



**CITY OF**

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# **NEWPORT BEACH**

## **Harbor Commission Staff Report**

November 13, 2019  
Agenda Item No. 6.3

**TO:** HARBOR COMMISSION

**FROM:** Carol Jacobs, Assistant City Manager - 949-644-3313,  
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**TITLE:** Proposed Changes to Title 17 – Harbor Code

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**ABSTRACT:**

The City Council requested that the Harbor Commission review Title 17 (Harbor Code) of the Newport Beach Municipal Code in February 2018. The Harbor Commission created a subcommittee consisting of Commissioners Kenney, Blank and Yahn to provide recommended changes based on the changed conditions within the Harbor. The proposed changes reflect all chapters of the Harbor Code with the exception of chapter 17.10 – Marine Activity Permits which will be provided to the Harbor Commission at a future date.

**RECOMMENDATION:**

- 1) Find this action exempt from the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment) and 15060(c)(3) (the activity is not a project as defined in Section 15378) of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, because it has no potential for resulting in physical change to the environment, directly or indirectly.
- 2) Approve the recommended changes to Title 17 and forward to the City Council for their consideration.

**FUNDING REQUIREMENTS:**

There is no fiscal impact related to this item.

**DISCUSSION:**

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

The Harbor Commission created a subcommittee consisting of Commissioners Blank, Kenney and Yahn. The subcommittee worked together to review Title 17 and update the code in draft form.

The subcommittee spent several months reviewing the code and identified sections for potential updates, modification or deletion. Because of the lengthy nature of the code, the subcommittee organized their review into three distinct blocks, to facilitate more effective community input. These review blocks included: 1) Chapters 17.01 – Definitions through 17.35 Harbor Development Regulations; 2) Chapters 17.40 – Live-Aboards through 17.70 – Enforcement; and 3) Chapter 17.10 – Marine Activities Permits (recommendations associated with this section of the code will be considered by the Harbor Commission separately at a future date).

The subcommittee conducted a public outreach campaign to collect input from harbor stakeholders and the community at large. Four public meetings were held to solicit this public input on the first two review blocks. All meetings were well attended. In addition, a new section of the City's website was developed to promote these public meetings. Working drafts of recommended code revisions were also made available on this website. A dedicated "Title 17" email address was established, where written comments and suggestions from the public could be submitted for the subcommittee's consideration. A variety of social media posts, emails, handbills, and sandwich board signs were used to promote the process and to encourage community stakeholders' engagement. Public comments are included in Attachment C.

In addition to these public outreach meetings organized by the subcommittee, the full Harbor Commission also reviewed these sections of the code at their public meetings, at which time additional community feedback was received.

Chapters 17.01 (Definitions) through 17.35 (Harbor Development Regulations) were reviewed at the June 12, 2019 Harbor Commission meeting and Chapters 17.40 (Live-Aboards) through 17.70 (Enforcement) at the August 14, 2019 Commission meeting.

Following the various levels of review, staff requested the City Attorney's Office provide input associated with these recommended changes. Following this legal review the subcommittee and staff worked closely together to address any outstanding issues. The result of the subcommittee's work, public input and review by the City Attorney's office resulted in the draft presented now for the Harbor Commission's consideration. Attachment A is the clean version of the proposed changes and Attachment B is the redline version.

Overall proposed changes were developed to more accurately reflect current practices and provide additional clarity. During this process several key items were identified as important to the community stakeholders and the subcommittee:

- Public Docks - Clarification of rules associated with use of public docks/piers, aimed at encouraging greater public access, and discourage unintended "permanent" storage of small craft at these locations.
- Live-Aboards – A number of changes are proposed to this chapter including: adding language to reflect that commercial marinas may not assign more than 7% of their slips for live-aboard boaters, providing minimum marine sanitation device requirements, requiring proof of a commercial pump out service or other verifiable

system as approved by the Harbormaster, requiring dye tablet testing at any time, and expanding the requirements for trash disposal.

- Harbor Development Permits - Clarified new construction and maintenance functions and added a section on how and when a variance may be issued, clarified the process for getting approvals from other governmental agencies.
- Public Trust Lands - Clarified and expanded Public Trust Lands, uses and exceptions to their use.
- Pollution Deterrent - Allow for dye tablet testing of marine sanitation devices within Newport Harbor to guard against pollutants being introduced into local waterways.
- Vessel Inspection - Provide the Harbormaster with the authority to inspect a vessel prior to a transfer of a mooring to ensure the vessel meets the standards for mooring a vessel in Newport Harbor.
- Practice of Loaning Moorings - Eliminated the code provision allowing a mooring permittee to “loan” their mooring to others free of charge. Recommendations would result in any vacant mooring being subject to sub-permit provisions, as issued by the Harbor Department.
- Number of Overnight Stays Aboard Vessels - There was much discussion and debate regarding how many nights permittees and sub-permittees could stay aboard a vessel. Many permittees wanted time expanded, while a number of residents along the bay preferred to limit the amount of overnight stays. The recommendation is to leave these sections unchanged while also, adding a provision allowing the Harbormaster to grant sub-permittees extension should specific circumstances warrant additional time.
- Mooring Extensions - A new section was added regarding a request to extend a mooring, should permittees wish to place larger vessels at that location. The mooring fields have limited space and require additional management to ensure extensions are considered where feasible, while also insuring adequate space is maintained for all moored vessels to use the fields. The Municipal Code did not allow for a process to consider such requests. A City Council policy is proposed to provide guidance on implementation of mooring extensions.
- Appeals and Calls for Review – These sections were revamped to include this process in one location within the Title.

In addition, the City Attorney’s Office worked with staff to implement additional improvements to the Title to be consistent with other processes within the Municipal Code that include:

*Chapter 17.05: Decision-Making Authority, Noticing, Hearing Procedures and Findings for Determinations of Decisions.*

Chapter 17.05 specifies the responsibilities of the City Manager, Harbormaster and Public Works Department, but is silent as to the Community Development Department, in implementing Title 17. Additionally, at least some of the responsibilities of the various departments have shifted over time. Therefore, revisions to Chapter 17.05 are proposed that specify the duties of the City Manager, Harbormaster and Public Works Department, as well as adding responsibilities of the Community Development Department consistent with the City's current processes.

In some instances, Title 17 did not specify the process for issuing certain permits, whether the issuance of that permit required a public hearing, who should receive notice of the hearing and what findings are necessary in order to approve or deny a permit. With these issues in mind, amendments to Chapter 17.05 are proposed that lay out the content of notices for public hearings, how notice of a public hearing is to be provided, hearing procedures, and the findings required to approve or deny a permit that is subject to a public hearing.

*Chapter 17.50: Clarifying the types of permits required for harbor development permits, departments responsible for reviewing applications and findings.*

Chapter 17.50 governs harbor development permits. Depending upon the type of project that is proposed, either a harbor development permit, approval and concept or both are required. Chapter 17.50 was silent as to which department (i.e. Public Works or Community Development) processed applications and which permits issued ministerially by the department versus requiring a public hearing before the Harbor Commission. Additionally, Chapter 17.50 does not currently provide a variance procedure in the event of special circumstances applicable to a particular. The revisions to Chapter 17.50 are proposed in order to address these issues.

*Chapter 17.70: Enforcement.*

Chapter 17.70 governs enforcement. Currently, Section 17.70.010 authorizes the abatement of a public nuisance related to a "building or structure" subject to the City Attorney first making a request to the City Council. In practice, limiting a public nuisance to "buildings or structures" does not give the City the ability to address other scenarios that constitute a public nuisance. For example, a vessel on the water or a particular use may constitute a public nuisance. However, as currently written, the City is limited to enforcement of public nuisances involving buildings or structures. Additionally, requiring the City Attorney to receive authorization from the City Council before abating a public nuisance limits the City's ability to respond quickly as issues arise.

Section 17.70.020 generally addresses revocations. However, revocations of certain types of permits, namely, live-aboard and mooring permits are located in other chapters of Title 17. An amendment to Section 17.70.020 is proposed so that all revocations are located in one place. Additionally, Section 17.70.020 provided for a hearing officer in the case of some revocations which, in practice, presents challenges in finding a hearing officer with sufficient knowledge and experience with harbor developments, uses or activities. Therefore, an amendment is proposed so that the Harbor Commission serves as the decision-making body in the event of a revocation.

Impounds. Section 17.70.030 was added to provide for impounding of vessels in certain instances consistent with state law as provided in Harbor and Navigations Code Section 523.

**ENVIRONMENTAL REVIEW:**

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

**NOTICING:**

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

**ATTACHMENTS:**

Attachment A – Recommended changes to Title 17 (clean)  
Attachment B – Recommended changes to Title 17 (redline)  
Attachment C – Public comments