of the provisions of this chapter.

Applications will be accepted only from persons holding a valid mooring permit issued pursuant to Chapter 17.60 of the Newport Beach Municipal Code or valid rental agreement from a commercial marina. All applications shall be accompanied by a fee established by resolution of the City Council, but the fee shall not exceed the cost to the City of administering this chapter. The submittal of an application for live-aboard shall be deemed consent by the owner of the vessel to any inspection necessary to confirm the accuracy of the information in the application. (Ord. 2018-17 §§ 33, 34, 2018; Ord. 2008-2 § 1 (part), 2008)

#### 17.40.050 Issuance of Permit.

Upon receipt of an application for a live-aboard permit, the Harbormaster shall investigate the information contained in the application as well as other information on record available to the City. The Harbormaster shall deny the application if:

- A. The vessel which will serve as the principal residence ~~will serve as the principal residence~~ is not equipped with a fully operational marine sanitation device and holding tank sufficient in capacity to insure no discharge of human waste into the harbor;
- B. Approval of the application would result in live-aboard permits in excess of the limitations provided by this chapter;
- C. Issuance of the permit, given the specific circumstances of the application, would significantly impact persons residing, working or visiting the bay;
- D. The vessel is incapable of safely maneuvering under its own power, whether by sail or engine, from the mooring to the open waters of the Pacific Ocean and back to the mooring. (Ord. 2018-17 § 35, 2018; Ord. 2008-2 § 1 (part), 2008)

#### 17.40.060 Term/Renewal.

- A. Permits issued pursuant to this chapter shall be valid for a term of twelve (12) months. Applications for the renewal of any permit shall be submitted at least sixty (60) days before expiration of the permit, on forms supplied by the City, shall include the fee established by resolution of the City Council and shall specify any changes to the information provided on the original application for a permit.
- B. The application for renewal shall be denied for any of the reasons specified in Section 17.40.050; the permittee has failed to comply with any provision of this title during the term of the previously issued permit; or the permittee has failed to use the vessel as permittee's principal residence during previous term of the permit.; or the permittee has failed to use the vessel as permittee's principal residence during the previous term of the permit.
- C. The issuance of a live-aboard permit is nontransferable and does not create any tenancy between the City and permittee or other persons living aboard, nor does it

create any property right to the mooring site. (Ord. 2013-11 § 158, 2013; Ord. 2008-2 § 1 (part), 2008)

#### **17.40.070 Conditions/Regulations.**

A. The Harbormaster may impose such conditions on the permit as are reasonably necessary to insure that the activities of the permittee comply with the provisions of this chapter. Such conditions shall include but are not limited to:

1) All vessels subject to a live-aboard permit shall have an operable marine sanitation device and holding tank pre-approved by the Harbormaster. 2) By obtaining a live-aboard permit, the permittee specifically authorizes the Harbormaster or his or her designee to board the subject vessel any time based upon reasonable suspicion to inspect the marine sanitation device and holding tank and install a dye tablet to determine whether there is any discharge from the same.

A.B. —The Harbormaster shall have the power to promulgate rules and regulations to insure that the purposes of this chapter are satisfied. Each permittee shall comply with these rules and regulations. Compliance shall be considered a condition to each live-aboard permit. (Ord. 2018-17 § 36, 2018; Ord. 2008- 2 § 1 (part), 2008)

#### **17.40.080 Use of Pumpout Facilities Disposal of Trash.**

Permittees shall use pumpout facilities on a regular basis or otherwise discharge human waste in a legal manner. The permittees and others living aboard pursuant to permit shall not deposit any garbage or trash in the bay or on property surrounding the bay except in trash receptacles owned and maintained by the City of Newport Beach or its contractors. (Ord. 2008-2 § 1 (part), 2008) Disposal of oversized items; e-waste, oils, fuels, chemicals, or other such liquids; not appropriate for disposal in trash receptacles owned and maintained by the City of Newport Beach or its contractors, shall be properly hauled off and properly disposed of by the permittee. Use of City owned trash receptacles must comply with any recycling initiative or other such waste material separation program instituted by the City.

#### **17.40.090 Compliance with Law.**

The permittee, and others authorized to live-aboard any vessel, shall comply with all applicable State and Federal laws, the provisions of the Newport Beach Municipal Code, and all conditions, express and implied, to the permit. Failure to comply with these laws, ordinances, or policies shall constitute grounds for revocation of the permit. (Ord. 2008-2 § 1 (part), 2008)

#### **17.40.100 Discharge Log.**

Each permittee shall maintain a log for the use of pumpout facilities, or commercial pumpout services. The log shall contain the date, time, and location waste was discharged. The discharge log and any supporting material from commercial putout service providers (such as company issued service records, service invoices, etc.) shall be available for inspection by the Harbormaster at all reasonable hours and upon request. The log and all supporting documentation shall be submitted to the Harbormaster with the renewal application. Each live aboard permittee is required to contract with an authorized commercial pumpout service at a minimum of twice a month. Company records from this commercial pumpout service will be made available to the City for regular review. Permittee will authorize the commercial pumpout service to share all service records with the City upon request. Exceptions may be considered based on specific circumstances with prior approval by the Harbormaster. Failure to comply

may result in revocation of the live-aboard permit and mooring. (Ord. 2018- 17§ 37, 2018: Ord. 2008-2 § 1 (part), 2008) 17.40.110

#### **17.40.110 Limitation on Number of Permits.**

~~A.~~—The number of live-aboard permits in effect at any given time shall not exceed seven percent of the number of offshore mooring permits and each commercial marina may have up to 7% of the total slips available (30 feet or larger) for live-aboards pursuant to Section 17.40.20 (D) issued by the City pursuant to Chapter 17.60.

~~B.A.~~ The Harbormaster shall establish a waiting list of persons who wish to apply for a live-aboard permit. The waiting list shall consist solely of persons who hold valid mooring permits issued pursuant to the provisions of Chapter 17.60, or any successor chapter. Any person who sells or transfers the vessel, or any ownership interest in the vessel, assigned to a mooring shall be removed from the waiting list. In the event the number of live-aboard permits falls below the limit specified in subsection (A) and subsection (B) of this section, the Harbormaster shall notify the person or persons next in order on the waiting list of the vacancy or vacancies. The notice shall specify that applications will be accepted for thirty (30) days after the date of the notice, and that failure to apply within the thirty (30) day period will result in removal of that person or persons from the waiting list. Notice shall be deemed given when deposited in the United States mail, with the first class postage prepaid, and addressed as specified by the person or persons on the waiting list. City shall not be liable for a failure to notify any person or persons on the waiting list since placement on the list does not create any property right in any person or persons on the list nor any contractual obligation on the part of the City. An application for placement on the waiting list shall be accompanied by a fee established by resolution of the City Council, but in no event shall the fee exceed the cost of administering the waiting list. (Ord. 2018- 17 § 38, 2018; Ord. 2008-2 § 1 (part), 2008)

#### **17.40.120 Transfer Prohibited.**

No person shall transfer, assign, sell or convey a live-aboard permit. Any attempt to transfer, sell, convey or assign a live-aboard permit shall be a violation of this chapter and grounds for revocation of the permit. (Ord. 2008-2 § 1 (part), 2008)

#### **17.40.130 Revocation/Cancellation.**

The City has reserved the right to cancel live-aboard permits under certain circumstances. Any permit issued pursuant to this chapter shall be deemed cancelled upon revocation of the mooring permit issued pursuant to Chapter 17.60 of the Newport Beach Municipal Code. (Ord. 2008-2 § 1 (part), 2008)

#### **17.40.140 Suspension and Revocation.**

Any permit granted pursuant to this chapter and Chapter 17.60, or any successor chapter, may be suspended or revoked by the Harbormaster upon a determination that:

1. The permittee has violated, or failed to comply with, any of the provisions or requirements of this chapter or Title 17;
2. The permittee has discharged raw or treated sewage into the bay or otherwise violated the provisions of Section 17.40.090 of this chapter;
3. Permittee has failed to pay any fee required to be paid pursuant to the provisions of this chapter and/or resolution of the City Council;

4. The permittee, or any person on the vessel, has engaged in conduct which has unreasonably interfered with the health, safety, welfare, or peace of any person. (Ord. 2018-17 § 39, 2018; Ord. 2008- 2 § 1 (part), 2008)

#### **17.40.150 Procedure for Suspension or Revocation.**

In the event the Harbormaster determines there may be grounds for suspension or revocation of a permit issued pursuant to this chapter, the Harbormaster shall give written notice [with service of the notice](#) in accordance with Section 1.05.030, or any successor section, of intent to suspend or revoke the permit and the right of the permittee to request a hearing before the Harbormaster within fifteen (15) calendar days from the date on which notice is deemed served. The notice shall state the reason for the proposed suspension or revocation and shall be accompanied by any documents in the possession of the Harbormaster that pertain to the grounds for the proposed action.

If the permittee does not request a hearing within fifteen (15) calendar days of the date the notice is deemed served, the decision of the Harbormaster shall be final and permittee shall not be entitled to an appeal. (Ord. 2018-17 § 40, 2018; Ord. 2013-11 § 159, 2013; Ord. 2008-2 § 1 (part), 2008) 17.40.160

#### **17.40.160 Appeals or Calls for Review.**

Appeals or calls for review to this chapter shall be made in accordance with Chapter 17.65, [or any successor chapter](#). (Ord. 2015- 9 § 29, 2015; Ord. 2008-2 § 1 (part), 2008)

### **Chapter 17.45 SANITATION**

#### **Sections:**

##### **17.45.010 Piers, Docks and Floats.**

##### **17.45.020 Required Pumpout Facilities.**

##### **17.45.030 Waste and Refuse—Small Vessel Moorage.**

##### **17.45.010 Piers, Docks and Floats.**

- A. A permit for a pier, dock or float shall not be issued until the rough plumbing for the dwelling unit or the required sanitation facilities serving such pier, dock or float has been installed and approved by the Community Development Department. The use of a pier, dock or float will not be allowed until any required sanitation facilities are completed and in operation.
- B. All public or private commercially operated shore-connected boat marinas shall have a minimum of two restroom facilities, one for women and one for men, for each twenty (20) berthing spaces available in the marina. The walking distance from the farthest boat berth to the restroom facility should be minimized to the extent possible, and shall not exceed a maximum of one thousand (1,000) feet in overall walking distance.
- C. Sewage Pumping Facilities. Permission may be granted to install and operate sewage pumping facilities for boats moored to shore-connected structures providing such



installations are first approved by the ~~Harbor Resources Division~~ Public Works Department and the Community Development Department. (Ord. 2013-11 §§ 160, 161, 2013; Ord. 2008-2 § 1 (part), 2008)

#### 17.45.020 Required Pumpout Facilities.

~~Findings and Purpose. The City Council finds and declares as follows:~~

- ~~1. On July 14, 1986, the City Council created the Coastal Bay Water Quality Citizens Advisory Committee (now the Water Quality/Coastal Tidelands Committee) in response to growing concerns about the deterioration of the quality of water in Newport Bay. The Committee was specifically empowered to develop information, and make recommendations, on proposed measures to improve water quality of the bay.~~
- ~~2. The Committee has, since its inception, conducted monthly meetings and received testimony from representatives of the Regional Water Quality Control Board, the Orange County Health Department, the Harbor Master, businesses that utilize Newport Bay, and experts in the field of water quality.~~
- ~~3. The Committee has determined, based upon testimony presented to it, that there are valid reasons for concern about contamination of bay waters and the Pacific Ocean caused by the discharge of treated or untreated human waste from vessels using the harbor and the Pacific Ocean.~~
- ~~4. The United States Environmental Protection Agency has determined that recreational swimmers exposed to waters contaminated by human waste are at a higher risk of developing gastrointestinal diseases.~~
- ~~5. The failure to take steps to control the discharge of treated or untreated human waste into the bay and the Pacific Ocean could result in a quarantine for water contact sports, a prohibition against gathering of shellfish from the waters of Newport Harbor and the Pacific Ocean and may lead to the onset and spread of disease in humans.~~
- ~~6. The discharge of treated or untreated human waste into the waters of Newport Bay and the Pacific Ocean, if allowed to continue, could jeopardize the economic viability of businesses which utilize, or are located on Newport Bay and the Pacific Ocean, and severely restrict recreational use of the bay and the Pacific Ocean.~~
- ~~7. The number of public pumpout facilities in Newport Harbor to serve the number of vessels using the harbor and the location of those facilities are not convenient to a large number of vessels that require pumpout of holding tanks. Substantial quantities of human waste have been discharged directly into the bay because of the lack of adequate pumpout facilities.~~
- ~~8. The heaviest commercial users of the bay, and those which have the greatest need for adequate pumpout facilities, are sailing clubs, marine activity permittees, and certified charter operations that load and unload passengers at the docks of harbor permittees located in commercial zones.~~
- ~~9.2. The installation and use of pumpout facilities by the heaviest commercial users of Newport Bay will help insure that bacteria, coliform and human pathogen levels remain below those which would cause the adverse impacts described in this section.~~

##### A. Pumpout Facility Required.

1. All sailing clubs, marinas with a capacity of fifty (50) or more vessels and marine activity permittees engaged in providing vessels for lease or charter shall install a vessel waste pumpout system solely for the use of vessels associated with that activity. The pumpout facility shall be installed on dock space under the control of the club or permittee with convenient access to all vessels, owned, leased or

chartered by the club or permittee. The pumpout facility shall have a capacity commensurate with the capacity of the holding tanks of the vessel or vessels of the club or permittee.

2. All pumpout facilities required by this chapter shall be installed pursuant to permit issued by the ~~Harbor Resources Manager—Public Works Department. City.~~ Application for permit shall be made on forms prepared, and furnished, by the ~~Harbor Resources Manager City Public Works Department.~~ No fee shall be charged for the issuance of the pumpout facility permit or any other permit required prior to installation.
3. The application for permit shall be accompanied by appropriate plans and specifications setting forth in detail the work to be done.
- 3.4. The application, plans and specifications required by this chapter shall be reviewed by the Harbor Resources Manager City to determine if the proposed work meets all requirements of this chapter and other provisions of the Newport Beach Municipal Code. The Harbor Resources Manager City shall issue the permit if the proposed pumpout station complies with all applicable ordinances, rules and regulations. A separate permit will be required from the Building Official prior to installation of the pumpout facility.
- 4.5. Maintenance. Permittee shall maintain the pumpout facility in good condition and repair at all times. (Ord. 2013-11 §§ 162—164, 2013; Ord. 2009-2 §§ 6—8, 2009; Ord. 2008-2 § 1 (part), 2008)

#### 17.45.30 Waste and Refuse—~~Small Vessel Moorage.~~

- A. Discharge of Treated or Untreated Human or Animal Excreta. No person shall discharge, permit or allow any other person on a vessel under his or her control or command to discharge any treated or untreated human or animal excreta from any head, toilet or similar facility on a vessel into the waters of Newport Bay or the Pacific Ocean. All vessels in the waters of Newport Bay which have marine sanitation devices shall be subject, at any time, to boarding by the Harbormaster based upon his/her reasonable suspicion to inspect the operation and condition of the same and shall be subject to the use of a dye tablet to determine whether or not the marine sanitation system is discharging overboard. Violations are subject to Administrative remedies per NBMC Section 1.05.20 and immediate removal from Newport Harbor.
- B.     -Vessel Holding Tank Requirements.
  1. Vessel Wastes. No person shall own or operate a vessel equipped with any head (toilet) or receptacle for human body wastes in the waters of Newport Bay or the Pacific Ocean unless it complies with all applicable Federal, State, County and City standards.
  2. Marina Pumpout Facilities. The owner and operator of every commercial marina with a capacity of fifty (50) or more vessels shall provide a permanent holding tank pumpout facility or equivalent services which are operable and available for use at all times and which are capable of servicing all vessels berthed, docked, or moored at the marina.
- C. Refuse in Navigable Waters. No person shall throw, discharge, deposit or leave or cause, suffer or permit to be thrown, discharged, deposited or left, either from the shore or from any pier or vessel or from any factory or elsewhere, any refuse matter of any description, into the navigable waters of Newport Harbor or on the shore of Newport Harbor or any navigable water within the boundaries of the City where the same may be washed into Newport Harbor or such navigable water, either by tides, or by floods or otherwise.



1. No person shall throw, discharge, deposit, or leave or cause, suffer or permit to be thrown, discharged, deposited or left from any boat, vessel, ship, or barge any graywater, ballast water, bilge water or waste water containing or contaminated with any crude petroleum, refined petroleum, engine oil, antifreeze or oily byproduct within the boundaries of the City unless such graywater, ballast water, bilge water or waste water is discharged into suitable and adequate settling basins, tanks, or other receptacles.

D. Refuse and Vessels on Shoreline. No person shall place or allow vessels, boats, materials, garbage, refuse, timber or waste matter of any description to remain on or upon the shorelines of the Pacific Ocean or on the shorelines of Newport Harbor within the City. The ~~Harbor Resources Manager~~ City may remove the same with or without notice, at his or her option, and the cost thereof may be recovered from any person owning the same, or placing or causing it to be placed on the shoreline, in a civil action.

- E. Refuse—Marinas and Piers. Any owner or operator of a marina or any owner or permit holder who maintains a pier shall keep the area in and around such marina or pier located on the shorelines of Newport Harbor within the City reasonably free and clear from beached or floating refuse, debris or litter at all times.
- F. Discharge of Flammable Materials. No person shall pump or discharge from any vessel or tank into the waters of Newport Harbor, oil, spirits, or any flammable liquid, or deposit any rubbish, refuse matter or articles of any similarly offensive character therein or upon any pier or street leading to such facility.
- G. Dead Animals. No person shall throw, place or leave any dead animal or putrefying matter in the waters of Newport Harbor, or on or along the shore thereof or the shore of any tidewater within the City.
- H. Signs Concerning Sanitation Regulations. The owner or operator of any commercial boat docking facility or marina located on the waters of Newport Bay shall install and maintain at his or her expense in conspicuous locations on the premises thereof standard signs to inform the public of the regulations prohibiting the discharge of toilets on any vessel into the waters of Newport Bay and other provisions of this title which relate to harbor sanitation. Uniform standards and specifications for the design and general locations of such signs shall be prescribed by the Harbor Commission. (Ord. 2013-11 §§ 165—167 2013; Ord. 2009-2 §§ 9, 10, 2009; Ord. 2008-2 § 1 (part), 2008)

## Chapter 17.50 HARBOR DEVELOPMENT PERMITS

### Sections:

- 17.50.010 Harbor Development Permits – General Required for Harbor Structures.
- 17.50.020 Harbor Development Permits – Applications for Harbor Development Permits.
- 17.50.030 Harbor Development Permits - Processing of Application.
- 17.50.040 Harbor Development Permits - Rendering of Decision.
- 17.50.050 Harbor Development Permits - Conditions.
- 17.50.060 Harbor Development Permits - Bond Requirements.
- 17.50.070 Harbor Development Permit - Transfer of Permit.
- 17.50.080 Harbor Development Permit - Expiration, Extension, Violation and Revocation.
- 17.50.090 Harbor Development Permit - Structure Without Permit.

**Declared a Nuisance Abatement.**

17.50.100 Harbor Development Permit - Securing of Structures.

17.50.110 Harbor Development Permit - Appeal or Call for Review.

**17.50.010 Harbor Development Permits – GeneralRequired for Harbor Structures.**

A. No person or agency shall build, make, erect, construct, improve, convert, maintain, extend, expand, reconstruct, replace or make additions or structural alterations (collectively or singularly referred to as “development”) on or to any building, pier, float, gangway, piling, bulkhead, sea wall, reef, breakwater, or 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, or do any filling or excavating in such waters or ocean, without first obtaining a written “Harbor Construction-Development Permit” from the City and provided that such development complies with the requirements of this chapter. Repairs or maintenance of such structures shall be subject to a maintenance permit in accordance with Sections 17.50.120-17.50.140 inclusive. Painting, replacement of rub-rails, and work considered cosmetic in nature may not require a permit and may be governed by State and Federal environmental policy and law.

B. The County of Orange may do construction work or fill or dredge within Newport Harbor, or cause the same to be done, without such a permit so long as such work is done pursuant to a harbor development plan on lands owned by the County or pursuant to a request therefore by the City Council.

C. A separate permit will be required by the Public Works Department for dredging (see Chapter 17.55, Dredging Permits). (Ord. 2018-17 § 41, 2018; Ord. 2008-2 § 1 (part), 2008)

**17.50.020 Harbor Development Permits – Applications.Application for Harbor Development Permits.**

A. Required Forms. Applications for Harbor Development Permits ~~authority to erect, revise and do maintenance work on structures~~ shall be filed in the office of the Community Development Department and the Public Works Department and processed in compliance with Section 17.05.115 in writing on forms prescribed by the Building Official. Plans showing the location, extent and character of the proposed work and required fees shall ~~accompany the application.~~ The Community Development ~~Department~~ Director shall not issue a permit without prior approval of the Public Works ~~Department~~ Director, or his or her designee.

~~Required Materials. Applications shall be accompanied by all plans, maps, and other materials required by the prescribed forms, unless specifically waived by the Building Official. The Building Official may request additional materials deemed necessary to support the application. Plans accompanying the application must comply with the Newport Beach Administrative Code adopted by the City of Newport Beach.~~

B. ~~Required Signatures. Application for discretionary approvals may be made by the owner, lessee, or agent of the owner of the property affected. The application shall be signed by the owner of record or may be signed by the lessee or by an authorized agent if written authorization from the owner of record is filed concurrently with the application. The application must be signed by the harbor permittee or his or her authorized agent. The applicant has the opportunity of submitting “Alternate Materials of Design and Methods of Construction” as part of his or her application for a Harbor Development Permit that may deviate from the design criteria through the appeal process.~~ Supported by Sufficient sufficient

justification.

~~\_ must be provided to the City to review any appeal request. If such a request is desired, obtain the necessary form from the City.~~

~~Fees. Applications shall be accompanied by a fee as established by resolution of the City Council. (Ord. 2018-17 § 42, 2018; Ord. 2013-11 § 168, 2013; Ord. 2008-2 § 1 (part), 2008)~~

#### **17.50.030 Harbor Development Permits - Processing of Application.**

A. ~~In addition to complying the with procedures for processing an application for the Harbor Development Permit in accordance with Section 17.05.140, the~~ The application and plans and specifications shall be reviewed by the Public Works Director and Community Development Department to determine whether the proposed ~~work-development~~ meets all the requirements of this Code and any standards and policies adopted by the City Council or required by State or Federal regulatory agencies for such ~~development~~, construction or work.

B. Approval by Other Agencies as Required.

~~1.~~ Coastal Commission. Proof of prior approval, when applicable, from the California Coastal Commission shall be required before issuing any permit.

~~1.~~

~~2.~~ U.S. Army Corps of Engineers. Proof of prior approval of the U.S. Corps of Engineers will be required.

~~2.~~

~~3.~~ County of Orange. Proof of prior approval of the County of Orange will be required when work extends over County tidelands.

~~3.~~

4. Approval in Concept. All development in areas where the Coastal Commission retains coastal development permit authority shall require conceptual approval from the Public Works Director prior to application to the Coastal Commission. An approval in concept from the Public Works Department indicates the proposed development conforms in concept to all applicable provisions of this title only and does not provide approval for any applicable land use and property development regulation.

C. ~~A public hearing shall be required for as determined by section 17.05.115 Table 17-1 Harbor Development Permits. Notice of the hearing shall be provided and the hearing shall be conducted in compliance with Section 17.05.140. Before issuing a permit for any work on oceanfront beaches or for any unusual type of harbor structure, or for a structure on which the applicant proposes a use that is not in keeping with the surrounding area, all property owners or long-term lessees within three hundred (300) feet of the proposed work shall be notified in writing by the Public Works Department of the pending application. Notice will be sent at least ten (10) calendar days prior to a decision by the Public Works Department, and after the department has rendered a decision. The Harbor Development Permit permit shall not be issued until the appeal or call for review period provided in Chapter 17.65, or any successor chapter, expires.~~

D. Prior to the issuance of a permit, the applicant will show proof of insurance coverage as required by the Longshoremen's and Harbor Worker's Compensation Act. (Ord. 2018-17 §§ 43—45, 2018; Ord. 2015-9 § 30, 2015; Ord. 2013-11 §§ 169, 170, 2013; Ord. 2008-2 § 1 (part), 2008)

#### **17.50.040 Harbor Development Permits - Rendering of Decision.**

A. Approval. The City-Community Development Director is authorized to approve and issue new Harbor Development Permits permits and revisions to existing Harbor Development Permits permits that conform to the design criteria and all applicable standards and policies in conjunction with plan reviews by the Public Works Department following compliance with the procedures set forth in Section 17.05.115. and, if a public hearing is required, a public hearing conducted by the Community Development Director, or his or her designee, in compliance with Section 17.05.140. After the conclusion of the hearing on an application for a Harbor Development Permit, tThe Community Development Director shall render a written decision within ten (10) days, unless both the applicant and the Community Development Director consent to a later date at the hearing. The Community Development Director may elect to refer any Harbor Development Permit application to the Harbor Commission for consideration and final action.

B. The application shall be denied if:

1. The application does not conform to the provisions of this Code, the design criteria approved by the City Council.

2. The proposed application is likely to create navigational congestion, or otherwise interfere with the rights of other harbor permittees within Newport Harbor, or ~~other oceanfront~~ property owners or long-term lessees located within a three hundred (300) foot radius.

3. The proposed application does not conform to the policies and regulations of the certified Local Coastal Program.

4. The development is designed or sited so as to obstruct public access to coastal resources or, in the case of the alteration, extension, enlargement, expansion, reconstruction, replacement or addition of any existing structures described in Subsection 17.50.010(A), if such development would, in comparison to the existing structure, restrict or impair the public's use of the bay or beach in the vicinity of the existing structure. (Ord. 2018-17 § 46, 2018; Ord. 2017-8 § 4, 2017; Ord. 2013-11 § 171, 2013; Ord. 2008-2 § 1 (part), 2008)

#### **17.50.050 Harbor Development Permits - Conditions.**

- A. In granting any such application, the Public Works-Community Development Director shall issue the Harbor Development permit Permit to the owner or long-term lessee of the abutting upland property and may impose conditions in the permit which are deemed necessary to protect commerce, navigation or fishing, or the use, operation or development of Newport Harbor.
- B. When appropriate where projects involve construction or development on or near the waterway, eelgrass (*Zostera marina*) and *Caulerpa taxifolia* protocol surveys shall be required as a condition of City approval of projects in the Newport Bay. The Southern California *Caulerpa* Action Team (SCCAT) shall be immediately notified if *Caulerpa taxifolia* is found.
- C. Acceptance of Provisions. It is understood and agreed by the permittee that the doing of any work under the permit shall constitute an acceptance of all the applicable provisions of the Municipal Code.
- D. Inspection shall be done by the City for conformity with the California Building Code, design criteria and the approved plans and conditions of approval. (Ord. 2018-17 § 47, 2018; Ord. 2017-8 § 5, 2017; Ord. 2013-11 §§ 172, 173, 2013; Ord. 2008-2 § 1 (part), 2008)

#### **17.50.060 Harbor Development Permits - Bond Requirements.**

If the nature of the proposed work-development is such that if left incomplete it will create a hazard to human life or endanger adjoining property, a cash bond or surety bond satisfactory to the City Attorney in the sum of one hundred twenty (120) percent of the estimated cost of the work will be required to guarantee the faithful performance of the proposed work-development. (Ord. 2008-2 § 1 (part), 2008)

**17.50.070 Harbor Development Permit - Transfer of Permit.**

Harbor Development Permits shall only be issued to and held by the owner or long-term lessee of the abutting upland property. The permittee shall not transfer a permit without prior written approval of the City-Community Development Director and payment of fees as established by resolution of the City Council. No person who as an abutting upland owner or lessee of real property was granted a permit under the provisions of this chapter for a pier or similar structure shall retain any right of use in such pier, or similar structure, after having divested himself or herself of the ownership or leasehold interest in such real property. Upon such divesting, the ownership interest in such pier, float or similar structure shall remain with the person to whom the permit was granted, but the right of use thereof shall vest in the City until such time as a permit for such pier, float or structure is granted to another person. Except where rights of ownership or use have heretofore been judicially decreed, no person may heretofore or hereafter gain any rights of ownership or use of any such pier, float or similar structure by any purported transfer made without such prior written approval of the City. The Public Works-Community Development Director is authorized to approve transfers of permits. (Ord. 2018-17 § 48, 2018: Ord. 2008-2 § 1(part), 2008)

**17.50.080 Harbor Development Permits - Expiration, Extension, Violation and Revocation.**

- A. Expiration. All construction-Harbor Development Permits-permits shall expire unless the work-development contemplated shall have been completed within one hundred eighty (180) days from the date of approval per the Uniform Administrative Code adopted by the City of Newport Beach.
- B. Violation of Terms. Any Harbor Development permit-Permit granted in accordance with the terms of this Code-chapter may be revoked if any of the conditions or terms of such permit are violated, or if any law or ordinance is violated in connection therewith.
- C. Revocation. Procedures for revocation shall be as prescribed by Chapter 17.70, (Enforcement). (Ord. 2008-2 § 1 (part), 2008)

**17.50.090 Harbor Development Permits - Structure Without Permit Declared a Nuisance—Abatement.**

Every structure maintained in or over the waters of Newport Harbor or the Pacific Ocean without a current valid permit existing therefore when required by this chapter, or maintained in a manner or for a purpose other than or different from that provided in the permit, shall constitute a nuisance and shall be immediately abated and may be removed. If upon written notice to remove any such structure the owner thereof fails, refuses or neglects to do so within a reasonable time specified in the notice, being not less than five nor more than thirty (30) days after such notice, the City shall abate or remove it and the cost thereof may be recovered from the owner of such structure in a civil action. (Ord. 2008- 2 § 1 (part), 2008)



**17.50.100 Harbor Development Permits - Securing of Structures.**

If, based upon an inspection by the City or the Harbormaster or other facts, the Harbormaster determines that a sea lion has boarded a permitted structure and/or any vessel or other appurtenances attached to the structure, the Harbormaster shall issue a notice of violation and the permittee shall take any and all necessary action to employ and maintain appropriate measures to deter sea lions from boarding the structure and/or any vessel or other appurtenances attached to the structure 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 take any and all necessary action to employ and maintain appropriate sea lion deterrent measures. Appropriate deterrent measures shall be defined as the latest methodology permitted by National Marine Fisheries Service to minimize sea lion boarding of a permitted structure and/or any vessel or other appurtenances attached to the structure (Ord. 2018-17 § 49, 2018: Ord. 2010-5 § 3, 2010: Ord. 2009-1 § 2, 1-27-2009; Ord. 2008-2 § 1 (part), 2008)

**17.50.110 Harbor Development Permits - Appeals or Calls for Review.**

Appeals or calls for review to this chapter shall be made in accordance with Chapter 17.65, or any successor chapter.

**Chapter 17.55 DREDGING PERMITS**

**Sections:**

- 17.55.010 Permit Required.**
- 17.55.020 Application for Dredging Permits.**
- 17.55.030 Limits on Development**
- 17.55.040 Limits on Uses**
- 17.55.050 Rights of Appeal or Calls for Review**

**17.55.010 Permit Required.**

A. Dredging bayward of residential and commercial property shall be the responsibility of the harbor permittee for the area delineated by the bayward prolongations of upland side property lines and the U.S. project line. All such dredging will require a dredging permit from the Public Works Department and other agencies with jurisdictional authority and may be subject to engineering approval by the Public Works Department.

B. Dredging outside the established harbor lines will require prior approval by the Public Works Department and the U.S. Army Corps of Engineers. (Ord. 2018-17 § 50, 2018: Ord. 2008-2 § 1 (part), 2008)

**17.55.020 Application for Dredging Permits.**

A. Required Forms. Applications for dredging permits shall be filed in the office of the Public Works Department in writing on forms prescribed by the Public Works Director.

B. Required Materials. Applications shall be accompanied by all plans, maps, and other materials required by the prescribed forms, unless specifically waived by the Public Works



Director. Applications shall include the following:

1. Eelgrass (*Zostera marina*) and *Caulerpa taxifolia* protocol surveys;
2. Grain size analysis;
3. Identification of the dredge disposal site and dredge quantities; and
4. Any other materials the Public Works Director deems necessary to support the application.

C. Required Signatures. Application for discretionary approvals may be made by the owner, lessee, or agent of the owner of the property affected. The application shall be signed by the owner of record or may be signed by the lessee or by an authorized agent if written authorization from the owner of record is filed concurrently with the application.

D. Fees. Applications shall be accompanied by a fee as established by resolution of the City Council. (Ord. 2018-17 §§ 51, 52, 2018; Ord. 2008-2 § 1 (part), 2008)

#### **17.55.030 Limits on Development.**

Development involving the diking, filling, or dredging of open coastal waters, wetlands, or estuaries shall only be permitted under the following circumstances:

- A. Only if there is no feasible, less environmentally damaging alternative.
- B. If there is no feasible, less environmentally damaging alternative, mitigation measures shall be provided to minimize adverse environmental effects.

C. Dredged materials suitable for beneficial reuse shall be transported for such purposes to appropriate areas and placed in a manner that minimizes adverse effects on the environment. The permittee shall be encouraged to work with the City in making sure materials are available for harbor beach replenishment.

D. Diking, filling or dredging projects shall sustain the functional capacity of the wetland, or estuary. In order to establish that the functional capacity is being maintained, the applicant must demonstrate all of the following:

1. That the project does not alter presently occurring plant and animal populations in the ecosystem in a manner that would impair the long-term stability of the ecosystem; i.e., natural species diversity, abundance, and composition are essentially unchanged as a result of the project;
2. That the project does not harm or destroy a species or habitat that is rare or endangered;
3. That the project does not harm a species or habitat that is essential to the natural biological functioning of the wetland or estuary;
4. That the project does not significantly reduce consumptive (e.g., fishing, aquaculture and hunting) or non-consumptive (e.g., water quality and research opportunity) values of the wetland or estuarine ecosystem.

E. Dredging and dredged material disposal shall avoid significant disruption to marine and wildlife habitats and water circulation. (Ord. 2008-2 § 1 (part), 2008)

#### **17.55.040 Limits on Uses.**

Development involving diking, filling, or dredging of open coastal waters, wetlands, and estuaries shall be limited to uses consistent with Section 30233 of the California Public Resources Code (Coastal Act) and the certified Local Coastal Program. (Ord. 2013-11 § 174, 2013; Ord. 2008-2 § 1(part), 2008)

### 17.55.050 – Rights of Appeal or Calls for Review

The decision of the Public Works Director may be appealed or called for review within the time and in accordance with the procedures prescribed by Chapter 17.65, or any successor chapter.

## **Chapter 17.60 HARBOR PERMITS AND LEASES**

### **Sections:**

- 17.60.010      ~~Permits and Public Trust Lands Leases—General.~~**
- 17.60.020      **Application for Permits.****
- 17.60.030      **Pier Permits for Noncommercial Piers.****
- 17.60.040      **Mooring Permits.****
- 17.60.050      **Houseboats.****
- 17.60.060      Leases/Permits of Public Trust Lands.**
- ~~17.60.080      Appeal.~~**

### **17.60.010      ~~Permits and Public Trust Lands Leases—General.~~**

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 Resort. The Beacon Bay Bill (Chapter 74 of the Statutes of 1978) and Assembly Bill 3139 (Chapter 728, Statutes of 1994) allow Parcel D of the Balboa Bay Resort to be leased for residential purposes until December 31, 2044.

3.—Harbor Island. Chapter 715, Statutes of 1984 allow the filled or reclaimed land on Harbor Island to be leased for nonpermanent recreational and landscaping purposes until March 22, 2047.

~~The State of California became the owner of tidelands on admission to the Union in 1850. The City manages those tidelands pursuant to various legislative grants from the State. The State Lands Commission, which administers tidelands, generally requires a trustee to negotiate leases on the basis of the current market value of the parcel. Failure of a trustee to receive consideration approximating the fair market value of leased tidelands could, under certain circumstances, be considered a violation of the legislatively imposed public trust. The City manages the tidelands through a series of permits, franchises and leases. The Public Works Director shall have the authority to approve, conditionally approve, or disapprove applications~~

~~for the uses and activities that require a harbor permit by the individual chapters of this Code, unless the authority is specifically assigned to the City Manager, Harbormaster, Harbor Commission or the City Council. This chapter applies to permits or leases for public trust lands used for commercial purposes by an entity other than the City, pier permits for non-commercial piers, and mooring permits.~~ (Ord. 2018-17 § 53, 2018: Ord. 2013-1 § 7, 2013: Ord. 2008-2 § 1 (part), 2008)

#### **17.60.020 Application for Permits.**

A. Required Forms. Applications for permits or leases which pertain to the harbor under the provisions of this ~~title chapter~~ shall be filed in the Public Works Department, in writing, on forms prescribed by the Public Works Director and in compliance with Section 17.05.115.

B. Required Materials. Applications shall be accompanied by all plans, maps, and other materials required by the prescribed forms, unless specifically waived by the Public Works Director. The Public Works Director may request additional materials deemed necessary to support the application.

C. Required Signatures. Application for discretionary approvals may be made by the owner, lessee, or agent of the owner of the property affected. The application shall be signed by the owner of record or may be signed by the lessee or by an authorized agent if written authorization from the owner of record is filed concurrently with the application.

D. Fees. Applications and renewals shall be accompanied by a fee as established by resolution of the City Council.

E. Tidelands Users. Users of public tidelands, including commercial and noncommercial users, shall be subject to rental or lease charges reflective of the fair market value related to such use as established by the City Council with the assistance of an appraisal. (Ord. 2018-17 §§ 54, 55, 2018; Ord. 2013- 1 § 8, 2013; Ord. 2008-2 § 1 (part), 2008)

#### **17.60.030 Pier Permits for Noncommercial Piers.**

A. Non-commercial Pier Permits. Upon the request of the abutting upland residential property owner, or lessee or the authorized agent of the owner or lessee (as the case may be), and in accordance with all applicable laws including, but not limited to, Subsections 17.35.020(A) and 17.35.020(B) of this Code, a residential pier permit shall be issued for up to ten (10) years. The City shall extend the term of any residential pier permit for up to ten (10) years upon: (1) permit expiration and the request of the owner or, lessee or the authorized agent of the owner or lessee (as the case may be); or (2) upon sale of the abutting upland property and the request of the new owner or, lessee or authorized agent of the owner or lessee (as the case may be). The maximum term of any permit issued hereunder, with extensions, shall be fifty (50) years. After fifty (50) years, the abutting upland residential property owner, or lessee or the authorized agent ~~of the owner~~ as the case may be shall be required to apply for a new residential pier permit.

B. Rental Fees. Rental Fee Required. Every owner or permit holder who maintains a pier used for noncommercial purposes, any part of which extends into public tide lands, shall pay to the City the applicable pier permit rental fee for such portions of the pier that extend into public tidelands, as established by City Council resolution.

C. Transfer of Non-commercial Pier Permits.

1. Permits for ~~harbor structures-non-commercial piers~~ are issued subject to the condition that any improvements constructed shall not be sold in whole or part, leased, or transferred, without the prior written consent of the City.
2. Whenever a permittee sells the abutting residential upland property, a request shall be made to the City to transfer the permit. Forms for this purpose may be obtained from the Public Works Department. Failure to apply for a transfer within thirty (30) days from the date that the abutting upland residential property changed ownership will result in an additional fee as established by resolution of the City Council.
3. Along with the City Manager, the Public Works Director is authorized to approve transfers to the new owners or long-term lessee of the abutting upland residential property.
4. Prior to the transfer of a pier permit, all harbor structures shall be inspected for compliance with the City's minimum plumbing, electrical and structural requirements, and the conditions of the existing permit. All structural deficiencies must be corrected prior to the transfer of the permit.
5. Noncommercial piers may be rented/leased, in whole or in part, by the owner(s) or occupant(s) of the abutting property permittee to a third party (or parties). Such rental/lease shall not be deemed a transfer under this section. (Ord. 2018-17§§ 56, 57, 2018; Ord. 2014-8 § 1, 2014; Ord. 2013-27 § 3, 2013; Ord. 2013-1 § 9, 2013; Ord. 2008-2 § 1 (part), 2008)
6. The provisions of this Section shall not apply to piers, docks or other structures located in the Promontory Bay and the waters over privately owned land.

#### **17.60.040 Mooring Permits.**

- A. Permit Required. No person shall place, erect, construct, maintain, use or tie to a mooring in the waters of Newport Harbor over City-owned or controlled tidelands (i.e., an offshore mooring) or in the nearshore perimeter of Newport Harbor and its island perpendicular to the shoreline (i.e. an onshore mooring) without first having obtained a mooring permit from the Harbormaster or having otherwise complied with this section. A mooring permit is in the nature of a license for the temporary use of a specific location within the Newport Harbor.
- B. Issuance of Permit—Conditions. The Harbormaster, in furtherance of the tideland grants to the City, may issue a mooring permit or mooring sub permit to allow the mooring permittee or mooring sub-permittee to temporarily use a portion of the waters of Newport Harbor for the mooring of a vessel. ~~Upon the effective date of this chapter, a~~ A mooring permittee may hold up to two mooring permits at any time. A mooring permittee that ~~holds-held~~ more than two mooring permits prior ~~May 11, 2017 to the effective date of this chapter~~ may continue to hold the mooring permits until the permits are sold, revoked, or otherwise transferred under this chapter.
  1. Exceptions.
    - a. The Balboa Yacht Club and the Newport Harbor Yacht Club (collectively, "yacht clubs") currently hold permits for single point moorings placed within certain mooring area boundaries established by the City, except as noted in subsection (B)(3)(f) of this section. In addition, the Lido Isle Community Association ("LICA") has permits for onshore moorings on Lido Isle. These organizations shall hold their respective permits under the yacht club, or respective organization name, for the moorings identified by the City as under their respective control ~~as of May 11, 2017 at the time of enactment of the ordinance codified in this section.~~ The yacht clubs and LICA shall be solely responsible for managing moorings under their control and shall be permitted to assign moorings under their control to yacht club members and members of LICA, respectively. The yacht clubs and LICA shall keep accurate records of

the name and address of the club members and community association members to which each mooring has been assigned. The yacht clubs and LICA may not sell or otherwise transfer the moorings under their control to a third-party that is not a member of the yacht club or LICA. Mooring records shall be provided annually to the Harbormaster on or before February 1st. The yacht clubs shall provide 24/7 contact information for mooring permittees.

b. Mooring of a Tender. A single vessel no longer than fourteen (14) feet in overall length to serve as access to and from the assigned vessel may be secured to the assigned vessel or may be secured to the offshore mooring in the absence of the assigned vessel. The vessel must be secured in such a manner so as not to intrude into the fairway or obstruct neighboring permittees. Notwithstanding the single vessel restriction, permitted live-aboards may secure up to two vessels no longer than fourteen (14) feet in overall length to the assigned vessel, to serve as access to and from the assigned live-aboard vessel.

c. Multiple Vessel Mooring System Program. The Harbormaster may approve a multiple vessel mooring system in the mooring areas of Newport Harbor Yacht Club and the Balboa Yacht Club. An application for a multiple vessel mooring system shall be submitted in writing to the Harbormaster, who shall evaluate the application based upon standards he or she shall have established.

2. Permit Requirements. Each mooring permit may be issued for up to two natural persons ("mooring permittee(s)") who shall be individually and collectively responsible for all activities related to the mooring permit. To the satisfaction of the Harbormaster, the mooring permittee(s) shall:

a. Identify on the permit the full legal name(s), current address(es), current telephone number(s) and current e-mail address(es), if one exists, of the mooring permittee(s);

b. Agree to be responsible for permit rent, fees, maintenance and repair of mooring equipment;

c. Agree to allow the Harbor Department to board the permittee's vessel at any time without prior notice to inspect the condition and operability of the marine sanitation devices(s) and/or insert dye tabs to determine whether said devices are discharging overboard.

d. The permit for joint ownership moorings shall provide that all parties shall have equal rights under the permit and shall be held jointly responsible for compliance with all rules, regulations, and conditions set forth in the mooring permit;

e. Grant permission to the City to temporarily assign the mooring to another vessel when it is unoccupied through the issuance of a mooring sub-permit;

f. Agree to defend and indemnify the City and any other government entity with jurisdiction against any claims or losses arising out of, or related to the use of, the mooring permit except where the claim or loss arises from the sub-permittee's damage of the mooring, or out of the negligence and/or misconduct of a person assigned the mooring as a mooring sub-permittee under subsections (G) and/or (H) of this section;

g. Provide proof of insurance on a vessel as may be determined by the City's Risk Manager;

h. Provide registration or other proof of controlling possessory right in the assigned vessel, all to the satisfaction of the Harbormaster;

i. Agree to pay fair market value rent, as established by resolution of the City Council, on a rent schedule established by the Harbormaster, which shall be similar to the schedule used to collect rent from other tidelands users in Newport Harbor;

j. Agree that the mooring permit does not provide any ownership interest in the underlying tidelands, which are held in trust by the City and owned by the people of the State of California; and



k. Authorize the City, or its designee, to move the vessel on the mooring to another location when deemed necessary by the Public Works Director and/or Harbormaster.

3. Permittee/Transferee Qualifications. A mooring permit may be held by, or transferred to, only the following persons:

- a. A natural person(s) holding title to an assigned vessel;
- b. An executor or administrator carrying out the terms of a will or administering a probated estate that holds a mooring permit, but only for the period of time prior to distribution of the estate;
- c. An inter vivos trust, family trust, or other similar type of trust estate holding a mooring permit, so long as all trustors are natural persons and the primary mooring permittee shall be the trustee of the trust;
- d. An approved transferee whose vessel and/or mooring permit are subject to any of the terms and conditions stated in subsection (E) of this section;
- e. A marine contractor, or marine support service provider, holding a mooring permit used to provide current or ongoing harbor infrastructure and marine or fishing services (such as maintenance and dredging);
- f. ~~Balboa Island Yacht Club for the purposes of youth education in boating and marine activities; Kerckhoff Marine Laboratories for the purpose of marine and oceanographic research; and American Legion Post 291 for the purpose of serving veterans and their families and supplying them with affordable access to boating and harbor activities; or similar marine educational entities;~~
- g. The Balboa Yacht Club, Newport Harbor Yacht Club (collectively “yacht clubs”) and the Lido Isle Community Association—only for those moorings assigned by the City within certain established mooring areas or locations, prior to May 11, 2017 the enactment of the amended ordinance codified in this section. These designated mooring areas may not be expanded. The boundaries of these mooring areas are graphically depicted by National Oceanographic and Atmospheric Administration (“NOAA”) Chart Number 18754. Yacht clubs shall be entitled to maximum number of moorings as can be accommodated in the mooring fields designated in NOAA Chart Number 18754 and at a minimum the current number of moorings assigned to them as of May 11, 2017 the effective date of the ordinance codified in this section.

C. Plans and Specifications Required. No mooring permit shall be issued for placing, erecting, constructing or maintaining a mooring or buoy unless such mooring or buoy is constructed:

1. In accordance with standard plans and specifications approved by the Harbormaster and at a location approved by the Harbormaster; or
2. In accordance with other plans and specifications for such mooring or buoy which have been submitted by the applicant, showing the construction of such proposed mooring or buoy together with the location thereof, and which meet the requirements established in this chapter and which have been approved by the Harbormaster.

D. Late Fees. A ten (10) percent late charge shall be added to all payments due but not received by City by the due date.

E. Transfer of Permit. No mooring permittee shall transfer a permit for a mooring or buoy granted under the provisions of this chapter, except:

1. When transferred from a natural person to another member of his or her immediate family, which shall be defined for the purposes of this section as the mooring permittee’s spouse and heirs at law to the second degree of consanguinity; or
2. Except when transferred to immediate family, a mooring permit may only be transferred under this subsection up to one time in any twelve (12) month period.

F. Procedures for Transfers. Permits shall not be transferred without the prior written



approval of the Harbormaster. The Harbormaster may approve the transfer of a mooring permit under the procedures set out below:

1. The mooring permittee(s) (or, if the permittee is deceased or incapacitated, the transferee) shall submit to the Harbormaster:

a. A completed mooring transfer form (on the form provided by the Harbormaster); and b. Documentation that the proposed new mooring permittee (transferee) qualifies as a mooring permittee under subsection (B)(3) of this section.

2. If transferee intends to purchase an assigned vessel but does not have title on the assigned vessel owned by the mooring permittee and transferor at the time of transfer, then:

a. Within sixty (60) days of a transfer, transferee shall submit to the Harbormaster a copy of a California Department of Motor Vehicles registration or other current registration (or, in lieu thereof, U.S. Coast Guard documentation of ownership) documenting transferee's ownership of the assigned vessel or, in the case of an onshore mooring, a photograph of the assigned vessel if it is not subject to vessel registration laws. The Harbor Department shall inspect the vessel at its office for compliance with Section 17.25.20 of the Newport Beach Municipal Code before assignment is approved; or

b. If such documentation is not received by the Harbormaster within the sixty (60) day period, then the vessel or the mooring may be impounded, the mooring may be deemed vacant and may be assigned pursuant to subsections (G) and (H) of this section.

The Harbor Department shall inspect the vessel at its office for compliance with Section 17.25.020 of the Newport Beach Municipal Code before assignment is approved.

3. If transferee intends to moor a vessel other than the assigned vessel and does not have title to the vessel that will be moored at the time of transfer, then:

a. Within sixty (60) days of an approved transfer, the transferee shall notify the Harbormaster that the assigned vessel has been removed from the mooring and before a new vessel may be placed on the mooring shall submit to the Harbormaster a copy of a California Department of Motor Vehicles registration or other current registration (or, in lieu thereof, U.S. Coast Guard documentation of ownership) documenting transferee's ownership of the new assigned vessel, or in the case of a shore mooring, a photograph of the new assigned vessel if it is not subject to vessel registration laws; or

If the documentation is not received within sixty (60) days of a transfer, the mooring may be deemed vacant by the Harbormaster and the mooring may be assigned pursuant to subsections

a. (G) and (H) of this section. The mooring may remain vacant until such time the permittee notifies the Harbormaster of their intent to assign their vessel to the mooring.

4. The transfer request shall be denied unless mooring permit rent, including late payment fees, is paid current; registration or documentation and insurance; required mooring inspections are current; required maintenance and repairs are complete and there are no derelict or unauthorized vessel(s) on the mooring, the vessel is the appropriate length.

5. The mooring permittee and transferee shall provide a written agreement to defend and indemnify the City of Newport Beach in any dispute with a third party over transferee's right to be the mooring permittee or in any dispute with a third party over the mooring permittee's right to transfer the permit.

6. Transfer Approval. Upon confirmation of compliance with this subsection, the Harbormaster must find all of the following conditions to approve the transfer of a mooring permit:

a. The mooring permittee no longer owns the assigned vessel or has retained ownership of the assigned vessel and has permanently vacated the mooring; The transferee has met all the qualifications and conditions for issuance of a permit in subsection of this section;

a-b. The transferor or transferee has reported to the Harbormaster the price paid for the mooring permit, and has paid to the City the required transfer rental charge; and

b-c. The transferor represents that he/she/it did not discriminate against any transferee or prospective transferee because of race, religious creed, color, national origin, ancestry, physical handicap, medical condition, marital status, sex, sexual orientation, age or any other impermissible basis under law.

7. The Harbormaster may approve a one-for-one exchange of moorings between two mooring permittees, subject to compliance with this subsection without any transfer rental advance charge imposed by the City.

8. The Harbormaster may approve the changing of an assigned vessel on the permit, subject to the requirements of subsection (B) of this section, without any transfer rental advance charge imposed by the City.

9. Following an approved transfer, the Harbormaster shall list the transfer price of the mooring permit on a publicly available website hosted by the City, or on a third-party's website under contract with the City to host information regarding mooring permit transfers.

G. City's Authority to Assign Moorings through Use of Sub-Permits. With the exception of the Balboa Yacht Club, the Newport Harbor Yacht Club, and the Lido Isle Community Association's designated moorings, a mooring permittee may not rent, assign, or transfer the use of the mooring to any other person. With the exception of moorings issued to mooring permittees described in subsection (B)(3)(e) of this section, City the Harbormaster shall have the authority to assign vacant moorings to sub-permittees pursuant to the following provisions:

1. Deemed Vacant Moorings. City The Harbormaster may assign deemed vacant moorings through the issuance of sub-permits at ~~its~~ his or her own discretion. Sub-permits may be renewed upon availability. The mooring permittee may reclaim its mooring upon three days' prior written notice to City the Harbormaster of its intent to return the assigned vessel to the mooring.

A "deemed vacant mooring" shall be defined as a mooring upon which:

- a. An assigned vessel has not been attached for thirty (30) consecutive days or more; or
- b. A vessel, other than an assigned vessel, has been attached for thirty (30) days or more; or
- c. Required documentation for an assigned vessel has not been provided for a transfer request pursuant to subsection (E) of this section.

2. Noticed Vacant Moorings. City The Harbormaster may assign noticed vacant moorings at ~~its~~ his or her own discretion through the issuance of a mooring sub-permit for any period of time, up to the reoccupation date on

mooring permittee's written notice, or the twenty-four (24) hour written notice per subsection (G)(2)(b) of this section. If the mooring continues to be vacant for thirty (30) days past the reoccupation date indicated on mooring permittee's notice, and there is no further written notice from mooring permittee, the mooring shall become a deemed vacant mooring.

- a. Mooring permittee may provide written notice to ~~City~~ the Harbormaster of its intent to vacate its mooring for fifteen (15) days or more. These moorings shall be "noticed vacant moorings." Written notice shall include the date the mooring permittee intends to vacate his/her mooring, and the date he/she intends to reoccupy the mooring with the assigned vessel.
- b. If a mooring permittee provides written notice, the mooring permittee may reclaim the assigned mooring on the reoccupation date indicated in his/her written notice or, if the mooring permittee returns prior to or after the reoccupation date, upon twenty-four (24) hours' written notice to the ~~City~~ Harbormaster.

H. Procedures for Mooring Sub-Permit Issuance. Any natural person wishing to use a mooring pursuant to the issuance of a sub-permit must enter into a written mooring sub-permit agreement with the City that includes the following:

1. A written representation of the current vessel length which shall be satisfactory to the Harbormaster;
2. An agreement to be responsible for any damage to mooring equipment; to defend and indemnify the City of Newport Beach and the mooring permittee against any claims or losses arising out of, or related to, the mooring rental; to require the mooring sub-permittee provide proof of insurance as may be determined by the City's Risk Manager; to require registration or other proof of ownership; to require an equipment damage deposit, all to the satisfaction of the Harbormaster; and authorize the City, or its designee, to move the vessel on the mooring to another location when deemed necessary by the Public Works Director and/or Harbormaster;
3. The repair of any damage to the mooring equipment shall be paid by the mooring sub-permittee. If the mooring is damaged by a vessel assigned by the City, or the City's agent, the City will arrange for the repair of the mooring with a qualified vendor and provide notice to the permittee of the occurrence and the arranged repair date. Should the sub-permittee fail to pay for the damage for any reason, the City will pay for the required repairs to the mooring, and then seek reimbursement from the sub-permittee. Also, the City will make available a mooring without charge for the returning vessel of the mooring permittee until such time as their permitted mooring is repaired;
4. Mooring sub-permittees shall provide approved mooring lines which shall be removed at the end of the rental period;
5. A mooring sub-permit agreement may be up to fifteen (15) days and may terminate at any time for any reason, and may be renewed based on availability. Upon return of the assigned vessel to the mooring, the Harbormaster will attempt to reassign the sub-permittee to another mooring. Mooring sub-permittees have no right of renewal or substitute moorings upon return of the assigned vessel, or upon termination of a mooring sub-permit agreement for any reason. Mooring sub-permittees accept an indefinite term at their own risk;
6. The mooring sub-permit rent will be based on a rate established by the Newport Beach City Council;
7. ~~Sub-permittees Live-aboards may be temporarily permitted as sub-permittees stay aboard~~

the vessel pending vessel inspection, for a period not to exceed fifteen (15) days in any twelve (12) month period. The Harbormaster may grant extension(s) for longer than fifteen (15) days;

8. Mooring sub-permits shall be offered to the public on a first-come, first-served basis. City owned and operated moorings may be reserved in advance;

9. Subject to the Harbormaster's approval, a mooring may be loaned ~~free-of-charge~~ by the mooring permittee to a vessel other than the assigned vessel subject to the sub-permittee rental agreement: for no more than thirty (30) consecutive days; provided, that:

a. The mooring permittee provides the Harbormaster with written notice identifying the vessel that will use the mooring;

~~b. The mooring permittee has not loaned the mooring for more than sixty (60) days in the twelve (12) month period that immediately precedes the commencement of the current mooring loan;~~

~~c. The vessel owner requesting a loan has not previously been the recipient of loans for more than ninety (90) days in the previous twelve (12) months; and~~

~~d.b.~~ The vessel owner authorizes the City, or its designee, to move the vessel on the mooring to another location when deemed necessary by the Harbormaster.

I. Mooring Permit Transfer Nonrefundable Rental Charge. The City shall charge the mooring permittee for the right to transfer a mooring permit under subsection (E) of this section in an amount equal to seventy-five (75) percent of the annual mooring rent as established by City Council resolution. This transfer charge represents a one-time non-refundable rental advance for the use of a mooring. A mooring permit transfer charge shall not be required if:

The transfer is from the mooring permittee to the same mooring permittee as trustor of an inter vivos trust, living trust or other similar estate planning tool; The transfer is made under subsections (F)(7) and (8) of this section; or

3. The transfer is made pursuant to subsection (E)(1) of this section.

J. Surrendered Mooring Equipment. If the mooring permittee sells, transfers, or otherwise no longer owns the assigned vessel and does not intend to apply for, or does not receive, approval to transfer the permit to another, the permittee may provide written notice to the Harbormaster of his or her intent to surrender the mooring permit; otherwise the provisions of subsection (G) of this section regarding a vacant mooring shall apply.

Once a mooring permit is surrendered, the mooring permittee shall remove the assigned vessel and/or the mooring equipment thirty (30) days after written notice of surrender of the permit, or, upon failure to remove the mooring equipment, title shall vest in the City and the City shall compensate mooring permittee the fair value for the mooring equipment, less rent or fees owed, as provided in subsection (L) of this section.

K. Revocation of Permit.

1. Grounds for Revocation. A mooring permit or sub-permit may be revoked upon any of the following grounds set forth in Section 17.70.020, or any successor section, or for any of the following:

a. The moored vessel or the mooring equipment has been determined to violate the applicable mooring regulations in Section 17.25.020, or any successor section, and the mooring permittee or sub-permittee has not made the necessary corrections or repairs within the time required;

b. The mooring permittee or sub-permittee has failed or refused to allow an

inspection of the vessel to determine if it is seaworthy and operable, a public nuisance or in compliance with applicable marine sanitation device requirements including the placement of a dye tab in the marine sanitation device;

c. Living aboard a vessel assigned to a mooring without a live-aboard permit unless otherwise noted in subsection (G) of this section;

d. When the mooring permittee or sub-permittee fails to pay any mooring rent or fee when due and is in arrears for a period of sixty (60) days or more; of

e. When the mooring permittee has sublet their mooring in violation of this title.

2. Notice and Hearing. In the event the Harbormaster determines there are grounds to revoke a permit issued pursuant to this chapter, the Harbormaster shall proceed in the manner described by Section 17.70.020, or any successor section.

3. Upon revocation, it shall be the duty of the mooring permittee to immediately remove the mooring equipment and any moored vessel. If not removed within thirty (30) days of revocation of the permit, the mooring equipment shall vest in the City and may be auctioned by the City to another person or may be removed by the Harbormaster and the cost of mooring equipment removal shall be paid by the mooring permittee. Any moored vessel or equipment not removed within thirty (30) days may be impounded by the City and disposed of in the manner provided by law. City incurred costs of removal of mooring equipment or any vessel moored thereto may be charged against the permittee and collected in any court of competent jurisdiction or recovered by the City from the proceeds of sale of the vessel or mooring equipment.

4. During any revocation proceeding under this subsection, if the mooring is unoccupied, it may be temporarily assigned as a mooring for guest vessels by the Harbormaster.

L. Moorings Reverting Back to City. Should a mooring revert back to the City for any reason, whether through abandonment, surrender, failure to provide documents pursuant to subsection (F) of this section, or for any other reason, the following shall apply:

M.

1. The mooring permittee shall be entitled to recover all of mooring permittee's mooring equipment within thirty (30) days of reversion;

2. If mooring permittee does not recover his or her mooring equipment, mooring permittee shall be entitled to payment from the City of the fair value of the mooring equipment as depreciated by use in an amount to be determined by the Harbormaster and as set in the City's master fee resolution, after any and all past due rent and fees, if applicable, have been satisfied; and

3. The mooring may be publicly auctioned by the City, or the City's designated representative, or the mooring may be used for other City purposes. (Ord. 2018-17 § 58, 2018: Ord. 2017-7 § 3, 2017: Ord. 2013-11 § 175, 2013; Ord. 2010-26 § 5, 2010: Ord. 2008-2 § 1 (part), 2008)

N. Extension of Length of Assigned Vessel to Offshore Mooring

1. Request for Extension of Vessel Occupancy Length. If an offshore mooring permittee wishes to moor a vessel other than the assigned vessel that is or will be longer than the assigned vessel, the Harbormaster may amend the existing offshore mooring permit to extend the vessel occupancy length to accommodate a longer vessel up to a maximum of five (5) additional feet upon the terms and conditions set forth below; provided, however, that the Harbormaster may refer such applications to the Harbor Commission for consideration and final action. The request must be in compliance with Harbor Policy. Applications for the extension of vessel occupancy



length in excess of five (5) feet shall be submitted to the Harbor Commission for consideration and rendering of a decision. For applications requiring the approval of the Harbor Commission, the Harbormaster shall present to the Harbor Commission all relevant facts to support the findings included in subsection 5, below.

2. Conditional Approval. An offshore mooring permittee may submit an application to amend an existing offshore mooring permit for a vessel that is known to be longer than the assigned vessel; or for a vessel that is expected to be longer than the assigned vessel if the offshore mooring permittee does not at the time of making an application know the identification of the vessel for which an amendment to the existing offshore mooring permit is being sought. Under either circumstance, the application shall include detailed information of such vessel including make, model, year, Length Overall (LOA), beam, dimension, vessel ID, and if the vessel identification is not known at the time of making an application, the Length Overall (LOA) and Adjusted LOA (including bowsprits, swim steps, or stern mounted dinghies) of the proposed vessel for which the applicant seeks approval and shall otherwise comply with all of the other application requirements and findings and Harbor Policy. If the Harbormaster or the Harbor Commission, as applicable, approves an application for an amendment to the offshore mooring permit under this section, such approval shall be conditional and contingent upon the following requirements:

a. The mooring permittee must occupy the mooring with the new vessel within twelve (12) months following the date of approval;

b. The mooring permittee's rights pursuant to a valid mooring permit, as amended, shall not be sold or otherwise transferred for a period of twelve (12) months following the date of occupancy of the mooring with the new vessel. The sale or transfer of said permit shall comply with the requirements of subsections (B)(3), (E) and (F) of Section 17.60.040.

Non-compliance with either of the foregoing requirements will constitute grounds for the Harbormaster to revoke the amendment to the mooring permit in accordance with Subsection 17.60.040(K). In the event that the Harbormaster determines that there are grounds to revoke the amendment to the mooring permit issued pursuant to this chapter, the Harbormaster shall proceed in the manner described by Section 17.70.020. Upon revocation, it shall be the duty of the mooring permittee to remove the moored vessel and, upon such revocation, to return the mooring area where vessel was assigned to its original length at the mooring permittee's expense within 30-days of written notification to do so. Rather than reverting back to the City upon such revocation, the mooring permittee may thereafter continue to use the mooring in accordance with all of the terms and conditions of the original offshore mooring permit and subject to all of the terms and provisions of Title 17 applicable to mooring permits.

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

4. Application Requirements. An application for an extension of the vessel occupancy length shall include the following information in addition to such other information as may be required by the Harbormaster:



a. The full identification of the applicant and the vessel for which an amendment to the existing offshore mooring permit is sought, certifying that the applicant and the assigned vessel have complied with (or in the event the vessel identification is unknown, applicant will certify that such unidentified vessel prior to occupying the mooring space will comply with) all of the appropriate United States Coast Guard license, inspection, and certification requirements, and certifying that the applicant has read and is otherwise familiar with all of the applicable rules and regulations promulgated by the City, including, but not limited to, the provisions of this Title;

b. Such plans and specifications as may be required by the Harbormaster for such mooring to accommodate the proposed longer vessel; and

c. Evidence in support of the findings included in subsection 5, below.

5. Action on Extension Request. Upon receipt of a completed application for an extension of the assigned vessel occupancy length, the Harbormaster or the Harbor Commission, as applicable, may approve or conditionally approve an amendment to the offshore mooring permit to allow the extension of the vessel occupancy length (in the event of an application for an unidentified vessel only a conditional approval may be obtained) only after first finding the following:

a. There have been no changes in the conditions or circumstances of the existing offshore mooring permit so that there would have been grounds for denial of the original offshore mooring permit or grounds for revocation thereof at the time an application for extension of the assigned vessel occupancy length is filed.

b. The proposed extension of the assigned vessel occupancy length will not: (i) impede or obstruct the fairways or channels or prevent or obstruct the passage of other vessels between the rows, (ii) impede, obstruct or prevent other mooring permittees from safely navigating in and out of adjacent moorings or moorings in other rows connected by the same fairway to the row of the permittee's vessel (iii) extend beyond the outer boundaries of the mooring area or row, (iv) exceed the intended vessel LOA established by the Harbor Commission for the row or mooring area in which the vessel will be moored, and (v) exceed the maximum length of the other vessels in the same row.

c. The applicant and the assigned vessel have complied with all of the appropriate United States Coast Guard license, inspection, and certification requirements for the assigned vessel and all of the applicable rules and regulations promulgated by the City, including, but not limited to, the provisions of this Title.

d. The applicant agrees to cover all costs associated with modifying the length of the mooring, including, but not limited to, any costs associated with relocating mooring anchors and tackle, and any costs associated with re-sizing mooring tackle to meet applicable mooring standards (e.g. chain size).

#### **17.60.050 Houseboats.**

A. Moorage Restrictions. No person shall moor or dock a houseboat on the waters of Newport Harbor.

B. No person shall use or occupy or permit the use or occupancy of a houseboat for living

quarters either permanently or on a temporary basis on the waters of Newport Harbor. (Ord. 2008-2 § 1 (part), 2008)

**17.60.060 Public Trust Lands.**

~~The following restrictions shall apply to public trust lands under either a permit or a lease:~~

A. Leases/Permits. In the event public trust lands are used for commercial purposes by an entity other than the City, such as for example, a commercial marina or commercial pier, then that entity shall enter into a lease or permit with the City.

1. Leases shall provide lessees with a leasehold interest in the property for a period of at least five (5) years, not to exceed a period of time as limited by the City Charter or applicable State law.

2. Permits shall provide permittees with an interest in the property for a period of ten (10) years or less, to be determined in the sole and absolute discretion of the City Manager.

3. The City Manager, or his or her designee, is authorized to enter into leases or permits authorized by this section on behalf of the City in a form approved by the City Council pursuant to Resolution No. 2012-91 for large commercial marinas and Resolution No. 2012-97 for commercial use of tidelands (as the same may be subsequently amended from time to time by the City Council) or in such form as is substantially similar thereto; provided, however, that the City Manager may instead refer the matter to the City Council for consideration and approval. Furthermore, the City Manager, or his or her designee, is authorized to implement such leases or permits on behalf of the City and to issue interpretations, waive provisions, and enter into amendments thereof.

B. Land Use. Leases and permits shall be for uses consistent with the public trust and Section 17.05.080. Preference shall be given to coastal-dependent uses.

C. Public Access. Public access shall be provided in a manner consistent with applicable law.

D. Revenue. Rent under this section shall be based upon fair market value, as determined by an authorized appraiser, survey, or other appropriate valuations method, of the uses authorized in the lease or permit as established by the City Council. ~~Such determination shall be based, in part, upon the findings of a City-selected appraiser.~~

E. Commercial uses provided under this Title 17 are exempt from any provision requiring involvement of the owner or long-term lessee of an abutting upland property. This subsection's sole purpose is to allow a person to apply for a commercial pier permit or lease in front of or encroaching upon abutting upland property not owned or leased by the person applying for the permit.

F. All persons that receive a commercial permit or lease, whether it is a new permit or lease or a transferred permit or lease, from the City to use public trust lands shall, to the fullest extent permitted by law, indemnify, hold harmless and defend (with counsel approved by the City, which approval shall not be unreasonably withheld) the City, its elected officials, officers, employees, agents, attorneys, volunteers and representatives from and against any and all claims, demands, obligations, damages, actions, causes of action, suits, losses, judgments, fines, penalties, liabilities, costs and expenses of every kind and nature whatsoever (individually, a "claim" or collectively, "claims"), which may arise from or in any manner relate (directly or indirectly) to the permit or lease including, but not limited to, the issuance of any permit or lease, the transfer of any permit or lease, the entry into any permit or lease, permittee's

or lessee's occupancy or use or occupancy or use by, or permittee's or lessee's guests, invitees, sublessees, or licensees ~~occupancy or use~~, of the public trust lands, or improvements including, but not limited to, any use involving petroleum based products, hazardous materials, hazardous waste and/or other hazardous substances as defined by City, County, State or Federal laws and regulations. The permittee's or lessee's obligations ~~in~~ under this indemnity shall not extend to the degree any claim is proximately caused by the sole negligence or willful misconduct of the City, subject to any immunities which may apply to the City with respect to such claims. This indemnification provision and any other indemnification provided elsewhere in an individual permit or lease shall survive the termination of said permit or lease and shall survive for the entire time that any third party can make a claim.

This indemnity obligation shall apply independent of whether it is explicitly placed within a particular commercial permit or lease. (Ord. 2013-27 §§ 4, 5, 2013; Ord. 2013-15 § 1, 2013; Ord. 2013-1 § 10, 2013; Ord. 2008-2 § 1 (part), 2008)

~~17.60.80 — Appeal.~~

~~Notwithstanding Chapter 17.65, appeals under this chapter involving any permit or lease shall be processed as follows:~~

~~A. — Time Limit. Appeals shall be initiated within twenty-one (21) calendar days of the decision under appeal.~~

~~B. — Initiation. Appeals shall be made in writing to the City Clerk and shall be accompanied by a fee established by resolution of the City Council. The appeal fee shall be refunded to the appellant if he or she is successful in their appeal under this section (e.g., decision being appealed is reversed).~~

~~C. — Effect on Decisions. Decisions that are appealed shall not become effective until the appeal or review is resolved.~~

~~D. — Hearing Date. Appeals shall be scheduled by the Public Works Director and/or Harbormaster, as applicable, for a hearing before an independent hearing officer within thirty (30) days of the filing of the appeal unless both appellant and City consent to a later date.~~

~~E. — Hearing. At the hearing, the hearing officer shall review the record of the decision and hear testimony of the appellant, the applicant and any other interested party. The hearing officer shall consider only the same application, plans and project-related materials that were the subject of the original decision.~~

~~F. — Required Findings. At the hearing, the hearing officer shall make the findings prescribed in this chapter when affirming, modifying or reversing the original decision.~~

~~G. — Decision and Notice. After the hearing, the hearing officer shall affirm, modify or reverse the original decision. When a decision is modified or reversed, the hearing officer shall state the specific reasons for modification or reversal. Decisions on appeals shall be rendered within thirty (30) calendar days of the close of the hearing. The Public Works Director and/or Harbormaster, as applicable, shall mail notice of the hearing officer's decision. Such notice shall be mailed within five working days after the date of the decision to the applicant and the appellant. The decision of the hearing officer shall be final. (Ord. 2018-17 §§ 59—61, 2018; Ord. 2013-1 § 11, 2013; Ord. 2008-2 § 1 (part), 2008)~~

~~H. — Effect on Decisions. Decisions that are appealed shall not become effective until the appeal or review is resolved.~~

~~I. — Hearing Date. Appeals shall be scheduled by the Public Works Director and/or~~

~~Harbormaster, as applicable, for a hearing before an independent hearing officer within thirty (30) days of the filing of the appeal unless both appellant and City consent to a later date.~~

~~J. Hearing. At the hearing, the hearing officer shall review the record of the decision and hear testimony of the appellant, the applicant and any other interested party. The hearing officer shall consider only the same application, plans and project-related materials that were the subject of the original decision.~~

~~K. Required Findings. At the hearing, the hearing officer shall make the findings prescribed in this chapter when affirming, modifying or reversing the original decision.~~

~~L. Decision and Notice. After the hearing, the hearing officer shall affirm, modify or reverse the original decision. When a decision is modified or reversed, the hearing officer shall state the specific reasons for modification or reversal. Decisions on appeals shall be rendered within thirty (30) calendar days of the close of the hearing. The Public Works Director and/or Harbormaster, as applicable, shall mail notice of the hearing officer's decision. Such notice shall be mailed within five working days after the date of the decision to the applicant and the appellant. The decision of the hearing officer shall be final. (Ord. 2018-17 §§ 59–61, 2018; Ord. 2013-1 § 11, 2013; Ord. 2008-2 § 1 (part), 2008)~~

## Chapter 17.65 APPEALS OR CALLS FOR REVIEW

### Sections:

- 17.65.010 Authorization.
- 17.65.020 Time Limits.
- 17.65.030 Initiation.
- 17.65.040 Procedures.
- 17.65.050 Judicial Review of City Decision.

#### 17.65.010 Authorization.

The purpose of this chapter is to provide procedures for the appeal or call for review of decisions of the Public Works Director, Community Development Director, Harbormaster and Harbor Commission under Title 17.

A. Decisions of the Public Works Director, Community Development Director and/or Harbormaster resulting from ~~his or her~~ their respective administration of Title 17 ~~this Code~~ may be appealed to the Harbor Commission by any interested person.

B. Decisions of the Harbor Commission may be appealed to the City Council by any interested person.

C. A member of the Harbor Commission, acting in their official capacity, may call for review, to the Harbor Commission, decisions resulting from the Public Works Director, Community Development Director and/or Harbormaster's administration of ~~this Code~~ Title 17 as applicable. The purpose of the call for review is to bring the matter in front of the entire body for review.

D. A member of the City Council, acting in their official capacity, may call for review, to the City Council, decisions of the Harbor Commission. The purpose of the call for review is to bring the matter in front of the entire body for review. (Ord. 2018-17 § 62, 2018; Ord. 2015-9 § 32,

2015: Ord. 2008-2 § 1(part), 2008)

**17.65.020 Time Limits.**

Appeals or calls for review shall be initiated within fourteen (14) days following the date of the decision was rendered. (Ord. 2015-9 § 33, 2015: Ord. 2008-2 § 1 (part), 2008)

**17.65.030 Initiation.**

A. Filing of Appeals and Calls for Review. Appeals or calls for review of decisions of the Public Works Director, Community Development Director and/or Harbormaster shall be made in writing to the City Clerk on forms provided by the Public Works Director, Community Development Director and/or Harbormaster as applicable. Appeals or calls for review of decisions of the Harbor Commission shall be made in writing to the City Clerk on forms provided by the City Clerk. The appeal shall state the facts and basis for the appeal. A call for review initiated by a member of the Harbor Commission or City Council, in their official capacity, shall be for the purpose of bringing the matter in front of the entire body for review.

B. Fee. Appeals shall be accompanied by a fee as established by resolution of the City Council. A call for review is exempt from the payment of a filing fee under Section 3.36.030, or any successor provision. The appeal fee shall be refunded to the appellant if he or she is successful in his or her appeal under this section (e.g. decision being appealed is reversed).

C. Effect on Decisions. Decisions that are appealed or called for review shall not become effective until the appeal or review is resolved. (Ord. 2018-17 § 63, 2018; Ord. 2015-9 § 34, 2015: Ord. 2008-2 § 1 (part), 2008)

**17.65.040 Procedures.**

A. Hearing Date. An appeal or call for review shall be scheduled for a hearing before the appellate or (reviewing) body within thirty (30) days of the filing of the appeal or call for review unless both applicant and appellant and the City Manager or review body consent to a later date. The City Clerk shall give notice to the appellant of the time, date and place for the hearing not less than ten (10) days prior to the date of the hearing by depositing it in the mail for delivery by the United States Postal Service in a sealed envelope, postage prepaid, addressed to the appellant at his or her last known address, as the same appears in the public records of the City.

B. Notice and Public Hearing. An appeal or call for review hearing shall be a public hearing if the decision being appealed or called for review requires a public hearing. In addition to the notice given to the appellant described in subparagraph (A), above, notice ~~Notice~~ of a public hearings under this Section 17.65.040 shall be given in the manner required under Title 17 for the decision being appealed or called for review.

C. Plans and Materials. At an appeal or review hearing, the deciding appellate or reviewing body shall consider only the same application, plans and project-related materials that were the subject of the original decision.

D. Hearing.

1. At the hearing, the deciding appellate or reviewing body shall review the record of the decision and hear testimony of the appellant, if any, the applicant and any other interested party. An appeal or call for review shall be de novo.

2. The failure of the appellant to appear at the hearing shall constitute a failure to exhaust his or her administrative remedies.



3. The hearing need not be conducted in accordance with the technical rules of evidence. Any relevant evidence may be admitted if it is evidenced on which reasonable persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might consider such admission improper in a civil action in courts of competent jurisdiction in this State. However, irrelevant or unduly repetitious evidence shall be excluded.

4.4. The appellate (or reviewing) body may continue the hearing from time to time and/or request additional information prior to issuing a written decision.

E. Required Findings. At an appeal or review hearing, the ~~deciding appellate (or reviewing)~~ body shall make the findings prescribed in the individual chapters of this Code when affirming, modifying or reversing the original decision.

F. Decision and Notice. After considering all of the testimony and evidence presented at the hearing, the appellate (or reviewing) body shall issue a written decision within thirty (30) days from the date of the conclusion of the hearing. ~~affirm, modify or reverse the original decision. When a The written decision is modified or reversed, the appellate (or reviewing) body shall state the specific reasons for modification or reversal the decision. Decisions on appeals shall be rendered within thirty (30) days of the close of the hearing. The written decision shall be served on the appellant Public Works Director and/or Harbormaster, as applicable, shall by deposit in the mail notice of a Harbor Commission decision for delivery by the United States Postal Service in a sealed envelope, postage prepaid, addressed to the appellant at his or her last known address, as the same appears in the public records of the City. and the The written decision of the City Council shall be serviced by the City Clerk shall mail a notice of a City Council decision in the same manner and within the same time as decision of the Harbor Commission are served.~~ Such notice shall be mailed within five working days after the date of the decision to the applicant and the appellant, if any. (Ord. 2018-17 § 64, 2018; Ord. 2015-9 § 35, 2015; Ord. 2008-2 § 1 (part), 2008)

#### **17.65.050 Judicial Review of City Decision.**

A person shall not seek judicial review of a City decision on any matter until all appeals or calls for review, if applicable, to the Harbor Commission and City Council have been first exhausted in compliance with this chapter. (Ord. 2015-9 § 36, 2015)

### **Chapter 17.70 ENFORCEMENT**

#### **Sections:**

#### **17.70.010 Declaration of Nuisance – Abatement.**

#### **17.70.020 Revocation of Permit.**

#### **17.70.010 Declaration of Nuisance— Abatement.**

Any building or structure set up, erected, constructed, altered, enlarged, converted, moved or maintained in or over the waters of Newport Harbor or the Pacific Ocean contrary to the provisions of this Code, and any use of any land, water, building or premises established, conducted, operated or maintained contrary to the provisions of this Code, shall be and the same is declared to be unlawful and a public nuisance; and the City Attorney shall, upon order of the City Council, immediately commence action or proceedings for the abatement and removal and injunction thereof in the manner provided by law, and shall take such other steps and shall apply to such courts as may have jurisdiction to grant such relief as will abate and remove such building or structure, and restrain and enjoin any person, firm or corporation



from setting up, erecting, building, maintaining, or using any such building contrary to the provisions of this Code. Pursuant to Government Code Section 38773, all expenses incurred by the City in connection with any action to abate a public nuisance will be chargeable to the person(s) creating, causing, committing, or maintaining the public nuisance. (Ord. 2008-2 § 1 (part), 2008)

#### 17.70.020 Revocation of Permit.

A. Grounds for Revocation. Unless otherwise provided by the terms of a permit, any permit heretofore or hereafter granted under and pursuant to this Title 17 for any structure, work, or activity in the waters of Newport Harbor or the Pacific Ocean may be revoked by the Harbor Commission upon any of the following grounds, in accordance with the provision of this section:

1. The development work, structure, use or activity has become detrimental to commerce, navigation or fishing;
2. The development work, structure, use or activity is detrimental to the use, operation or development of the harbor Newport Harbor or the Pacific Ocean;
3. The development work, structure, use or activity has become a source of pollution of the harbor Newport Harbor or the Pacific Ocean;
4. The development work, structure, use or activity does not comply with the permit or does not meet the standards adopted by the Harbor Commission for such development, work or structure;
5. The permittee has failed for a period of sixty (60) days to pay the fee or fees heretofore or hereafter imposed for the occupancy of tidelands, filled tidelands or submerged lands upon which such development, work or structure exists;
6. The development work or structure has fallen into a state of disrepair;
7. The space occupied by such development, work or structure is over public trust land and such space is to be devoted to a more necessary public use;
8. The permittee has breached or failed to comply with the terms or conditions contained in the permit or upon which the permit was granted;
9. The development work, structure, use or activity violates the terms of the tidelands trust grants to the City; or -
19. For any violation of this Title 17 or State or Federal law.

A mooring permit or sub-permit may be revoked upon the foregoing grounds or upon any of the grounds set forth in Subsection 17.60.040(K)

B. Notice and Hearing. Any such permit ~~shall~~ may be revoked only after a public hearing before the Harbor Commission at which the permittee has an opportunity to be heard. At least fifteen (15) days' notice of such hearing shall be given by the Harbormaster in writing by first class-certified mail with postage prepaid addressed to the address of the permittee shown on such permit, setting out the date, time and place of hearing, and specifying the facts which constitutes substantial evidence to establish grounds for revocation. Such notice shall provide notice of the time, date and location of the hearing.-

The Harbor Commission may shall preside over the hearing. -or, in the alternative, appoint a Hearing Officer to conduct the hearing, receive relevant evidence and to submit to the Harbor

~~Commission findings and recommendations to be considered by the Harbor Commission. The Harbor Commission may continue a hearing from time to time and may request additional information from the Harbormaster or the permittee before issuing a decision. The failure of the permittee to appear at the hearing shall constitute a failure to exhaust his or her administrative remedies.~~

~~At the hearing, the permittee shall be given the opportunity to testify and present evidence and shall raise any and all legal and factual issues concerning the determination under this section. The hearing need not be conducted in accordance with the technical rules of evidence. Any relevant evidence may be admitted if it is evidence on which reasonable persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might consider such admission improper in a civil action.~~

~~shall render its decision within forty-five (45) days from the date of the hearing or, in the event that a Hearing Officer has been appointed, within forty-five (45) days from the date on which the Harbor Commission receives the findings and recommendations of the Hearing Officer. The decision of the Harbor Commission shall be final.~~

C. Decision and Notice. After considering the testimony and evidence presented at the hearing, including, if applicable, the findings and recommendations submitted by the Hearing Officer, the Harbor Commission shall issue a written decision, including the findings upon which the decision was made, within forty-five (45) days from the date of the conclusion of the hearing or, in the case of the conduct of a hearing by a Hearing Officer, within forty-five (45) days from the date on which the Harbor Commission receives the findings and recommendations of the Hearing Officer. The decision of the Harbor Commission shall be final, unless appealed or called for review. The written decision of the Harbor Commission shall be served within five (5) working days after the date of the decision by the City Clerk by certified mail with postage prepaid, addressed to the address of the permittee shown on such permit.

~~Within ten days of the conclusion of the hearing, the Harbor Commission shall render a decision. The City Clerk shall notify the permittee or applicant of the decision of the Harbor Commission.~~

D. Effective Date. The decision of the Harbor Commission to revoke a permit shall become final fourteen (14) days after the date of the decision has been placed in the United States mail by the City Clerk, unless appealed or called for review.

E. Rights of Appeal or Call for Review. The decision of the Harbor Commission may be appealed or called for review by the City Council with the time and in accordance with the procedures. Appeals or calls for review shall be as prescribed by Chapter 17.65, or any successor chapter. (Ord. 2015-9 §§ 37, 38, 2015; Ord. 2013-1 § 12, 2013; Ord. 2008-2 § 1 (part), 2008)