

## ATTACHMENT A

### ORDINANCE NO. 2020-5

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF NEWPORT BEACH, CALIFORNIA, AMENDING TITLE 17 (HARBOR CODE) AND OTHER RELATED PROVISIONS OF THE NEWPORT BEACH MUNICIPAL CODE MAKING COMPREHENSIVE REVISIONS INCLUDING, BUT NOT LIMITED TO, UPDATING DEFINITIONS, REGULATING MARINE SANITATION DEVICES TO PROTECT AGAINST DISCHARGE OF WASTE IN NEWPORT HARBOR, AMENDING REQUIREMENTS FOR MOORING SUB-PERMITS, ADDING A PROCEDURE TO ALLOW MOORING LENGTH EXTENSIONS AND MODIFYING AND/OR ADDING PROCEDURES FOR ISSUANCE OF PERMITS, APPEALS/CALLS FOR REVIEW AND REVOCATIONS**

**WHEREAS**, Section 200 of the Charter of the City of Newport Beach ("Charter") vests the City Council with the authority to make and enforce all laws, rules and regulations with respect to municipal affairs subject only to the restrictions and limitations contained in the Charter and the State Constitutions, and the power to exercise, or act pursuant to any and all rights, powers, and privileges, or procedures granted or prescribed by any law of the State of California;

**WHEREAS**, pursuant to the 1978 Beacon Bay Bill, as amended, ("Beacon Bay Bill") the City of Newport Beach ("City") acts on behalf of the State of California as the trustee of tidelands located within the City's limits, including Newport Harbor;

**WHEREAS**, the City adopted rules and regulations for Newport Harbor, which are contained in Title 17 (Harbor Code) ("Title 17") of the Newport Beach Municipal Code ("NBMC");

**WHEREAS**, in 2017, the City assumed mooring management responsibilities from the County of Orange Sheriff's Department over Newport Harbor and created a Harbor Department to oversee these new responsibilities and, as a result, the City Council adopted Ordinance No. 2018-17 amending Title 17 to reflect this reorganization;

**WHEREAS**, additional comprehensive revisions to Title 17 were required in order to create consistency and update processes and procedures related to Newport Harbor, therefore, in 2018, the Harbor Commission formed an ad-hoc committee to review Title 17 in order to carry out this task;

**WHEREAS**, the ad-hoc committee met approximately twenty-five (25) times, including a series of community meetings, to facilitate public input in the Title 17 revision process;

**WHEREAS**, the proposed updates to Title 17, with the exception of Chapter 17.10 (Marine Activities Permit), are reflected in Exhibit 1 based upon input from the Harbor Commission, the public and staff;

**WHEREAS**, the Harbor Commission is currently undertaking review of Chapter 17.10 (Marine Activities Permits) and will propose revisions based upon input from the Harbor Commission, the public, and staff;

**WHEREAS**, updates to other related provisions of the NBMC are necessary in order to create consistency throughout the NBMC; and

**WHEREAS**, the City shall file a copy of this ordinance with the California Department of Boating and Waterways prior to its adoption and at least thirty (30) days prior to its effective date, as required by California Harbor and Navigations Code Section 660(a).

**NOW, THEREFORE**, the City Council of the City of Newport Beach does hereby ordain, as follows:

**Section 1:** The City Council hereby adopts the amendments to Chapters 17.01 (Definitions), 17.05 (General Provisions), 17.20 (Vessel Launching and Operation), 17.25 (Berthing, Mooring and Storage), 17.30 (Harbor Use Regulations), 17.35 (Harbor Development Regulations), 17.40 (Live-Aboards), 17.45 (Sanitation), 17.50 (Harbor Development Permits), 17.55 (Dredging Permits), 17.60 (Harbor Permits and Leases), 17.65 (Appeals), and 17.70 (Enforcement) of Title 17 (Harbor Code) of the Newport Beach Municipal Code, attached hereto as Exhibit 1 and incorporated herein.

**Section 2:** The definition of "Charter" or "chartered" in Section 3.34.010 (Definitions) subsection C of Chapter 3.34 (Marine Charter Passenger Tax) of Title 3 (Revenue and Finance) of the Newport Beach Municipal Code is hereby amended to read as follows:

C. "Charter" or "chartered" shall mean any contract arrangement, agreement or lease pursuant to which consideration is paid to the owner or operator of a vessel for the right to use, or the right of carriage on, any vessel which will operate, at least in part, on the waters, of Newport Harbor provided, however, the term charter shall not include those activities which are exempt from the permit requirements of Chapter 5.18 or Chapter 17.10 of this Code.

**Section 3:** The definition of "Commercial harbor activity permittee" in Section 3.34.010 (Definitions) subsection E of Chapter 3.34 (Marine Charter Passenger Tax) of Title 3 (Revenue and Finance) of the Newport Beach Municipal Code is hereby amended to read as follows:

E. "Commercial harbor activity permittee" shall mean any charter business authorized to conduct marine charters pursuant to Chapter 17.10 of this Code.

**Section 4:** The column titled "Harbor Resources" and the column that follows of Exhibit A set forth in Section 3.36.030 (Cost Recovery Percentages) subsection E of Chapter 3.36 (Cost Recovery for User Services) of Title 3 (Revenue and Finance) of the Newport Beach Municipal Code is hereby amended to read as follows:

**Exhibit A**

The City's cost of providing the following services shall be recovered through direct fees charged for services. Exhibit "A" limits cost recovery fees to the percentages or dollar amounts indicated below.

Harbor Department	
Appeal of Lease/Permit under Section 17.60.060	\$100

**Section 5:** Section 11.03.020 (General Provisions) subsection B of Chapter 11.03 (Special Events) of Title 11 (Recreational Activities) of the Newport Beach Municipal Code is hereby amended to add subsection (B)(15) to read as follows:

15. Fastening of a vessel pursuant to Section 17.25.010.

**Section 6:** Section 11.17.010 (Definitions) subsection A of Chapter 11.17 (Regulation of Vessels Along the Pacific Ocean) of Title 11 (Recreational Activities) of the Newport Beach Municipal Code is hereby amended to read as follows:

A. Oceanfront Beach. All public land owned or controlled by the City of Newport Beach, including tidelands and uplands, which fronts, in whole or in part, on the Pacific Ocean.

**Section 7:** Section 17.10.095 (Appeal) of Chapter 17.10 (Marine Activities Permit) of Title 17 (Harbor Code) of the Newport Beach Municipal Code is hereby amended to read as follows:

Appeals of any decision of the Harbormaster shall be made in accordance with Chapter 17.65.

**Section 8:** Except as specifically amended by this ordinance, all other sentences, paragraphs, subsections, sections, chapters, and titles of the NBMC shall remain unchanged and in effect.

**Section 9:** The recitals provided in this ordinance are true and correct and are incorporated into the substantive portion of this ordinance.

**Section 10:** If any section, subsection, sentence, clause or phrase of this ordinance is, for any reason, held to be invalid or unconstitutional, such decision shall not affect the validity or constitutionality of the remaining portions of this ordinance. The City Council hereby declares that it would have passed this ordinance, and each section, subsection, sentence, clause or phrase hereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared invalid or unconstitutional.

**Section 11:** The City Council finds the approval of this ordinance is not subject to the California Environmental Quality Act ("CEQA") pursuant to Sections 15060(c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment), 15060(c)(3) (the activity is not a project as defined in Section 15378), 15320 (changes in organization by local agencies), and 15321 (enforcement actions by regulatory agencies) of the CEQA Guidelines, California Code of Regulations, Title 14, Division 6, Chapter 3, because the revisions to Title 17 set forth herein have no potential for resulting in physical change to the environment, directly or indirectly.

In 2017, the City assumed management responsibilities over Newport Harbor, categorically exempt under CEQA, which triggered many of the revisions to Title 17 provided herein. As a result, revisions to Title 17, as provided herein, are necessary to create consistency and delineate existing practices within Title 17 and the NBMC as a whole. These revisions will not result in any physical change to the environment. Additionally, the environmental impact of a permit issued in accordance with Title 17's revisions is not reasonably foreseeable at this time, and will be analyzed prior to the issuance of a permit. Finally, code revisions related to enforcement actions are categorically exempt. Alternatively, the City Council finds the approval of this ordinance is not a project under CEQA Guidelines Section 15061(b)(3) because it has no potential for causing a significant effect on the environment.

**Section 12:** The Mayor shall sign and the City Clerk shall attest to the passage of this ordinance. The City Clerk shall cause this ordinance, or a summary thereof, to be published pursuant to Charter Section 414.



This ordinance was introduced at a regular meeting of the City Council of the City of Newport Beach, held on the 28<sup>th</sup> day of January, 2020, and adopted on the 11<sup>th</sup> day of February, 2020, by the following vote, to wit:

AYES: \_\_\_\_\_

NAYS: \_\_\_\_\_


RECUSED: \_\_\_\_\_

\_\_\_\_\_  
WILL O'NEILL  
MAYOR

**ATTEST:**

\_\_\_\_\_  
LEILANI I. BROWN, CITY CLERK

**APPROVED AS TO FORM:**  
THE CITY ATTORNEY'S OFFICE

  
\_\_\_\_\_  
AARON C. HARP, CITY ATTORNEY

ATTACHMENT: Exhibit 1 – Revised Title 17

## **Title 17**

### **HARBOR CODE**

#### **Chapters:**

- 17.01 Definitions**
- 17.05 General Provisions**
- 17.10 Marine Activities Permit**
- 17.20 Vessel Launching and Operation**
- 17.25 Berthing, Mooring and Storage**
- 17.30 Harbor Use Regulations**
- 17.35 Harbor Development Regulations**
- 17.40 Live-Aboards**
- 17.45 Sanitation**
- 17.50 Harbor Development Permits**
- 17.55 Dredging Permits**
- 17.60 Harbor Permits and Leases**
- 17.65 Appeals or Calls for Review**
- 17.70 Enforcement**

## **Chapter 17.01**

### **DEFINITIONS**

#### **Sections:**

**17.01.010 Effect of Chapter.**

**17.01.020 Rules for Construction of Language.**

**17.01.030 Definition of Terms.**

**17.01.010 Effect of Chapter.**

For the purposes of this title and the “Waterfront Project Guidelines and Standards, Harbor Design Criteria, Commercial and Residential Facilities”, the words and phrases herein defined shall, unless the context clearly indicates otherwise, have the meanings herein set forth in this chapter.

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

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

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

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

#### **A. Definitions: A.**

1. **Abutting Upland(s) Property.** The term “abutting uplands property” or “abutting upland(s)” shall mean the adjacent bordering property held in fee or by lease. In instances, such as on Balboa Island, where a City-owned public walkway exists between the harbor structure and the adjacent bordering property, the “abutting uplands property” or “abutting upland(s)” shall mean the property adjacent to and abutting the property held in fee or by lease on the landward side of the walkway.
2. **Alternate Materials, Design and Methods of Construction.** The term “alternate materials, design and methods of construction” shall refer to the alternate materials, design or methods of construction authorized in Sections 1.8.7.2 and [A] 104.11 of the California Building Code.
3. **Anchorage or Anchorage Area.** The terms “anchorage” and “anchorage area” shall mean any portion of Newport Harbor which has been designated pursuant to law and approved by the Federal Government for the temporary anchorage of vessels, using the vessel’s own anchoring tackle.
4. **Applicant.** The term “applicant” shall mean a person applying for a permit under this title.
5. **Approval In Concept.** The term “approval in concept” shall mean a conceptual approval issued by the City prior to the application to the Coastal Commission, Army Corps of Engineers or other regulatory agency for development in areas where the regulatory agency retains jurisdiction, which indicates the proposed development conforms in concept to this Code and the design criteria.
6. **Assigned Vessel.** The term “assigned vessel” shall mean a vessel lawfully owned and registered or documented to a permittee to occupy a designated mooring or berthing location in Newport Harbor.

#### **B. Definitions: B.**

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

3. Beach. The term “beach” shall mean the expanse of sand, gravel, cobble or other unconsolidated material that extends landward from the low water line to the place where there is distinguishable change in physiographic form, or to the line of permanent vegetation. The seaward limit of a beach (unless specified otherwise) is the mean low water line.
4. Beam. The term “beam” shall mean the width of a vessel. Vessel beams are generally critical at two (2) locations of the boat, at the water line where the boat directly interfaces the dock, and the walking deck. For the purpose of compliance with any measurement requirements, the beam shall be interpreted as the widest point of the vessel which includes all vessel attachments including but not limited to boarding steps, rub rails and fixed fenders.
5. Berth. The term “berth” shall mean any location such as a floating dock, slip, side tie, mooring and the related area (berthing area or space) adjacent to or around it, allocated to tie up and/or store a boat.
6. Breakwater. The term “breakwater” shall mean a structure or barrier protecting a shore area, harbor, anchorage, or basin from waves, usually constructed as a concrete or riprap (rock wall) structure.
7. Building Official. The term “Building Official” shall mean the Building Manager/Chief Building Official of the City’s Community Development Department, or his or her designee.
8. Bulkhead or Seawall. The term “bulkhead” or “seawall” shall mean the retaining wall that separates dry land areas and water areas.
9. Bulkhead Line. The term “bulkhead line” shall mean the harbor land/water perimeter lines established in Newport Harbor by the Federal Government which define the permitted limit of filling or solid structures that may be constructed in Newport Harbor. The establishment of bulkhead lines does not necessarily allow the property owner to build to the limits of the bulkhead line due to potential environmental considerations established by the State of California and/or the Federal Government.
10. Business or Business Activity. The terms “business” and “business activity” shall mean all activities, whether the activity is non-profit or for profit, engaged in for gain, benefit, advantage or livelihood to any person, directly or indirectly, including, but not limited to, any profession, trade, occupation, employment or calling engaged in trade, commerce, the

exchange of goods, services, or property of any kind, transportation of persons as well as goods, communication, renting or leasing real or personal property or that provides any service.

C. Definitions: C.

1. Caulerpa. The term “Caulerpa” shall mean an invasive Mediterranean seaweed (*Caulerpa taxifolia*) introduced to southern California in 2000 that has a potential to cause severe ecological damage to coastal and nearshore waters.
2. Certified Charter. The term “certified charter” shall mean any vessel inspected by the United States Coast Guard under Title 46 of the Code of Federal Regulations and which has been chartered for consideration.
3. Channel. The term “channel” shall mean a water area in Newport Harbor designated for vessel navigation with necessary width and depth requirements, and which may be marked or otherwise designated on Federal navigation charts, City navigation charts or maps, or other sources.
4. Chartered for Consideration. The term “chartered for consideration” shall mean any vessel which has been hired or leased by the owner, directly or through an authorized representative, to any person for a voyage in exchange for the payment of money, the receipt of something of value, or the forgiveness of a debt.
5. Chum. The term “chum” shall mean to place in the water fish, or other material upon which fish feed, for the purpose of attracting fish to a particular area in order that they may be taken.
6. City. The term “City” shall mean the City of Newport Beach.
7. City Council. The term “City Council” shall mean the City Council of the City.
8. City Manager. The term “City Manager” shall mean the City Manager of the City or his or her designee.
9. City Tide and Submerged Land. The term “City tide and submerged land” shall mean that area within Newport Harbor granted to the City by the State of California.

10. Coastal Access. The term “coastal access” shall mean the ability of the public to reach, use or view the shoreline of coastal waters or inland coastal recreation areas and trails.

11. Coastal Commission. The term “Coastal Commission” shall mean the California Coastal Commission, the State agency established by State law responsible for carrying out the provisions of the California Coastal Act including review of coastal permits on appeal from local agencies.

12. Coastal-Dependent Development or Use. The terms “coastal-dependent development” or “coastal-dependent use” shall mean any development or use which requires a site on, or adjacent to, the sea to be able to function at all (from California Public Resources Code, Section 30101).

13. Code. The term “Code” shall mean the Newport Beach Municipal Code.

14. Commercial. The term “commercial” shall mean any business activity whether the business activity is nonprofit or for profit. Commercial activities shall include, but are not limited to, marinas, charter facilities, yacht clubs, yacht sales, rental facilities, boat yards, pier rentals and any other business activity.

15. Commercial Fishing Vessel. The term “commercial fishing vessel” shall mean a vessel registered by the Department of Fish and Wildlife pursuant to Section 7880 *et seq.*, or successor provision, of the Fish and Game Code of the State of California, when operating under the authority of a fish and game permit or license.

16. Community Development Director. The term “Community Development Director” shall mean the Community Development Director of the City or his or her designee.

17. Current. The term “current” as applied to the flow of water shall mean a flow of water in a particular direction. Such flows can be driven by wind, temperature or density differences, tidal forces, and wave energy.

D. Definitions: D.

1. Dead Load. The term “dead load” shall mean the weight of all construction materials and equipment that may be permanently attached to a dock.

2. Design Criteria. The term “design criteria” refers to “Waterfront Project Guidelines and Standards, Harbor Design Criteria, Commercial and Residential Facilities” adopted by the City and as amended from time to time, as minimum standards for design whenever harbor permits are required. The City may require additional requirements, based on the specific details of a particular application and project.

3. Dinghy or Tender. The term “dinghy” or “tender” shall mean a vessel no longer than fourteen (14) feet in overall length.

4. Dock. The term “dock” shall mean a structure generally linked to the shoreline to which a vessel may be secured. A dock may be fixed to the shore or fixed on pilings, or may float in the water.

5. Dolphin. The term “dolphin” shall mean a multi-pile structure that is used for mooring large boats that generally cannot be accommodated by floating docks.

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

E. Definitions: E.

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

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

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

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



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

F. Definitions: F.

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

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

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

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

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

6. Freeboard.

a. Dock System Freeboard. For the purposes of dock systems, the term “freeboard” shall mean the distance between the water surface and the walking surface of the dock system.

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

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

G. Definitions: G.

1. Gangway. The term “gangway” shall mean a structure that provides pedestrian access from land to the floating docks. One end is generally attached to the bulkhead, fixed pier or landside with a hinge, and the other end rolls on gangway wheels or slide plates, which rest directly on the dock surface. The word “brow” is synonymous with “gangway.”
2. Graywater. The term “graywater shall mean all water and other fluids used on a vessel for any purpose whatsoever, including but not limited to, washing or cleaning clothing, linens, towel, bedding or other linens; washing or cleaning cooking equipment, eating utensils, or serving ware; bathing, showering or cleansing; and/or washing and/or cleaning all or any portion of the interior of a vessel, including but not limited to, heads, kitchens, engine rooms, floors, windows, furniture, equipment or other portions of the interior of the vessel.
3. Groin. The term “groin” shall mean a shoreline protection structure built, usually perpendicular to the shoreline, to trap nearshore sediment or retard erosion of the shore. A structure that extends from a beach or bulkhead perpendicularly to the shoreline into tidal waters is intended to trap and retain and/or reduce the erosion of sand and retard the general erosion of the shoreline and undermining of shore protection structures (bulkheads, riprap slopes, etc.).
4. Groin System or Groin Field. The term “groin system” or “groin field” shall mean a series of groins acting together to protect a section of beach or shoreline.

H. Definitions: H.

1. Habitat. The term “habitat” shall mean the locality, including the physical and biological environment, in which a plant or animal lives.
2. Harbor Commission. The term “Harbor Commission” shall mean the Harbor Commission of the City.
3. Harbor Department. The term “Harbor Department” shall mean the Harbor Department of the City. Any provision within this Code or any uncodified ordinance or resolution referring to the Harbor Resources Division shall mean the Harbor Department.

4. Harbor Lines. The term “harbor lines” shall mean all established bulkhead, pierhead, and project lines as defined within Newport Harbor by the Federal, State, County and City. The harbor lines in Lower Newport Bay have been established by an act of the U.S. Congress and can only be modified by an act of Congress.
5. Harbor Maintenance Uses, Equipment and Facilities. The terms “harbor maintenance uses, equipment and facilities” shall mean all uses and their related equipment, vessels, docking, and land storage facilities and access which provide: dredging and beach replenishment; demolition, repair and new construction of docks, piers, bulkheads, and other in-and-over-water structures; mooring maintenance and repair; and/or waterborne debris and pollution control, collection, and removal. This category also includes environmental, survey, or scientific vessels and related equipment based, or on assignment, in Newport Harbor.
6. Harbormaster. The term “Harbormaster” shall mean the Harbormaster of the City, or his or her designee. Any provision within this Code or any uncodified ordinance or resolution referring to the Harbor Resources Manager shall mean the Harbormaster.
7. Harbor Structures. The term “harbor structures” refers to any pier, float, gangway, piling, bulkhead, seawall, reef, breakwater or any other structure excluding moorings or watercraft 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.
8. Headwalk. The term “headwalk” shall mean that portion of a dock that serves as a primary pedestrian access to mainwalks, fingers, and slips. Fingers may be attached directly to headwalks. Headwalks are generally parallel to the bulkhead.
9. Houseboat. The term “houseboat” shall mean any vessel or harbor structure, floating or nonfloating, which is designed or fitted out as a place of habitation and is not principally used for transportation.
10. Human-Powered Vessel. The term “human-powered vessel” shall mean a vessel that is being propelled by the human body through the use of oars, paddles, or the like and without the use of wind, a motor, or other machinery.

I. Definitions: L.

1. Launching Facility. The term “launching facility” shall mean a generic term referring to any location, structure (ramps, docks), and equipment (cranes, lifts, hoists, etc.) where vessels may be placed into and retrieved from the harbor waters.
2. Live-Aboard. The term “live-aboard” shall mean the use or occupancy of a vessel as a domicile or for human habitation while at its dock, berth, or mooring for a period exceeding seventy-two (72) hours in any thirty (30) consecutive day period.
3. Live Bait and/or Sea Life Receiver. The term “live bait” or “sea life receiver” shall mean an object for confining live bait or sea life such as those receivers fostering growth of sea life under the water, which is afloat in the waters of Newport Harbor or the Pacific Ocean, either moored to a pier, bulkhead or sea wall, or moored by means of an anchor or other weight to the bottom of the harbor or ocean; provided, however, that a live bait receiver shall not be deemed to be a “structure” within the meaning of Chapter 17.50.
4. Live Load. The term “live load” refers to the weight of all temporary loads such as pedestrians and berthing loads.
5. Local Coastal Program (LCP). The term “Local Coastal Program” or “LCP” shall mean Title 21 of this Code and the City of Newport Beach Coastal Land Use Plan adopted by the City and certified by the Coastal Commission in order to implement the provisions and policies of the Coastal Act at the local level.
6. Longshore. The term “longshore” shall mean parallel to and near the shoreline.
7. Lower Newport Bay. The term “Lower Newport Bay” shall mean the area of Newport Bay south of the centerline of Coast Highway.

J. Definitions: M.

1. Maintenance Construction. The term “maintenance construction” shall mean the reconstruction or replacement within the existing footprint of twenty (20) percent, or less, of the total replacement value of an existing pier, float, gangway, piling, bulkhead, seawall, reef, breakwater or other structure, as well as other criteria as stated in subsequent sections of this

title. Construction estimates and the total value of work on any given project is based on pre-determined values of various work on record with and established by the Building Official.

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

3. Marina. The term “marina” shall mean a commercial berthing facility (other than moorings, anchorage or noncommercial pier) in which five (5) or more vessels are wet-stored (in water) and/or dry-stored (on land/racks) for more than thirty (30) calendar days.

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

5. Mean Lower Low Water (MLLW). The term “mean lower low water” or “MLLW” shall mean the nineteen (19) year average of the lower low water heights. MLLW is the datum used to define elevations of structures within the bay, along the coastline, and for navigation.

6. Mono Pile. The term “mono pile” shall mean a normally large diameter pile that is used for mooring large boats that generally cannot be accommodated by floating docks. Generally, mono piles and dolphin piles are used for similar purposes.

7. Mooring. The term “mooring” shall mean a device consisting of a floating buoy or other object that is secured to the harbor bottom by an anchor system for purposes of securing a vessel and includes any apparatus used to secure a vessel in Newport Harbor which is not carried aboard such vessel as regular equipment when under way.

8. Mooring Area. The term “mooring area” shall mean an area designated for a group of moorings.

9. Motorboat. The term “motorboat” shall mean any vessel being propelled by machinery.

10. Mudline. The term “mudline” shall mean the highest elevation of accumulated sediments.

11. Multiple Vessel Mooring System. The term “multiple vessel mooring system” shall mean a floating platform secured to a single or double anchor system which allows multiple vessels to be secured that are shorter in overall length than the side of the platform to which the vessels are to be moored.

K. Definitions: N.

1. New Construction. The term “new construction” shall mean: the erection or construction of a new pier, float, gangway, piling, bulkhead, seawall, reef, breakwater or other structure; or the improvement, conversion, extension, reconstruction or replacement of more than twenty (20) percent of the replacement value of an existing pier, float, gangway, piling, bulkhead, seawall, reef, breakwater or other structure. Construction estimates and the total value of work on any given project is based on pre-determined values of various work on record and established by the Building Official.

2. Newport Bay. The term “Newport Bay” shall mean the estuary consisting of the Lower Newport Bay and the Upper Newport Bay.

3. Newport Harbor. The term “Newport Harbor” shall mean the water area within the Lower Newport Bay and within the Upper Newport Bay, exclusive of the Upper Newport Bay Ecological Reserve.

4. Nonprofit Organization. The term “nonprofit organization” shall mean an entity that registers with the Internal Revenue Service or the State Franchise Tax Board as tax exempt and, as a result, designated as tax exempt by the Internal Revenue Service or the State Franchise Tax Board.

L. Definitions: O.

1. Offshore Mooring. The term “offshore mooring” shall mean a mooring that is located bayward of the pierhead line and is comprised of a single or double buoy, weight and chain installed for the purpose of berthing a vessel, as provided by Chapter 17.25.

2. Onshore Mooring. The term “onshore mooring” or “shore mooring” shall mean a mooring for vessels which is located in the nearshore perimeter of the harbor and its islands, perpendicular to the shoreline, where one end of the mooring line is attached to a point on or adjacent to the bulkhead, and

the other end is attached to a single buoy, weight and chain installed for the purpose of berthing a vessel, as provided by Chapter 17.25.

3. Open Coastal Waters. The term “open coastal waters” shall mean the area composed of submerged lands at extreme low water of spring tide extending seaward to the boundaries of the exclusive economic zone (twelve (12) to two hundred (200) miles). This includes navigation channels, turning basins, vessel berthing, anchorage and mooring areas of Newport Bay.

4. Operable. The term “operable” shall mean capable of safely maneuvering under the vessel’s own power from the mooring to a demarcation line designated by the appropriate authority and generally to be defined as the line between the seaward ends of the harbor entrance jetties and back to the mooring.

5. Operator. The term “operator” shall mean the person who operates or who has charge of the navigation or use of the vessel.

M. Definitions: P.

1. Pacific Ocean. The term “Pacific Ocean” shall mean the waters off of the City from the beach to a point three (3) nautical miles seaward.

2. Passenger. The term “passenger” shall mean every person other than the operator and a member of the crew or other persons employed or engaged in any capacity on board a vessel in the business of that vessel.

3. Permittee(s). The term “permittee(s)” shall be the person or entity who holds a validly issued permit under any provision of this title.

4. Person. The term “person” shall mean an individual, proprietorship, firm, partnership, joint venture, syndicate, business trust, company, corporation, association, committee or any other legally recognized entity.

5. Pier. The term “pier” shall mean any fixed or floating structure for securing vessels, loading or unloading persons or property, or providing access to or over the water. A pier includes wharf, dock, slip, gangway or float, or any other landing facility or floating dry dock.

a. Commercial Pier. The term “commercial pier” shall mean a pier adjacent to commercially or non-residentially zoned property with single or multiple berths which are rented or leased, including any pier used in connection with marinas, charter facilities, yacht clubs, yacht sales, rental facilities or boat yards. For purposes of this chapter,

multiple piers which are adjacent to a lot or parcel of land occupied by a multifamily dwelling or dwelling units that are income generating, and structures adjacent to commercially zoned uplands that are business or income generating in nature, shall be deemed commercial.

b. Noncommercial Pier. The term “noncommercial pier” shall mean a pier used for private recreational purposes by the owner(s), occupant(s), guest(s) or lessee(s) of the abutting residentially zoned upland property.

c. Public Pier. The term “public pier” shall mean a pier used for public recreational purposes provided by a public agency.

6. Pierhead Line. The term “pierhead line” shall mean the harbor water area perimeter lines established in Newport Harbor by the Federal Government or the City, in cooperation with private associations, that define the permitted limit of fixed pier, floating dock and other in-water structures which may be constructed in the harbor. The pierhead line typically shall define the limit of pier and floating dock structures and defines the limit of construction except as otherwise approved by the Harbor Commission.

7. Police Chief. The term “Police Chief” shall mean the Chief of Police of the City or his or her respective designee.

8. Project Line. The term “project line” shall mean the harbor water area channel lines of the improvements constructed by the Federal Government in 1935-1936.

9. Property Owner. The term “property owner,” for purposes of Chapter 17.50, shall mean the owner of the abutting upland property who has obtained a permit to place a structure in Newport Harbor.

10. Public Trust Lands. The term “public trust lands” shall mean all lands subject to the common law public trust for commerce, navigation, fisheries, recreation, and other public purposes and includes all tidelands, submerged lands, the beds of navigable lakes and rivers, and historical tidelands and submerged lands that are presently filled or reclaimed and which were subject to the public trust at any time.

11. Public Works Director. The term “Public Works Director” shall mean the Public Works Director of the City or his or her designee.

N. Definitions: R.



1. Residential. The term “residential” shall mean those properties that are identified in Title 20 of this Code as a district that allows residential uses or areas designated and used for residential purposes.
2. Rhine Wharf. The term “Rhine Wharf” shall mean the area at the terminus of the Rhine Channel where vessels may load and unload supplies directly to and from the wharf while tied directly to the wharf.
3. Rhine Wharf Public Pier. The term “Rhine Wharf public pier” shall mean the pier and long float parallel to the Rhine Wharf, and which is used for public recreational purposes provided by the City.
4. Riprap. The term “riprap” shall mean a protective layer or facing of rock, concrete blocks or quarry stone, placed to prevent erosion, scour, or sloughing of an embankment or bluff.
5. Risk Manager. The term “Risk Manager” shall mean the Risk Manager of the City or his or her designee.

O. Definitions: S.

1. Sail Area. The term “sail area,” as defined for the purposes of structural analysis or berthing facilities and structural pilings, shall mean the area of a boat, above the water line, that is exposed to wind under tied/berthed conditions.
2. Sailing Club. The term “sailing club” shall mean an organization operating from a fixed location and principally engaged in the coordination or facilitation of the use of boats owned or operated by the club for its members.
3. Seaworthy. The term “seaworthy” shall mean that the vessel is safe, operable and reasonably fit for its intended purpose, not leaking fluids overboard, and its hull, keel, decking, cabin and mast are structurally sound and generally free from dry-rot.
4. Shore. The term “shore” shall mean the narrow strip of land in immediate contact with the sea, including the zone between high and low water line. A shore of unconsolidated material is usually called a beach.
5. Shoreline. The term “shoreline” shall mean the intersection of the ocean or sea with land; the line delineating the shoreline on National Oceanic and Atmospheric Administration (NOAA) Office of Coast Survey

nautical charts and surveys approximating the mean low tide water line at the time the chart was prepared.

6. Side Tie. The term “side tie” shall mean a berth where the dock is alongside only one side of the boat.

7. Slip. The term “slip” shall mean a berth where the boat has a finger on one side and either another finger or adjacent boat on the other side.

8. Sport Fishing Charter. The term “sport fishing charter” shall mean a vessel chartered solely for sport fishing outside of Newport Harbor.

9. Submerged Lands. The term “submerged lands” shall mean lands which lie below the line of mean low tide.

10. Sub-Permit. The term “sub-permit” shall mean a permit issued by the Harbormaster for the temporary use of a deemed vacant or noticed vacant mooring.

P. Definitions: T.

1. Tidelands. The term “tidelands” or “public tidelands” shall mean all lands that were granted to the City by the State of California, including, but not limited to, submerged lands and/or lands that are located between the lines of mean high tide and mean low tide.

2. Tidelands Trust. The term “tidelands trust” shall mean all tidelands and submerged lands granted to the City by State or Federal legislation and the terms and conditions of any such legislative grant.

Q. Definitions: U.

1. Upland. The term “upland” shall mean land with a shared property line with and immediately adjacent to Newport Harbor.

2. Upper Newport Bay. The terms “Upper Newport Bay” and “Back Bay” are often used interchangeably. The term “Upper Newport Bay” shall mean the area of Newport Bay north of the centerline of Coast Highway.

R. Definitions: V.

1. Vessel. The term “vessel” shall mean any watercraft used as a means of transportation on water, whether mechanically powered, human powered or wind powered, including, but not limited to, ships and boats of all kinds, sailboats, catamarans, trimarans, dinghies, and every hulled structure

adapted to be navigated from place to place for the transportation of persons or property.

2. Vessel Length. The term “vessel length” shall include the following:
  - a. Length Overall as published by the manufacturer of a particular vessel (LOA).
  - b. Adjusted Length Overall (Adjusted LOA) is the LOA plus the length including all vessel attachments which may include bowsprits, swim steps or stern mounted dinghies or other objects affixed to the vessel adding to the LOA.
  - c. In the event the LOA cannot not be obtained from the published manufacturer specifications, then the LOA shall be determined by first, a United States Coast Guard (USCG) documentation certificate, or if none is available then second, by a state issued registration document, or if none is available, then third by other official documentation certifying the LOA of the vessel acceptable to the Harbormaster at his or her discretion.
3. Vessel Owner. The term “vessel owner” shall mean the owner of the vessel as shown on current registration with the Department of Motor Vehicles or the United States Coast Guard.
4. Vessel Width. The term “vessel width” shall have the same meaning as “beam” defined above.

S. Definitions: W.

1. Walkway. The term “walkway” shall mean a walkway on a wide portion of the floating dock system that is used for pedestrian access. A walkway can refer to the headwalk, mainwalk and/or fingers.
2. Waters of Newport Harbor. The term “waters of Newport Harbor” shall mean all waters of Newport Harbor in which the tide ebbs and flows, whether or not the ordinary or mean high tide line of the Pacific Ocean has been fixed by ordinance, statute, court action or otherwise and whether or not the lands lying under the tidal water are privately or publicly owned.
3. Wind-Powered Vessel. The term “wind-powered vessel” shall mean a vessel that is being propelled by the wind through the use of sails and without the use of a motor or other machinery.

T. Definitions: Z.

1. Zostera Marina. See Eelgrass.

## **Chapter 17.05**

### **GENERAL PROVISIONS**

#### **Sections:**

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

#### **17.05.010 Title.**

This title shall be known as the “City of Newport Beach Harbor Code” and referred to as the “Harbor Code.”

#### **17.05.020 Purpose.**

- A. Preserve the diverse uses of the harbor and the waterfront that contribute to the charm and character of Newport Bay, and that provide needed support for recreational boaters, visitors, and residents with regulations limited to those necessary to protect the interests of all users;
- B. Maintain and enhance public access to the harbor water and waterfront areas;
- C. Enhance the water quality and protect the marine environment in the harbor;

- D. Preserve and enhance the visual character of the harbor;
- E. Preserve and enhance historical resources of the harbor;
- F. Provide for the ongoing administration and maintenance of the harbor;
- G. Recover the costs of services provided to tidelands users and the fair market rental value where appropriate;
- H. Administer the use of public trust lands in a manner consistent with the tidelands trust, the California Constitution, the certified Local Coastal Program, and applicable laws; and
- I. Implement the policies of the General Plan and certified Local Coastal Program.

**17.05.030 Applicability.**

The provisions of this title, and any rules and regulations adopted pursuant to this title, shall be applicable to and within Newport Harbor and all public trust lands under the jurisdiction of the City that are not subject to Title 21, except where otherwise provided in this title. Any activity or action or use of Newport Harbor regulated herein is prohibited unless specifically permitted by the provisions of this Code, or the tidelands trust.

**17.05.040 Administrative Authority.**

The responsibility for the administration of the provisions of this title is delegated to the City Manager, or officers or employees of a department or departments of the City designated by him or her; provided except as delegated by this title.

**17.05.050 Duties of the City Manager.**

The City Manager shall be authorized to:

- A. Carry out the orders of the City Council and to enforce this title and all other ordinances and tidelands trust requirements;
- B. Order any vessel improperly berthed to change its position or location as he or she may designate, and in case his or her orders are not complied with, or the vessel is unattended, to cause such vessel to be so moved, and to collect the cost of removal; and

C. Promptly report to the appropriate Federal agency any violation of the laws of the United States for the protection of navigation and the preservation of navigable waters, particularly any encroachment on the waterway by the building of illegal structures, illegal filling or dumping of material of any sort into the waterway, or throwing overboard or setting adrift or allowing to be set adrift anything that is or might become obstructive or dangerous to navigation.

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

It shall be the duty of the Harbormaster and the Harbormaster is hereby authorized to:

- A. Act for and assist the City Manager in administering the provisions of this title, perform the duties assigned to the Harbormaster in this title, coordinate with the resource agencies, regulatory agencies, and private organizations, as set forth in Section 17.05.100, coordinate with interested civic associations and coordinate with the Public Works Director, Community Development Director, and other appropriate department directors for services falling within their respective functions as defined in Title 2 of this Code;
- B. Act as the head of the Harbor Department and supervise and assist the City staff assigned to the Harbor Department to carry out the purposes of this title;
- C. Administer the harbor-related policies adopted by the City Council and the Harbor Commission, and recommend to the City Manager appropriate changes and modifications to harbor-related policies;
- D. Conduct regular inspections of both public and private facilities and structures located upon or over the waters of Newport Harbor or the Pacific Ocean or any other water where the tide ebbs and flows within the City, and to recommend action to the City Manager to ensure compliance with this title;
- E. Interpret the meaning and application of the provisions of this title related to uses and activities that require a permit be issued by the Harbormaster and enforce this title with respect to uses and activities that fall within the Harbormaster's duties; and
- F. Approve, conditionally approve or disapprove applications for uses and activities that require a permit to be issued by the Harbormaster in accordance with the provisions set forth in this title.

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

It shall be the duty of the Public Works Director and the Public Works Director is hereby authorized to:

- A. Maintain files and records of all pier permits issued by the City;
- B. Act for and assist the City Manager in administering the provisions of this title, perform such duties as assigned to the Public Works Director by this title, and coordinate with the resource agencies, regulatory agencies, the Harbormaster, the Community Development Director and other appropriate department directors for services falling within their respective functions as defined in Title 2 of the Code;
- C. In cooperation with the Community Development Director, issue approvals in concept or harbor development permits, for development located on tidelands or submerged lands that do not involve a discretionary action required by Title 20 or Title 21, where the authority is specifically assigned to the City Council, Planning Commission, Harbor Commission, Community Development Director, or Zoning Administrator;
- D. Interpret the meaning and application of the provisions of this title related to uses and activities that require a permit be issued by the Public Works Director and enforce this title with respect to uses and activities that fall within his or her function; and
- E. Approve conditionally approve, or disapprove application for the uses and activities that require a permit to be issued by the Public Works Director in accordance with the provisions set forth in this title.

#### **17.05.062 Duties of the Community Development Director.**

It shall be the duty of the Community Development Director and the Community Development Director is hereby authorized to:

- A. Act for and assist the City Manager in administering the provisions of this title, perform such duties as assigned to the Community Development Director by this title, and coordinate with the Harbormaster, the Public Works Director and other appropriate department directors for services falling within their respective functions as defined in Title 2 of this Code;
- B. Interpret the meaning and application of the provisions of this title related to uses and activities that require a permit be issued by the Community Development



Director, and enforce this title with respect to uses and activities that fall within his or her function; and

C. Approve, conditionally approve, or disapprove applications for the uses and activities that require a permit to be issued by the Community Development Director in accordance with the provisions set forth in this title.

**17.05.065 Duties of the Harbor Commission.**

It shall be the duty of the Harbor Commission to:

A. Advise the City Council in all matters pertaining to the use, control, operation, promotion and regulation of all vessels and watercraft within Newport Harbor.

B. Approve, conditionally approve, or disapprove applications on harbor permits provided in this Code.

C. Serve as an appellate and reviewing body for decisions related to harbor permits, and other harbor-related administrative matters.

D. Advise the City Council on proposed harbor-related improvements.

E. Advise the City Council, Planning Commission, and City Manager on land use and property development applications referred to the Harbor Commission by the City Council, Planning Commission, or the City Manager.

F. Make recommendations to the City Council for the adoption of regulations and programs necessary for the ongoing implementation of the goals, objectives, policies of the Harbor and Bay Element of the General Plan, the Harbor Area Management Plan, and the Tidelands Infrastructure Capital Plan.

G. Advise the City Council on the implementation of assigned parts of the Tidelands Capital Plan including, but not limited to, dredging priorities, in-bay beach sand replenishment priorities, and Newport Harbor amenities such as mooring support service areas and public docks.

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

All channels, turning basins, anchorage areas, and pierhead and bulkhead lines in Newport Harbor shall be as established by the Federal Government or by the City Council upon recommendation of the Harbor Commission. A map thereof shall be kept on file in the offices of the City Clerk and the Harbor Department for public inspection.

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

A. 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.

B. Exceptions. State legislation has modified public trust restrictions for the historic tidelands in Beacon Bay, the Balboa Bay Club, and Harbor Island as follows:

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.
2. Balboa Bay Club. The Beacon Bay Bill (Chapter 74, Statutes of 1978) and Assembly Bill 3139 (Chapter 728, Statutes of 1994) allow Parcel D of the Balboa Bay Club to be leased for residential purposes until December 31, 2044.
3. Harbor Island. Chapter 715, Statutes of 1984, allows the filled or reclaimed land on Harbor Island to be leased for nonpermanent recreational and landscaping purposes.

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

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

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

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

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

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

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

Where uncertainty exists regarding the interpretation of any provision of this title or its application to a use or activity that requires a permit be issued by the Harbormaster, Public Works Director or Community Development Director, the person holding the position charged with issuing the permit shall determine the intent of the provision or the application thereof and issue a determination or refer the matter to the Harbor Commission for a determination. An interpretation made by the Harbormaster, Public Works Director or Community Development Director may be appealed to or called for review by the Harbor Commission, in compliance with Chapter 17.65.

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

A. Date of Payment. All permit fees required to be paid under this title shall be due and payable on a schedule established by the Finance Director. Any permit holder who fails to pay any permit fee or renewal fee required by this title after the same is due shall be subject to late fees and charges in the amount established by resolution of the City Council in accordance with Section 3.36.040. Failure to pay the permit fee or renewal fee, plus any late fees and charges, within one hundred and twenty (120) days of when the permit fee or renewal fee was due shall constitute grounds for revocation of the permit by the responsible review authority.

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

### **17.05.130 Permits Nontransferable.**

Unless otherwise authorized in this title, any permit, issued under this title is personal to the person receiving such permit, and may not be transferred or assigned to any other person without the express written consent of the issuing official or body in compliance with the provisions for issuance of such permit.

### **17.05.140 Public Hearings.**

A. Purpose. Except for revocations covered under Chapter 17.70, when a public hearing is required, advance notice of the hearing shall be given and the hearing shall be conducted in compliance with this chapter and all other applicable laws, including the Ralph M. Brown Act.

B. Notice of Public Hearing.

1. Content of Notice. Notice of a public hearing shall include the following applicable information.

a. Hearing information.

(i) The date, time, and place of the hearing and the name of the review authority;

(ii) A brief description of the City's general procedure concerning the conduct of hearings and decisions;

(iii) The phone number, street address, and website of the City, where an interested person can call or visit to obtain additional information;

(iv) A statement that an interested person or authorized agent may appear and be heard at the public hearing and the procedures for appeal; and

(v) A statement that if a person challenges the subject development in court, that person may be limited to raising only those issues that the person, or someone else speaking on their behalf, raised at the public hearing (described in the notice) or in written correspondence delivered to the City at, or before, the public hearing.

b. Project Information.

(i) The name of the applicant;

- (ii) The City's file number(s) assigned to the application;
- (iii) A general explanation of the matter to be considered; and
- (iv) A general description, in text and/or by diagram, of the location of the property or mooring that is the subject of the hearing.

2. Method of Notice Distribution. Notice of a public hearing required by this title shall be given as specified below.

a. Mailing. Notice shall be mailed or delivered at least ten (10) calendar days before the scheduled hearing to all the following:

- (i) Project Site Owners, Applicant and Appellant. The owners of the property being considered in the application, or the owners' agent, the applicant or the applicant's agent, and the appellant, if any;
- (ii) Nearby Property Owners. All owners of real property located within a three hundred (300) foot radius, excluding intervening rights-of-way and waterways, of the exterior boundaries of the location of the subject matter of the application, as shown on the last equalized assessment roll. It shall be the responsibility of the applicant to obtain and provide to the review authority a list of the names and addresses of all owners who are to be provided notice under this subsection; and
- (iii) Persons Requesting Notice. A person who has made a written request for notice with the City Clerk.

b. Posting of a Sign and Notice. Notice shall be posted at a conspicuous place, easily readable by the public and placed as close as possible to the site of the proposed development at least ten (10) calendar days before the scheduled public hearing in the following manner:

- (i) One or more signs shall be posted as determined by the City;

(ii) The size and location of the sign(s) shall be determined by the City to ensure that it will be easily readable by the public;

(iii) The project applicant, or in the case of an appeal, the appellant shall be responsible for maintaining the sign(s) in a satisfactory condition; and

(iv) The project applicant shall remove the sign(s) after the date specified for the public hearing.

c. Failure to Receive Notice. The failure of any person or entity to receive notice given in compliance with this section shall not invalidate the actions of the applicable review authority.

C. Hearing Procedure.

1. Time and Place of Hearing. A hearing shall be held at the date, time and place for which notice was given.

2. Continued Hearing. A hearing may be continued without further notice, provided that the official or chair of the review authority announces the date, time and place to which the hearing will be continued before the adjournment or recess of the hearing.

3. Deferral of Final Decision. The review authority may announce a tentative decision and defer their action on a final decision until appropriate findings and/or conditions or approval have been prepared.

D. Findings and Decision.

1. Except in the case of a variance, the reviewing authority may approve or conditionally approve a permit only after making all of the following findings:

a. The use complies with this title, the local coastal program, General Plan, design criteria, and any applicable standards and policies approved by the City Council;

- b. The design, location, size and/or operating characteristics of the use are compatible with the allowed uses in the vicinity;
  - c. For any structures, the site is physically suitable in terms of design, location, shape, size and operating characteristics, and the provision of the public and emergency vehicle (e.g., fire and medical) access and public services and utilities;
  - d. Operation of the use at the location proposed would not be detrimental to or endanger, jeopardize, or otherwise constitute a hazard to the public convenience, health, interest, safety, or general welfare;
  - e. Any new development is designed or sited so as to not obstruct public access to coastal resources or, in the case of the alteration, extension, enlargement, expansion, reconstruction, replacement or addition of any structures would not, in comparison to the existing structure or structures, further restrict or impair the public's use of the bay or beach in the vicinity of the existing structure of structures; and
  - f. Any specific findings set forth in this title.
2. With respect to a request for a variance, the reviewing authority may approve or conditionally approve a variance from the standards of this title, the design criteria and other applicable standards and policies otherwise applicable to the property only after making all of the following findings:
- a. The strict application of this title, the design criteria and other applicable standards and policies otherwise applicable to the property would deny the property owner privileges enjoyed by other property owners in the vicinity, based on special circumstances applicable to the property, including location, shape, size, surrounding topography or other physical features;
  - b. Strict compliance with this title, the design criteria and other applicable standards and policies applicable to the property would deprive the subject property of privileges enjoyed by other properties in the vicinity;
  - c. Granting of the variance is necessary for the preservation and



enjoyment of substantial property rights of the applicant;

d. Granting of the variance will not constitute a grant of a special privilege inconsistent with the limitations on other properties in the City;

e. Granting of the variance will not be detrimental to the harmonious and orderly growth of the City, nor endanger, jeopardize, or otherwise constitute a hazard to the public convenience, health, interest, safety, or general welfare of persons residing or working in the vicinity; and

f. Granting of the variance will not be in conflict with the intent and purpose of this title, the design criteria and any applicable standards and policies approved by the City Council.

E. Decision. The reviewing authority may announce and record their decision on the matter being considered at the conclusion of a scheduled hearing or defer action and continue the matter to a later meeting.

## **Chapter 17.20**

### **VESSEL LAUNCHING AND OPERATION**

#### **Sections:**

**17.20.010 Vessel Launching and Hauling.**

**17.20.020 Vessel Operation.**

**17.20.030 Trespass or Injury to Vessel.**

**17.20.040 Abandoned or Unattended Vessels and Property.**

**17.20.050 Air and Water Propulsion Vessels Prohibited.**

**17.20.060 Vessel Races.**

**17.20.010 Vessel Launching and Hauling.**

A. No person shall launch or remove any vessel onto or from the waters of Newport Harbor over any public seawall, sidewalk, street end or public property, except at locations where a regular business, as authorized under Title 20 and Title 21, for launching and hauling vessels is conducted or at launching sites designated by resolution of the City Council.

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

1. Designated boat launching locations may be used only between the hours of seven a.m. and sunset.
2. The use of motors on any vessel being launched or recovered shall not be permitted within one hundred (100) feet of such launching sites.
3. Only hand-carried vessels may be launched from some sites, as designated by the City Council.
4. No motorized devices may be used for purposes of launching any vessel at locations designated for the launching of hand carried vessels, or for transporting them on beaches.

**17.20.020 Vessel Operation.**

A. Speed Limit. No owner, operator or person in command of any vessel, except a public officer or employee in the performance of his or her duty, shall operate the same or permit the same to be operated in any portion of Newport Harbor or the water in the present or prior channel of the Santa Ana River, within

the City, at a rate of speed in excess of five nautical miles per hour, or at any speed which creates a wake that may cause damage to moorings of vessels or floating structures, except as provided for in this title.

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

1. From and including June 1st through September 15<sup>th</sup>, the channel between Bay Island and the Balboa Peninsula is designated as a closed area for the use and/or operation of motorboats.

2. From and including June 1st through September 15<sup>th</sup>, the Grand Canal is designated as a closed area; however, the closure shall not apply to human-powered vessels or vessels berthed at residential piers or moorings located along or within the Grand Canal.

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

D. Towing. No person operating a vessel shall tow any object, structure or vessel at a distance in excess of seventy-five (75) feet astern of the towing vessel.

E. Anchoring. In addition to the requirements set forth in Section 17.25.020(A)(1)(b), no person owning, leasing, occupying or having charge or possession of any vessel shall anchor such vessel on the Pacific Ocean unless the vessel is continuously occupied by a person during:

1. Any nighttime hours (sunset to sunrise);
2. Any time period when a Small Craft Advisory or greater has been issued by the National Oceanic and Atmospheric Administration; and

3. During daylight hours, except for one shore excursion per day for no more than three (3) hours.

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

- A. **Damage to Property.** No person shall willfully or carelessly destroy, damage, disturb, deface or interfere with any buoy, float, life preserver, sign, notice, navigational marking, or other similar property under the jurisdiction of the City, County, or other governmental agency.
- B. **Boarding Vessel Without Permission.** No person shall climb into or upon any vessel moored, docked or anchored in Newport Harbor, without the consent of the owner or other person having charge thereof, unless authorized by the Harbormaster.
- C. **Tampering with Vessel.** No person shall willfully injure or tamper with, or break or remove any part of or from, any vessel in the City, or tamper with the lines securing any such vessel, without the consent of the owner or other person having charge thereof, unless authorized by the Harbormaster.
- D. **Tampering with Moorings.** No person shall tamper with any mooring or anchorage in the City whether or not the same is occupied by a vessel, unless authorized by the Harbormaster for the maintenance of harbor operations.

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

All stray, unattended or abandoned vessels, timber or any other personal property found in the water or on the shore of Newport Harbor or the Pacific Ocean, not in the lawful possession or control of some person, shall be immediately reported to the Harbormaster. Any such vessel or property shall be dealt with as provided in the appropriate provisions of Chapters 1.20 and 17.70, or Section 510 et seq. of the California Harbors and Navigation Code, as the same now read or may hereafter be amended. For purposes of this section, any vessel on the Pacific Ocean shall be deemed to be stray, unattended and abandoned if the vessel is unoccupied by a person during:

- A. Any nighttime hours (sunset to sunrise);
- B. Any time period when a Small Craft Advisory or greater has been issued by the National Oceanic and Atmospheric Administration; or
- C. Daylight hours for more than three (3) hours.

**17.20.050 Air and Water Propulsion Vessels Prohibited.**

- A. No person shall operate any vessel on the waters of Newport Harbor if the vessel is powered or maneuvered by means of mechanical air or water propulsion above the surface of the water.
- B. The provisions of this section do not apply to the operation of any vessel by any public agency or any person responding to an emergency on behalf of any public agency.

**17.20.060 Vessel Races.**

- A. The Harbormaster may issue a permit to a person, as defined in Chapter 17.01 that would allow individuals operating a human-powered vessel, wind-powered vessel, or vessel providing support services to a human- or wind-powered vessel as part of the person's special event (e.g., race) or organized practice to exceed the speed limit provided in Section 17.20.020(A).
- B. An application for a vessel racing permit shall be filed with the Harbormaster, in accordance with Section 17.60.015, and issued by the Harbormaster if the Harbormaster determines the event will not interfere with the natural flow of traffic, or negatively impact surrounding property owners.
- C. The Harbormaster has discretion to determine if a permit shall be associated with a single event or multiple events; however, no permit shall be valid for more than six (6) months from the date of issuance.
- D. Permits issued under this section are non-transferrable and shall be in addition to any license, permit or fee required under this Code or any other provision of law.
- E. The Harbormaster may impose conditions on a permit to protect persons and property and to assure that the activity allowed under the permit will not create a nuisance or interfere with the reasonable use of Newport Harbor by other vessels or persons. At a minimum, every permit issued under this section shall be conditioned to require permittees to:
  - 1. Obtain, provide, and maintain at their own expense, for the full period of time for which the permit is granted, policies of insurance with such limits and coverage as established by the Risk Manager that clearly identify the activity and vessel(s) covered;

2. Indemnify, defend and hold harmless the City, County of Orange, and the State of California for all liability, injury or damage that relates in any way to or arises from permittee's event/activity;
  3. Otherwise comply with this Code, California Harbors and Navigation Code, and the Federal Inland Navigation Rules; and
  4. Ensure any vessel operating pursuant to a vessel racing permit is operated in a safe, controlled, and seamanlike manner, and at a speed that does not endanger the safety of persons or property.
- F. Notwithstanding the process set forth in Chapter 17.70 for the revocation of permits, any permit issued under this section may be immediately revoked at any time, without notice, by the Harbormaster, if:
1. The permittee fails to comply with the conditions contained within the permit;
  2. An individual participating in the permittee's special event or organized practice operates a vessel in an unsafe, uncontrolled, or unseamanlike manner or at a speed that endangers persons or property; or
  3. An individual participating in the permittee's special event or organized practice fails to comply with the lawful instructions of the Harbormaster, or any other person authorized by the City to enforce rules and regulations within Newport Harbor.

## **Chapter 17.25**

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

#### **Sections:**

**17.25.010 Docking Regulations.**

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

**17.25.030 Storage Regulations.**

**17.25.010 Docking Regulations.**

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

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

2. No person shall make fast any vessel to any other vessel already occupying any pier, either public or private, without first obtaining a special event permit as required in Chapter 11.03. At the Rhine Wharf, the Harbormaster shall have the authority to authorize this activity, via a Rhine Wharf permit, under either of the following conditions:

a. A commercial fishing vessel is loading or unloading, and no other mooring or berthing space is available in Newport Harbor for this purpose; or

b. A vessel is taking refuge from inclement weather and no other mooring or berthing space is available in Newport Harbor for this purpose.

In no event shall more than one vessel be made fast to the dockside vessel and no other vessel shall be made fast to the outboard vessel. Both vessels shall have operators aboard at all times.

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

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

C. Time Limits and Rules.

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

- a. Blue markings shall mean vessels may be tied up or secured for twenty (20) minutes maximum.
- b. Green markings shall mean vessels may be tied up or secured for three (3) hours maximum.
- c. White markings shall mean vessels may be tied up or secured for twelve (12) hours maximum.
- d. Black markings shall mean vessels may be tied up or secured for twenty-four (24) hours maximum.
- e. Yellow markings shall mean vessels may be tied up or secured for seventy-two (72) hours maximum.
- f. Red markings shall mean vessels shall not be tied up or secured for any amount of time.
- g. Orange markings shall mean the maximum length vessel permitted to be tied up or secured is nine (9) feet.
- h. No vessel greater than thirty (30) feet long may be tied or secured at Central Public Pier.

2. In addition to a Rhine Wharf permit issued in accordance with subsection (A) (2), the Harbormaster shall have the discretion to issue a Rhine Wharf permit, if an application is filed in accordance with Section



17.60.015, and the Harbormaster makes the findings set forth in Section 17.05.140(D). Unless a Rhine Wharf permit is issued the Rhine Wharf shall not be used by vessels for any purpose. A Rhine Wharf permit shall be subject to the following standard conditions as well as any additional conditions imposed by the Harbormaster:

- a. Vessels may be tied or secured to the Rhine Wharf for four (4) hours maximum unless the Harbormaster determines special circumstances dictate an extension and the Harbormaster authorizes an extension;
- b. The Harbormaster shall have the authority to limit the size of vessels using the Rhine Wharf; and
- c. Vessels using the Rhine Wharf shall be in the actual process of loading, unloading, engaged in temporary repairs or taking refuge from inclement weather, when no other mooring or berthing is available.

3. When dock markings and signs are posted giving notice of the time limits and/or size restrictions in subsections (C)(1)(a) through (h) of this section, no person shall tie up or secure a vessel at any such facility for a period of time in excess of that period, exceed the maximum permitted vessel length, or permit any supplies or gear to remain on such facility for a period in excess of that permitted by the dock markings or posted signs. Vessels tied up or secured in marked areas designated with time restrictions provided in subsections (C)(1)(c) through (e) shall not continue to use that same dock area beyond those established periods by relocating the vessel to another section of that dock, or securing the line associated with that vessel to tie to another location on that dock. Any vessel that has occupied a marked area must be removed from the same public pier, dock or facility, after the expiration of the time allowed, and may not re-occupy the dock for a subsequent tie up period sooner than twenty-four (24) hours following expiration of the time allowed.

4. The Rhine Wharf shall be closed between the hours of midnight and 6:00 a.m. daily.

D. Vessel Tie-Up Method. Every vessel tied up and secured at any pier in Newport Harbor shall be fastened in such a manner as to assure the security of such vessel fore (bow) and aft (stern) at a minimum with the exception of dinghies which may tie up bow only at public piers.

- E. Direct Fueling Prohibited. No person shall fuel any vessel with any petroleum product directly from a tank, wagon or truck.
- F. Gangway Required - Lights. Every vessel used for hire while loading or unloading passengers or crew from a pier or from another vessel shall be provided with a gangway with manropes or railings, and from sunset until sunrise any such gangway shall be lighted adequately to provide visibility as long as such gangway is or may be used.
- G. Dockside Steam Engine Spark Prevention. No person shall use any donkey engine or other steam engine on any pier or vessel within Newport Harbor in loading or unloading vessels or otherwise without a bonnet or spark arrestor attached to the smokestack of such engine so as to prevent sparks from coming into contact with the pier or vessel.

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

A. Location. No person having charge of any vessel shall berth or anchor the same in Newport Harbor except within designated areas. Any vessel which is berthed, moored or anchored at a place not designated for such vessel shall be moved as directed by the Harbormaster. In the designation of mooring areas and anchorage areas, consideration shall be given to the needs of commerce, the utilization of turning basins, the use of channels for navigation, and the economy of space. No vessels shall be moored or anchored in any part of any turning basin or channel unless secured both fore and aft except as provided in subsection (H) of this section. Every vessel moored or anchored in any part of the harbor outside of any turning basin or channel shall be so moored or anchored as to prevent such vessel from swinging or drifting into any turning basin or channel.

1. No person owning, leasing, occupying or having charge or possession of any vessel shall:
  - a. Berth or anchor the same in Newport Harbor except within the designated areas; or
  - b. Anchor a vessel at any location on the open waters of the Pacific Ocean within five hundred (500) yards of a designated protected swimming area for a cumulative period of time that exceeds seventy-two (72) hours within any thirty (30) calendar day period. The Harbormaster may authorize, in writing, an extension to the seventy-two (72) hour time limit if the Harbormaster determines that

given the particular circumstances an extension of time is reasonable and warranted.

2. Any vessel which is berthed, moored or anchored at a place in Newport Harbor not designated for such vessel shall be moved as directed by the Harbormaster. In the designation of mooring areas and anchorage areas in Newport Harbor, consideration shall be given to the needs of commerce, the utilization of turning basins, the use of channels for navigation, and the economy of space.

B. Application of Chapter. The terms of this chapter, as they relate to moorings and buoys, shall apply to “on-shore moorings” which are moorings located landward of the pierhead line and to “offshore moorings” which are located bayward of the pierhead line, with equal force and effect.

C. Berthing.

1. Boats berthed at private or public piers shall not extend beyond the prolongation of the side property lines of the property or properties to which the pier is connected in accordance with Section 17.35.020.

2. Any boat berthed at a pier or slip shall not extend bayward beyond the end of the pier or slip by a distance of more than the maximum width of its beam. Between Bulkhead Station 256, beginning at Collins Avenue to Bulkhead Station 255, boats moored at a pier or slip shall not extend more than fifteen (15) feet bayward beyond the end of the pier or slip or more than the width of the beam of the boat, whichever is less.

D. Permit Required. No person shall place, erect, construct or maintain a pier mooring or buoy in the waters of Newport Harbor over City-owned or controlled tidelands without first having obtained a permit pursuant to this title.

E. Unauthorized Use of Mooring. No person shall use a mooring unless he or she holds a current and valid permit except with the permission of the Harbormaster for temporary use, as herein provided.

F. Chains and Fastenings.

1. No person shall erect, construct or maintain any mooring in Newport Harbor unless all chains and fastenings are of sufficient size to stand a breaking strain of at least six (6) times the weight of the mooring.

2. All mooring lines on buoys shall be so arranged that, when dropped, they will immediately sink. With a double mooring, however, it shall be

permissible to connect two (2) mooring lines with a spreader line having floats attached thereto to keep such line afloat when the mooring is unoccupied.

G. Buoy Markings. Mooring buoys shall be painted with the number allocated thereto by the Harbormaster to the mooring, the numeral(s) of which shall be at least three (3) inches in height.

H. Mooring, Anchoring and Vessel Condition Requirements.

1. Mooring Anchoring. All vessels anchored on the open waters of the Pacific Ocean shall be anchored in such a manner so that the vessel does not come in contact with another vessel or structure. All vessels using moorings in Newport Harbor shall be firmly anchored to a mooring from bow and stern in such a manner as to prevent the vessel from swinging, turning or drifting, except in areas designated by the Harbormaster as single mooring areas. Vessels in single mooring areas shall be tied from the bow. All vessels anchored in Newport Harbor in the designated anchorage area shall be anchored in such a manner so that the vessel does not come in contact with another vessel or structure and does not extend beyond the demarcation line of the designated anchorage area.

2. Vessel Condition. Safety, Seaworthiness and Operability. Vessels assigned to a mooring by permit must be maintained in a safe, seaworthy and operable condition. If, based upon the appearance of the vessel, inspection by the City or other facts, the Harbormaster has cause to believe a vessel is not safe, seaworthy and operable, the Harbormaster shall give written notice to the permittee, in accordance with the service requirements of Section 1.05.030, requesting a demonstration that the vessel is safe, seaworthy and operable. The permittee shall, upon written notice specifying the date and time, demonstrate to the Harbormaster that the vessel assigned to the mooring is safe, seaworthy or operable. In the event that the Harbormaster determines that vessel is not safe, seaworthy or operable, the permittee shall:

a. Commence repairs within thirty (30) calendar days upon service of the written notice of such determination and complete repairs within ninety (90) calendar days of the commencement unless the Harbormaster, upon written request from the permittee specifying the reasons therefor, approves an extension of time to complete the repairs; or

- b. Remove the vessel within thirty (30) calendar days of service of the written notice of such determination and request assignment of a different vessel that is safe, seaworthy and operable to the mooring within sixty (60) calendar days after the removal of the vessel. This section is not intended to apply to any brief period of repair common to most vessels. The Harbormaster may repeat his or her request to test operability and seaworthiness as needed.
3. Vessel Condition – Public Nuisance. No person owning, leasing, occupying or having charge or possession of any vessel shall maintain, permit, cause or allow to exist on such vessel any of the following conditions:
  - a. Promotion of a fire hazard, including, but not limited to, improper open fuel storage, deficiencies in the vessel's fuel storage tanks, inoperable electrical systems, storage of combustible or other flammable material that constitutes a fire hazard to any vessel;
  - b. Retention of water that becomes stagnant, unsanitary, or polluted;
  - c. Accumulation or storage of rubbish, trash, debris, rubble, containers, or boxes that are visible aboard the vessel or stored inside the vessel in such a way to make the vessel inoperable for its intended use;
  - d. Storage or securing a vessel in such a way that it impedes pedestrian travel on City beaches and tidelands;
  - e. Contribution to hazards to public safety or health, such as, but not limited to: propagation of vermin, rats, insects, or unsanitary conditions from the accumulation of fecal materials;
  - f. Maintenance in such non-seaworthy condition that the vessel is unsafe, unsightly or poorly maintained, including, but not limited to: broken windows, unsecured doors or hatches, excessive marine growth attached to the vessel, being inoperable for the vessel's intended use, partially destroyed or partially repaired for more than three (3) continuous months, providing access to marine mammals, actively seeping hazardous or toxic material into the surrounding waters, or would present a physical danger to public safety personnel during emergency access;

- g. Operation of its mechanical or electrical systems creates excessive noise, odors, vibrations, fumes, discharges or emissions that constitute an impact on public health or safety;
- h. Violation of the terms and conditions of other use or rental permits as granted by the City;
- i. Allowance of repetitive, boisterous or unruly conduct by the vessel operator or occupants when that conduct:
  - (i) Is offensive to a person of ordinary sensibility, and
  - (ii) Continues after a written or oral request to terminate the conduct, or
  - (iii) Is offensive to a considerable number of people;
- j. Anchorage in an area controlled by the City without adequate anchor(s) rope or chain appropriate for the wind and sea conditions encountered in Newport Bay;
- k. Inability of a vessel on a shore mooring to be self-righting on an incoming tide without flooding the vessel;
- l. Attachment to a mooring in such a way that the vessel regularly drifts or impedes safe navigation in Newport Bay; or
- m. Installation of a marine sanitation device that is not connected directly to an internal holding tank at all times while in Newport Bay.

Violation of Subsection H is hereby declared to be a public nuisance. In the event that the City determines that a vessel is a public nuisance, the City may commence public nuisance abatement as provided in this title.

4. If, based upon the appearance of the vessel, inspection by the City or Harbormaster or other facts, the Harbormaster determines that a sea lion has boarded a moored vessel, the Harbormaster shall issue and serve a notice of violation in accordance with Section 1.05.030 and the permittee shall take any and all necessary action to employ and maintain appropriate measures to deter sea lions from boarding the vessel within seven (7) calendar days of the notice of violation. If the Harbormaster determines that appropriate deterrent measures have not been taken within seven (7) calendar days of the notice of violation, the Harbormaster may issue an administrative citation or

take any other enforcement action authorized by this Code. In the event the Harbormaster issues an administrative citation, the permittee shall:

- a. Take any and all necessary action to employ and maintain appropriate sea lion deterrent measures; or
- b. Remove the vessel from Newport Harbor.

Appropriate deterrent measures shall be defined as the latest methodology permitted by National Marine Fisheries Service to minimize sea lion boarding of vessels assigned to a mooring. If the City is unable to reach the permittee within the seven (7) calendar days, the Harbormaster may install temporary deterrent measures as needed and recover the City's cost of compliance.

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

J. Specifications. Specifications for the size of chains required on moorings and weights of moorings shall be adopted by resolution of the City Council.

K. Inspection of Moorings. Each mooring shall be lifted by the owner for inspection by the Harbormaster at least once every two (2) years and shall be repaired, as necessary, so as to be in good condition before being replaced; provided, that the Harbormaster may require any mooring to be lifted at any time when deemed necessary to assure it is in good condition. If the permittee has such lifting performed by a marine contractor, then the Harbormaster may authorize such contractor to inspect the mooring on behalf of the Harbormaster and certify the results to the Harbormaster in writing. The permittee shall pay the costs of any inspection performed by a contractor on behalf of the Harbormaster.

L. Rental Not Permitted. Except as authorized in Section 17.60.040(B)(1)(a), no mooring may be leased or rented by the permittee to another person except with the written permission of the Harbormaster.

M. Administration. The Harbormaster shall administer all provisions in this section.

### **17.25.030 Storage Regulations.**

A. Vessel or Trailer Storage on Beaches Prohibited - Exceptions. No person shall store any vessel, trailer or other similar object on any public beach in the City except as provided in subsection (A)(1) of this section. As used in this section, the

term “store” shall mean to leave or permit to remain unattended for a period of three (3) hours or more and not in the possession or control of the owner or user.

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

- a. Any vessel(s), watercraft and/or related equipment owned and maintained by the City or its contractors which is (are) used in conjunction with recreation programs offered by the City;
- b. Any vessel(s), watercraft and/or related equipment that cannot feasibly be berthed or moored at a privately owned pier or mooring and is (are) used by a nonprofit corporation for noncommercial purposes provided a vessel storage permit has been approved by the Harbormaster. An application for a vessel storage permit shall be filed with the Harbormaster, in accordance with Section 17.60.015 and issued if the Harbormaster makes the findings set forth in Section 17.05.140 (D) and there is substantial evidence that the permit would not adversely affect the health, safety or welfare of those who use, enjoy or own property on or near the waters of Newport Bay. Vessel storage permits are subject to the following standard conditions as well as any additional conditions imposed by the Harbormaster:
  - i. The permittee shall not cause or permit any unreasonable noise that would adversely affect the use or enjoyment of public or private property in the vicinity of the vessel, watercraft or equipment;
  - ii. The permittee shall not engage in, or permit, any activity that unreasonably interferes with the use of the beach or adjoining waters by the public;
  - iii. The permittee shall not cause or permit any activity that pollutes any public or private property of the waters of Newport Bay; and
  - iv. Notwithstanding the process set forth in Chapter 17.70 for the revocation of permits, the permit provided herein may be revoked by the Harbormaster, without cause, at any time, upon thirty (30) days’ written notice to the permittee.



- c. Any vessel for which a mooring permit has been issued by the City pursuant to Section 17.60.040, or any successor section, provided the vessel remains on the beach only to the extent necessary to load or unload.

## **Chapter 17.30**

### **HARBOR USE REGULATIONS**

#### **Sections:**

- 17.30.010 Landing of Aircraft.**
- 17.30.020 Loading or Unloading Hazardous Materials.**
- 17.30.030 Live Bait and Sea Life.**
- 17.30.040 Special Event Permits.**

#### **17.30.010 Landing of Aircraft.**

No person shall land or take off from the waters of Newport Harbor with any aircraft without first obtaining a permit from the City Council. An application for an aircraft landing permit shall be filed with the Harbormaster in accordance with Section 17.60.015. Such permit may be issued if the City Council determines that, under the circumstances, the proposed landing or takeoff will not create a hazard to life or property or otherwise impact the health, safety and welfare of the public. In granting such permit, the City Council may impose such conditions on the exercise thereof as it deems appropriate.

#### **17.30.020 Loading or Unloading Hazardous Materials.**

No person shall load or unload any hazardous materials to or from any vessel from or upon any pier or other vessel in Newport Harbor without first obtaining a permit from the Fire Marshal pursuant to Section 105.6 of the California Fire Code and Chapter 9.04 of Title 9 of this Code. An application for a permit to load or unload any hazardous materials shall be filed with the Harbormaster in accordance with Section 17.60.015. The Fire Marshal or his or her designee shall issue the permit if he or she finds that the hazardous materials and the associated maintenance, handling and/or storage activities conform to the California Fire Code and this Code. The Fire Marshal or his or her designee may impose any conditions on the issuance of the permit necessary to protect the health, safety and welfare of the public. The decision of the Fire Marshall may be appealed in accordance with Chapter 15.80.

### **17.30.030 Live Bait and Sea Life.**

- A. Requirements for Live Bait/Sea Life Receivers. All live bait/sea life receivers used within the waters of Newport Harbor shall be fitted with screen trays in the bottom thereof so as to retain all dead bait or sea life or other debris within the receiver which can be raised to dispose of the dead bait/sea life or other debris. All live bait receivers within the City shall also have a screen or solid cover which fits closely unless the receiver is completely covered by a roof.
- B. Nonconforming Bait and/or Sea Life Receivers. Storage of live bait or sea life other than in a receiver conforming to the requirements hereof is prohibited. After three (3) calendar days' written notice, served in accordance with Section 1.05.030, to the owner of a nonconforming receiver, it may be removed by the Harbormaster and stored at the expense of the owner.
- C. Commercial Bait Boats, Bait and Sea Life Receivers. All boats used to catch or furnish live bait or sea life shall, at all times, have aboard a covered receptacle in which shall be placed all dead bait and other sea life debris. No person shall commercially operate a bait boat or a bait receiver without first obtaining a marine activities permit pursuant to Chapter 17.10. Bait tanks on such boats when containing bait shall be covered at all times when in Newport Harbor by a cover which fits closely over the top except while bait is actually being transferred to or from the tank.
- D. Disposal of Bait. No person shall chum, place or allow to be placed any live or dead bait, fish or other sea life debris in the unconfined waters of Newport Harbor or on the waters of the Pacific Ocean within the jurisdiction of the City except when it is attached to a hook or hooks in the act of fishing.
- E. Transfer of Live Bait. No person shall transfer live bait from one vessel to another vessel or sell the same at retail from a vessel within the limits of Newport Harbor, except when all vessels involved are moored to a pier and are within the pierhead line. During a period of adverse conditions of sea or beaches causing the transfer from offshore receivers to be hazardous, a location inside the harbor may be used with the written approval of the Harbormaster or when authorized by a lease issued pursuant to Chapter 17.60.

### **17.30.040 Special Event Permits.**

If a permittee proposes a use of Newport Harbor other than that allowed by this Code, he or she must first obtain a “special event permit,” as provided by Chapter 11.03 of this Code. Upon issuance of the special event permit, the City may impose conditions on the permit to assure that the proposed use does not affect the health, safety or welfare of the residents of Newport Beach.

## **Chapter 17.35**

### **HARBOR DEVELOPMENT REGULATIONS**

#### **Sections:**

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

#### **17.35.010 General Provisions for Harbor Structures.**

A. Design. Design of harbor structures shall conform to the “Waterfront Project Guidelines and Standards, Harbor Design Criteria, Commercial and Residential Facilities” as adopted by resolution of the City Council and as may be amended from time to time. The applicant may submit an alternate design for review and potential approval of the City prior to the issuance of a harbor development permit using the “Alternate Materials, Design or Method of Construction” as provided in Sections 1.8.7 and [A] 104.11 of the California Building Code.

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

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

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

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

F. Protection of Traffic. Adequate provisions shall be made for the protection of the traveling public. Barricades shall be placed on streets with lights at night, and flagmen employed, as necessary or otherwise required. The permittee shall not attempt to forbid the full and free use by the public of all navigable waters at or adjacent to the work or structure. Additionally, adequate lighting and signals required by the particular work in progress or as prescribed by the U.S. Coast Guard shall be provided by the permittee at his or her expense.

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

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

I. Repairs. The permittee shall keep the structures in good repair at all times. Failure to repair, when written notice has been given by the Public Works Department, shall be cause for the revocation of the permit in accordance with Section 17.70.020.

J. Pollution Control. The permittee shall maintain the area delineated on the harbor development permit free and clear from beached or floating rubbish, debris or litter at all times. Adequate safeguards shall be maintained by the permittee to avert any other type of pollution of Newport Harbor from recreational and/or commercial use of the tidelands. Failure to comply with the provisions of this section shall be cause, after written notice has been given to the permittee by the City, for the revocation of the permit in accordance with Section 17.70.020. When unusual circumstances arise with respect to the collection of debris or litter, the City Manager may authorize by the use of City forces or by contract, the removal of such debris. Cost for such pollution control shall be borne by the permittee.

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

L. Special Event Permits. If a permittee proposes a use of Newport Harbor other than that allowed by this Code, he or she must first obtain a “special event permit,” as provided by Chapter 11.03 of this Code. Upon issuance of the special event permit, the City of Newport Beach may impose conditions on the permit to ensure that the proposed use does not affect the health, safety or welfare of the residents of Newport Beach.

#### **17.35.020 Piers.**

##### **A. Use Regulations.**

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

10. Permits may be granted for joint ownership piers at the prolongation of common lot lines. The permit for joint ownership piers shall provide that all parties shall have equal rights under the permit and shall be held jointly responsible for compliance with all rules, regulations, and conditions set forth in the permit.

B. Setbacks.

1. All piers and slips for residential properties shall be set back a minimum of five (5) feet from the prolongation of the side property line.

2. With the prior approval of the City, piers and slips for commercial properties may extend past the prolongation of the property line.

3. The prolongation of the property line bayward at the same bearing from the bulkhead shall generally be used in determining the allowable setbacks for piers and slips. Because there are certain physical conditions which preclude the strict application of this policy without prejudice to adjoining properties, special consideration will be given to areas where precise prolongation of the property line has not been determined and at least one of the following conditions exist:

a. Where property lines are not approximately perpendicular to the bulkhead line;

b. Where curves or angles exist in the bulkhead line; or

c. Where bridges, topography, street ends or publicly owned facilities adjoin the property.

4. Setbacks apply to joint ownership piers with the exception that the slips, floats and piers may extend over the common property line.

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

1. The maximum projection of patio decks encroachments beyond the bulkhead line shall be limited to five (5) feet.

2. The minimum setbacks from the prolongations of the side property lines shall be five (5) feet.



3. No float shall be permitted within one (1) foot of the decks.
  4. No permanent structure shall be permitted on the projecting portion of the patios except:
    - a. Planters and benches not over sixteen (16) inches in height; and/or
    - b. Railings not over forty-two (42) inches in height with approximately ninety-five (95) percent open area.
  5. A harbor development and building permit has been obtained.
- D. Storage Lockers. Storage lockers and boat boxes may be installed on shore-connected piers and floats subject to the following limitations:
1. The overall height shall not exceed thirty (30) inches when located bayward of residential property zones.
  2. The overall height shall not exceed thirty (30) inches when located bayward of commercial and industrial property zones where the piers and floats are used primarily for the mooring of pleasure boats.
  3. The overall height shall not exceed sixty (60) inches when located on facilities bayward of commercial and industrial zoned property where the use is not primarily for the mooring of pleasure boats.
  4. The overall height shall be measured from the deck of the pier or float to the top of the storage locker. The enclosed portion of the locker or box shall not exceed the storage locker height.
- E. Safety Requirements.
1. All commercially operated boat docking facilities shall be equipped with firefighting facilities as specified by the Fire Code.
  2. Any electrical service upon any pier, dock or float shall be installed under a permit obtained from the Community Development Department.
  3. Any domestic water service upon any pier, dock, or float shall be installed under a permit obtained from the Community Development Department.
  4. All commercial piers, floats or docks used for the loading of passengers shall be lighted in such a manner as to provide an illumination

level as specified by the California Building Code for all areas used for the loading of such passengers.

F. Encroaching Piers and Floats. In areas where existing piers and floats encroach in front of abutting upland property owned or leased by others, a new permit shall be required upon the occurrence of any of the following:

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

A public hearing before the Harbor Commission is required prior to the issuance of a new permit for an encroaching pier or float. The public hearing shall be held in accordance with the procedures set forth in Section 17.05.140. The Harbor Commission may approve or conditionally approve a new permit for an encroaching pier or float upon making the findings set forth in Section 17.05.140(D)(1). The requirements in this subsection are limited to permits and shall not apply to leases entered into by the City in accordance with Chapter 17.60.

G. Defective Piers. Upon learning that any pier is in a defective or dangerous condition, the Public Works Director shall immediately notify the owner or other person having charge of the same in writing, requiring such person or persons to immediately repair it or to put up barriers to prevent persons from going upon it. If such person fails or neglects to do so, the Public Works Director may place barriers, as necessary, for the protection of the public and charge the cost thereof to such person. It shall be a violation of this title for any person to interfere with any such barrier.

H. Damaged Pier. If any pier, or any portion thereof, or any material on such pier, shall fall into the waters of Newport Harbor, it shall be the duty of the owner, agent or lessee of such pier to forthwith remove the same from the waters of Newport Harbor and, if they shall fail to do so, the Public Works Director may do so and the cost thereof may be recovered from the owner, agent, or lessee of such pier in a civil action.

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

- A. Piers and floats may not extend beyond the pierhead line unless approved in compliance with Council Policy as may be amended from time to time.
- B. Piers and floats shall not be permitted on the north side of the channel south of Bay Island.
- C. Piers and floats shall not be permitted in the beach area along the northerly side of Lido Isle between the easterly line of Lot 849 and the westerly line of Lot 493.
- D. Piers and floats shall not be permitted in the beach area along the southerly side of Lido Isle between the easterly line of Lot 919 and the westerly line of Lot 457.

### **17.35.040 Other Structures.**

- A. Race Committee Platforms. Race committee platforms and instruction platforms may be constructed bayward of the bulkhead line at recognized yacht clubs and recognized sailing schools. All work shall require issuance of a Harbor Development Permit.
- B. Floating Dry Docks. Permits for floating dry docks may be approved by the Public Works Director. An application for a floating dry dock permit shall be filed with the Public Works Department, in accordance with Section 17.60.020 and shall be approved if:
  - 1. The Public Works Director makes the findings set forth in 17.05.140 (D)(1);
  - 2. The location of the floating dry dock is in waters bayward of commercial, manufacturing or unclassified zones; and
  - 3. A harbor development permit has previously been approved.
  - 4. Permits for floating dry docks are issued for one location only. A new permit must be obtained to move a floating dry dock from one location to another location within the harbor.

### **17.35.050 Bulkheads.**

- A. All bulkheads in residential districts shall be installed on the established bulkhead line or at a location behind the bulkhead line that would preserve the

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

The Community Development Director may approve bulkheads located between U.S. Bulkhead Station Nos. 112 and 109, not to exceed the bayward side of the "Vacated East Bay Avenue." For the addresses at 2209, 2223, 2227, 2231 and 2233 Bayside Drive, approval of a bulkhead at these properties shall not exceed a point bayward of the average high tide line established at a point forty (40) feet landward of the face of the bulkhead at the property at 2137 Bayside Drive, and then on a straight line from that point to the bayward most point of the bulkhead at the property at 2301 Bayside Drive.

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

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

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

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

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

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

H. Maintenance or replacement of existing bulkheads is permitted when expansion or encroachment into coastal waters is limited to the minimum extent necessary to repair, maintain, or replace an existing bulkhead and the backfill is not used to create new usable residential land areas.

**17.35.060 Balboa Island - Noncommercial Piers.**

A. No new noncommercial piers on Balboa Island shall be approved unless determined by the Harbor Commission to be in the public interest, which finding shall be a prerequisite to the issuance of a harbor development permit pursuant to Chapter 17.50. New noncommercial piers, if approved, shall be constructed in strict conformance with this section and Chapter 17.50 and the design criteria. Piers presently permitted may be maintained and repaired upon securing a permit in accordance with Chapter 17.50. Any revision of an existing pier or float shall be in strict conformance with this section and shall not be approved if the addition or revision would, in comparison to the existing structure, further restrict or impair the public's use of the bay or beach in the vicinity of the pier or floats.

B. The alteration, reconstruction or replacement of any existing permitted noncommercial pier on Balboa Island, or any portion thereof, shall be limited to the following:

1. The overall square footage of the noncommercial pier, as proposed for alteration, reconstruction or replacement shall be equal to or less than the square footage of the permitted noncommercial pier;
2. The noncommercial pier, as proposed for alteration, reconstruction or replacement shall not extend beyond the City permit line (the U.S. pierhead line) or such other bayward extension of the permit area that is permitted by this section or the Council Policy; and
3. The noncommercial pier, as proposed for alteration, reconstruction or replacement shall be wholly within the original permitted area as specified in the existing permit on file with the City.

C. Whenever any application for a harbor development permit to install a new noncommercial pier on Balboa Island is submitted, a public hearing shall be held by the Harbor Commission in accordance with the procedures set forth in Section 17.05.140.

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

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

1. The permittee shall be responsible for maintaining the area delineated on the harbor development permit free and clear from floating rubbish, debris or litter at all times; and
2. The permittee shall be responsible for all maintenance dredging, in accordance with the design profile for Promontory Bay, for the area between the bulkhead line and pierhead line as delineated by the harbor development permit.

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

1. The permittee shall be allowed either one (1) pier platform, or in lieu thereof, two (2) shore mooring type appurtenances per lot. Pier platforms and shore moorings shall be constructed according to the design criteria adopted by the City.
2. All vessels (maximum length eighteen (18) feet) moored in the Grand Canal shall be tied off to pier platform structures or onshore moorings. Floating platforms or slips will not be allowed. Vessels tied to the bulkhead or by alternate methods not approved by the Harbor Department shall be prohibited.
3. The permittee shall be allowed no more than one (1) vessel per onshore mooring.
4. Any onshore mooring approved for the Grand Canal shall display a permit number issued by the Harbor Department.
5. Each vessel tied to any pier platform in the Grand Canal shall be anchored from the stern in such a method as to prevent the vessel from swinging into adjoining vessels or across bayward prolongations of private property lines.

### **17.35.080 Parking Requirements.**

Parking shall be provided pursuant to Titles 20 and 21 of this Code.

### **17.35.090 Signs.**

No sign permitted on the tidelands shall exceed four (4) square feet in total area except signs permitted pursuant to a lease with the City or under a marine activities permit issued pursuant to Chapter 17.10.

## **Chapter 17.40**

### **LIVE-ABOARDS**

#### **Sections:**

- 17.40.010 Purpose.**
- 17.40.020 Live-Aboards Prohibited.**
- 17.40.030 Permits Required.**
- 17.40.040 Application for Live-Aboard Permit.**
- 17.40.050 Issuance of Permit.**
- 17.40.060 Term/Renewal.**
- 17.40.070 Conditions/Regulations.**
- 17.40.080 Use of Pump Out Facilities – Disposal of Trash.**
- 17.40.090 Compliance with Law.**
- 17.40.100 Discharge Servicing and Records.**
- 17.40.110 Limitation on Number of Permits.**
- 17.40.120 Transfer Prohibited.**
- 17.40.130 Termination of Permit.**

#### **17.40.010 Purpose.**

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

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

#### **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).



C. Live-aboards may be permitted on moorings subject to short-term sub-permits according to Section 17.60.040(G).

#### **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. No permit shall be issued for any live-aboard which is not intended to serve as the principal residence of the permittee. For purposes of this section, principal residence shall mean to live-aboard for not less than two hundred forty three (243) days in any calendar year.

#### **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, and 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; and
- E. Other information the Harbormaster reasonably believes is necessary or helpful to the efficient administration of the provisions of this chapter.

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.

#### **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 along with 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 is not equipped with a fully operational marine sanitation device and holding tank with a capacity of no less than ten (10) gallons which is necessary to ensure 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. The applicant does not have a valid mooring permit as required by Section 17.60.040;
- D. Issuance of the permit, given the specific circumstances of the application, would significantly impact persons residing, working or visiting Newport Harbor;
- E. 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; or
- F. In the case of a renewal, the applicant was in violation of this title during the prior permit term.

#### **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) calendar 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 if the permittee does not comply with any of the requirements 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 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.

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

A. The Harbormaster may impose such conditions on the permit as are reasonably necessary to ensure 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. The live-aboard permittee shall maintain a log, which shall be updated by the end of each calendar month and kept on the vessel subject to the live-aboard permit, which shows the days/nights the live aboard resided on the boat.
3. By obtaining a live-aboard permit, the permittee specifically authorizes the Harbormaster or his or her designee to board the subject vessel at any time to inspect the marine sanitation device and holding tank and install a dye tablet to determine whether there is any discharge from the same.

B. The Harbormaster shall have the power to promulgate rules and regulations to ensure 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.

#### **17.40.080 Use of Pump Out Facilities - Disposal of Trash.**

Permittees shall use pump out facilities on a regular basis or otherwise discharge human waste in a legal manner. The permittees and others living aboard pursuant to a permit shall not deposit any garbage or trash in Newport Harbor or on property surrounding Newport Harbor except in trash receptacles owned and maintained by the City or its contractors. 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 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 the permitted vessel, shall comply with all applicable State and Federal laws, the provisions of this Code, and all conditions set forth in the permit. Failure to comply with these laws, ordinances, or policies shall constitute grounds for revocation of the permit.

### **17.40.100 Discharge Servicing and Records.**

Each live-aboard permittee is required to contract with an authorized commercial pump out service at a minimum of twice a month in any month the vessel is occupied by the live-aboard permittee. Each permittee shall maintain a log and any supporting materials from the commercial pump out service provider including, but not limited to, company issued service records and invoices. The log and supporting material shall contain the date, time, and location waste was discharged from the vessel and deposited with the commercial service provider. The log and supporting material shall be made available for inspection by the Harbormaster at all reasonable hours and upon request. In addition, the log and supporting material shall be submitted to the Harbormaster with the renewal application. Exceptions to the frequency and use of a commercial service provider may be permitted by the Harbormaster with prior approval. Failure to comply shall result in non-renewal or revocation of the live-aboard permit and/or revocation of the mooring permit.

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

The number of live-aboard permits in effect at any given time shall not exceed seven (7) percent of the number of offshore mooring permits issued by the City pursuant to Chapter 17.60.

### **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.

### **17.40.130 Termination of Permit.**

Any live-aboard permit issued pursuant to this chapter shall be deemed terminated upon revocation of the mooring permit or lease issued pursuant to Chapter 17.60 of this Code.

## **Chapter 17.45**

### **SANITATION**

#### **Sections:**

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

#### **17.45.020 Required Pump Out Facilities.**

#### **17.45.030 Waste and Refuse.**

#### **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 (2) restroom facilities 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. Permission may be granted to install and operate sewage pumping facilities for boats moored to shore-connected structures provided such installations are first approved by the Public Works Department and the Community Development Department.

#### **17.45.020 Required Pump Out Facilities.**

A. 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 pump out system solely for the use of vessels associated with that activity. The pump out facility shall be installed on dock space under the control of the club, marina or permittee with convenient access to all vessels, owned, leased or chartered by the club, marina or permittee. The pump out facility shall have a capacity commensurate with the capacity of the holding tanks of the vessel or vessels of the club, marina or permittee.

B. All pump out facilities required by this chapter shall be installed pursuant to permit issued by the Public Works Department. Application for permit shall be

made on forms prepared, and furnished, by the Public Works Department. No fee shall be charged for the issuance of the pump out facility permit or any other permit required for the issuance of the pump out facility permit prior to installation.

C. The application for permit shall be accompanied by appropriate plans and specifications setting forth in detail the work to be done.

D. The application, plans and specifications required by this chapter shall be reviewed by the Public Works Department to determine if the proposed work meets all requirements of this chapter and other provisions of this Code. The Public Works Department shall issue the permit if the proposed pump out station complies with all applicable ordinances, rules and regulations. A separate permit will be required from the Building Official prior to installation of the pump out facility.

E. Maintenance. Permittee shall maintain the pump out facility in good condition and repair at all times.

#### **17.45.030 Waste and Refuse.**

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 marine sanitation device on a vessel into the waters of Newport Harbor or the Pacific Ocean. In accordance with Harbor and Navigations Code Section 782 any vessel in the waters of Newport Harbor or on the waters of the Pacific Ocean within the jurisdiction of the City, with a marine sanitation device, is subject, at any time, to boarding by the Harbormaster 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 all available remedies, including immediate removal from Newport Harbor.

B. Vessel Holding Tank Requirements.

1. Vessel Wastes. No person shall own or operate a vessel equipped with any marine sanitation device for human body wastes in the waters of Newport Harbor or the Pacific Ocean unless it complies with all applicable Federal, State, County and City standards.

2. Marina Pump Out Facilities. The owner and operator of every commercial marina with a capacity of fifty (50) or more vessels shall provide a permanent holding tank pump out 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 debris, garbage, litter, timber or other waste 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.

D. Refuse and Vessels on Shoreline. No person shall place or allow abandoned vessels or boats, materials, garbage, refuse, debris, litter, timber or other 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 City may remove the same with or without notice, and the cost thereof may be recovered from any person owning the same, or placing or causing it to be placed on the shoreline.

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 or marine sanitation devices 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.



## **Chapter 17.50**

### **HARBOR DEVELOPMENT PERMITS**

#### **Sections:**

- 17.50.010 Permits - General.**
- 17.50.020 Applications.**
- 17.50.030 Processing of Application.**
- 17.50.040 Rendering of Decision.**
- 17.50.050 Permits - Conditions.**
- 17.50.060 Bond Requirements.**
- 17.50.070 Transfer of Permit.**
- 17.50.080 Expiration, Extension, Violation and Revocation.**
- 17.50.090 Structure Without Permit Declared a Nuisance - Abatement.**
- 17.50.100 Securing of Structures.**
- 17.50.110 Appeal(s) or Call(s) for Review.**

#### **17.50.010 Permits - General.**

A. New Construction. Except as provided in subsection (C), no person shall build, cause to be built or perform any new construction 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 the Pacific Ocean, without first obtaining a harbor development permit and approval in concept, if required by another agency, from the City.

B. Maintenance. Except as provided in subsection (C), no person shall build, cause to be built or perform any maintenance construction 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 the Pacific Ocean, without first obtaining a harbor development permit from the City. Notwithstanding the foregoing, painting, replacement of rub-rails, minor replacement work, and work considered cosmetic in nature shall not require a permit.

C. County of Orange. The County of Orange may do construction work or fill or dredge within Newport Harbor, or cause the same to be done, without a harbor

development permit so long as such work is done pursuant to a site plan on lands owned by the County or pursuant to a request therefore by the City Council.

D. Variances. A variance provides a process for Harbor Commission consideration of requests to waive or modify this title, the design criteria and other applicable standards and policies otherwise applicable to the property when, because of special circumstances applicable to the property, including location, shape, size, surrounding topography or other physical features, the strict application of this title, the design criteria and other applicable standards and policies otherwise applicable to the property denies the property owner privileges enjoyed by other property owners in the vicinity.

E. Dredging. A separate permit will be required by the Public Works Director for dredging (See, Chapter 17.55, Dredging Permits).

#### **17.50.020 Applications.**

A. Application. Application for an approval in concept, harbor development permit, or variance shall be filed with the Community Development Department in writing on forms prescribed by the Community Development Department.

B. Review Authority. Depending upon the nature of the project, the Community Development Department or other appropriate department may act as review authority responsible for reviewing and making decisions on each type of application. Upon completing an initial review of the application, the Community Development Department shall inform the applicant of the department serving as review authority of the application and decision.

C. Required Materials. Applications shall be accompanied by all plans, maps, and other materials required by the prescribed forms, unless specifically waived by the review authority. The review authority may request additional materials deemed necessary to support the application. Plans accompanying the application must comply with Chapter 15.02. If the applicant is submitting a request for "Alternate Material, Design and Methods of Construction" that deviate from the standard design criteria, the application shall include all relevant information or material requested by the department.

D. Required Signatures. The application 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.

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

### **17.50.030 Processing of Application.**

A. City Review. The application and plans and specifications shall be reviewed by the review authority to determine whether the proposed development meets all the requirements of this title, the design criteria, 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. If approval by other agencies is required prior to the review authority taking action on an application for an approval in concept or harbor development permit, the applicant shall obtain and submit proof the applicant has obtained the approvals prior to the review authority issuing the approval in concept or harbor development permit. The following is a non-exhaustive list of other agency approvals that may be required.

1. Coastal Commission. All development in areas where the Coastal Commission retains coastal development permit authority shall require the City to issue an approval in concept that indicates the proposed development conforms in concept to all applicable provisions of this title and the design criteria prior to the applicant applying for a coastal development permit. Additionally, the City may require proof of prior approval of a coastal development permit by the Coastal Commission, when applicable, before the issuance of a harbor development permit.
  2. U.S. Army Corps of Engineers and Santa Ana Regional Water Quality Control Board. Maintenance construction and new construction may require approval by the U.S. Army Corps of Engineers and Santa Ana Regional Water Quality Control Board prior to the issuance of an approval in concept or harbor development permit. When required, proof of prior approval of the U.S. Corps of Engineers or the Santa Ana Regional Water Quality Control Board shall be required before the issuance of an approval in concept or harbor development permit.
  3. County of Orange. Maintenance construction and new construction may require approval of the County of Orange, when work extends over County tidelands prior to the issuance of an approval in concept or harbor development permit. When required, proof of prior approval of the County of Orange shall be required before the issuance of an approval in concept or harbor development permit.
- C. Insurance. Prior to the issuance of a harbor development permit, the

applicant shall show proof of insurance coverage as required by the Longshoremen's and Harbor Worker's Compensation Act.

#### **17.50.040 Rendering of Decision.**

##### **A. Approval.**

##### **1. Approval by City Staff.**

a. Except as provided in subsection (2), the review authority shall approve and issue an approval in concept and/or harbor development permit if, a public hearing is not expressly required, and the application conforms to the provisions of this title, the design criteria and all applicable standards and policies otherwise applicable to the property.

b. Before issuing an approval in concept or harbor development permit for:

- i. any development on oceanfront beaches;
- ii. development of a non-standard structure; or
- iii. development of a structure for a use that is not in keeping with the surrounding area

the review authority shall notify all real property owners within three hundred (300) feet of the proposed development, as shown on the last equalized assessment rolls, of the pending application. Notice will be sent at least ten (10) calendar days prior to a decision.

c. An approval in concept only indicates the proposed development conforms in concept to all applicable provisions of this title and does not provide approval for any applicable land use and property development regulation not covered by this title.

2. Approval by Harbor Commission. The application for a harbor development permit, approval in concept, or variance shall be referred to the Harbor Commission for a public hearing, as set forth in Section 17.05.140, to determine if a harbor development permit, approval in concept, or variance shall be issued, denied, or conditionally approved if:

- a. The applicant is requesting a permit pursuant to Section 17.35.020(F) or 17.35.060;

- b. The application is likely to create navigational congestion, or otherwise interfere with the rights of other harbor permittees within Newport Harbor, or property owners or long-term lessees located within a three hundred (300) foot radius of the area subject to the proposed permit;
- c. The development is designed or sited so as to obstruct public access to coastal resources or, in the case of new construction, as that term is defined, includes replacement of an existing structure that 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; or
- d. In the case of a variance, the application does not conform to the provisions of this title, the design criteria and/or other applicable standards and policies approved by the City Council because of special circumstances applicable to the property, including location, shape, size, surrounding topography or other physical features that, if applied, denies the property owner privileges enjoyed by other property owners in the vicinity.

B. Notice of Decision. Notice of the decision shall be posted on the City website within one day of the date of the decision. The review authority shall provide notice of the decision to the applicant and publish notice of the decision on the City's website for fourteen (14) calendar days. If no appeal or call for review of the decision is filed within the fourteen (14) calendar days, the decision is final. No permit shall be issued until the appeal period or call for review, in accordance with Chapters 15.80 or 17.65, expire.

#### **17.50.050 Permits - Conditions.**

- A. In approving an application as provided in this chapter, the permit shall be issued to the owner or long-term lessee of the abutting upland property and include 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 Newport Bay. The Southern California *Caulerpa* Action Team (SCCAT) shall be immediately notified if *Caulerpa taxifolia* is found.

C. 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 this Code.

D. Inspection shall be done by the City for conformity with the California Building Code, design criteria, the approved plans and conditions of approval.

E. The permittee shall be responsible for all liability for personal injury or property damage which may arise out of or in any way relate to the work permitted. In the event any claim is made against the City or any department, officer, or employee thereof, which may arise from or in any way relate to such work, permittee shall defend, indemnify and hold them and each of them, harmless from such claim.

#### **17.50.060 Bond Requirements.**

If the nature of the proposed 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 fifty (150) percent of the estimated cost of the work will be required to guarantee the faithful performance of the proposed development.

#### **17.50.070 Transfer of Permit.**

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 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 Community Development Director is authorized to approve transfers of permits.

### **17.50.080 Expiration, Extension, Violation and Revocation.**

- A. Expiration. All permits issued pursuant to this chapter shall expire unless the development contemplated shall have been completed within the time frames set forth in Chapter 15.02.
- B. Violation of Terms. Any permit granted in accordance with the terms of this 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.

### **17.50.090 Structure Without Permit Declared a Nuisance - Abatement.**

Except for structures owned by the City or another public agency, every structure maintained in or over the waters of Newport Harbor 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 (5) 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.

### **17.50.100 Securing of Structures.**

If, based upon an inspection by the City 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 (7) calendar days of the notice of violation. If the Harbormaster determines that appropriate deterrent measures have not been taken within seven (7) calendar days of the notice of violation, the Harbormaster may take enforcement action in accordance with this Code 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.

**17.50.110 Appeal(s) or Call(s) for Review.**

A. The Building Official's decision on use of alternate materials in accordance with the "Alternate Material, Design and Methods of Construction" may be appealed in accordance with Chapter 15.80. If the Building Official's decision is appealed, the Building and Fire Board of Appeals shall consider the matter first, prior to any other appeal or call for review provided for in subsection (B).

B. Except as provided in subsection (A), all other appeals or calls for review related to this chapter shall be made in accordance with Chapter 17.65.



## **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 Approval of Dredging Permit.**

#### **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.

#### **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.

### **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. To establish that the functional capacity is being maintained, the applicant must demonstrate all of the following:
  - 1. 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. The project does not harm or destroy a species or habitat that is rare or endangered;
  - 3. The project does not harm a species or habitat that is essential to the natural biological functioning of the wetland or estuary; and
  - 4. The project does not significantly reduce consumptive (e.g., fishing, aquaculture and hunting) or nonconsumptive (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.

**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.

**17.55.050 Approval of Dredging Permit.**

The Public Works Director shall issue the Harbor Dredging Permit if the application complies with the limitations set forth in this chapter and he or she makes the findings set forth in Section 17.05.140(D)(1).

## **Chapter 17.60**

### **HARBOR PERMITS AND LEASES**

#### **Sections:**

- 17.60.010 Public Trust Lands - General.**
- 17.60.015 Application for Harbormaster Permits.**
- 17.60.020 Application for Pier/Mooring Permits or the Lease of Public Trust Lands.**
- 17.60.030 Pier Permits for Noncommercial Piers.**
- 17.60.040 Mooring Permits.**
- 17.60.050 Houseboats.**
- 17.60.060 Public Trust Lands.**

#### **17.60.010 Public Trust Lands - 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. The City manages these lands through a series of permits, franchises and leases. This chapter applies to permits or leases for public trust lands used for commercial purposes by a person, other than the City, pier permits for non-commercial piers, and mooring permits.

B. Limits on Uses. Except as provided in subsection (C), 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 as provided in Section 17.05.080(B).

#### **17.60.015 Application for Harbormaster Permits.**

A. Required Forms. Except for applications for marine activities permits filed under Chapter 17.10, applications for permits which pertain to Newport Harbor under the provisions of this title which are to be issued by the Harbormaster shall

be filed with the Harbormaster, in writing, on forms prescribed by the Harbormaster.

B. Required Materials. Applications shall be accompanied by all materials required by the prescribed forms, unless specifically waived by the Harbormaster. The Harbormaster may request additional materials deemed necessary to support the application.

C. Required Signatures. Application for permits issued by the Harbormaster shall be submitted and signed by the owner, lessee, or agent of the owner of the property affected 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.

#### **17.60.020 Application for Pier/Mooring Permits or the Lease of Public Trust Lands.**

A. Required Forms. Except for permits to be filed with the Harbormaster, applications for permits or leases which pertain to Newport Harbor under the provisions of this chapter shall be filed in 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. The Public Works Director may request additional materials deemed necessary to support the application.

C. Required Signatures. Applications for permits or leases issued by the Public Works Director 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.

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

A. Noncommercial Pier Permits. Upon the request of the abutting upland residential property owner, or lessee or the authorized agent of the owner or lessee 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; 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. 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 authorized agent of the owner shall be required to apply for a new residential pier permit.

B. Rental Fees. Every owner or permit holder who maintains a pier used for noncommercial purposes, any part of which extends into public tidelands, 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 Noncommercial Pier Permits.

1. Permits for noncommercial 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 permittee to a third party or parties. Such rental/lease shall not be deemed a transfer under this section.

6. The provisions of this section shall not apply to piers, docks or other structures located in Promontory Bay and in other 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 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 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 if the Harbormaster makes the findings set forth in 17.05.140(D)(1). A mooring permittee may hold up to two (2) mooring permits at any time. A mooring permittee that held or continues to hold more than two (2) mooring permits prior to May 11, 2017 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, as noted in subsection (B)(3)(h) 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 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 and the corresponding length of each vessel. 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 and 24/7 emergency contact information shall be provided annually to the Harbormaster by the yacht clubs and LICA on or before February 1st.

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 (2) 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. An application and applicable fee, established by resolution of the City Council, for a multiple vessel mooring system shall be submitted in writing to the Harbormaster, who shall evaluate the application based upon standards established and the application shall be approved if the Harbormaster makes the findings under the applicable standards and those set forth in Section 17.05.140(D)(1).

2. Permit Requirements. Each mooring permit may be issued for up to two (2) 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. 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;
- d. 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;
- e. 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;
- f. Provide proof of insurance for the assigned vessel naming the City as an additional insured to the satisfaction of the Risk Manager;
- g. Provide registration or other proof of controlling possessory right in the assigned vessel, all to the satisfaction of the Harbormaster;
- h. 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;
- i. 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;
- j. 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; and
- k. Agree to allow the Harbormaster, or his designee, to board the permittee's vessel at any time to inspect the condition and operability of the marine sanitation device(s) and/or insert dye tablets to

determine whether said devices are discharging overboard in accordance with applicable laws.

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 or 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; or
- 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 January 13, 2011. These designated mooring areas may not be expanded. The boundaries of all mooring areas in Newport Harbor are graphically depicted by National Oceanographic and Atmospheric Administration (“NOAA”) Chart Number 18754. Yacht clubs shall be entitled to a maximum number of moorings identified in NOAA Chart Number 18754 that are located within the yacht club’s established mooring

fields and at a minimum the current number of moorings assigned to them as of January 13, 2011.

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 late charge shall be added to all payments due but not received by City by the due date in accordance with Section 17.05.120.

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 Harbormaster shall inspect the vessel at its office for compliance with Section 17.25.020(H) before the 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 assigned pursuant to subsections (G) and (H) of this section.

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 an onshore mooring, a photograph of the new assigned vessel if it is not subject to vessel registration laws. The Harbormaster shall inspect the vessel at its office for compliance with Section 17.25.020(H) before the assignment is approved; or

b. 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 (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; required mooring inspections are current; registration or documentation and insurance are provided; required maintenance and repairs are complete and there are no derelict or unauthorized vessel(s) on the mooring; and the vessel is of appropriate length with the appropriate weights and chains.
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;
  - b. The transferee has met all the qualifications and conditions for issuance of a permit in subsection (B) of this section;
  - c. 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 fee; and
  - d. The transferor represents that the person 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 (2) mooring permittees, subject to compliance with this subsection without any transfer fee 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 fee 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, 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)(g) of this section, the Harbormaster shall have the authority to assign vacant moorings to sub-permittees pursuant to the following provisions:

1. Deemed Vacant Moorings. The Harbormaster may assign deemed vacant moorings through the issuance of sub-permits at his or her own discretion. Sub-permits may be renewed upon availability. The mooring permittee may reclaim its mooring upon three (3) days' prior written notice to 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 or approved sub-permittee vessel approved in accordance with subsection (H)(8), 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 (F) of this section.

2. Noticed Vacant Moorings. The Harbormaster may assign noticed vacant moorings through the issuance of a mooring sub-permit for any period of time, up to the reoccupation date on the 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 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 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 sub-permittee’s 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 shall 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 shall 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 resolution of the City Council; and
  7. 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.
- I. Mooring Permit Transfer Nonrefundable Fee. 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 fee represents a one-time nonrefundable transfer fee for the use of a mooring. A mooring permit transfer fee shall not be required if:
1. 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;
  2. 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. The grounds and procedure for revocation of a mooring permit or sub-permit are set forth in Section 17.70.020.
2. Upon revocation of the mooring permit, 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.
3. During any revocation proceeding, 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 other than as set forth in subsection (K), the following shall apply:

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 equipment may be publicly auctioned by the City, or the City's designated representative, or the mooring equipment may be used for other City purposes.

M. Request to Extend Mooring Length.

1. Review Authority. 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 in accordance with this subsection; provided, however, that the Harbormaster may refer such applications to the Harbor Commission for consideration and final action. Applications for the extension of vessel occupancy length in excess of five (5) feet shall be submitted to the Harbor Commission for consideration and rendering of a decision. For applications requiring the approval of the Harbor Commission, the Harbormaster shall present to the Harbor Commission all relevant facts to support the findings included in 17.05.140(D)(1).

2. Application.

a. 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 of the City Council.

b. 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:

i. 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 applicable 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;

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

iii. Detailed information regarding the vessel including make, model, year, LOA, beam, dimension, vessel ID, and if the vessel identification is not known at the time of making an application, the LOA and Adjusted LOA (including bowsprits, swim steps, or stern mounted dinghies) of the proposed vessel for which the applicant seeks approval. The LOA as published by the manufacturer of a particular vessel shall be used to determine the required mooring size of a particular vessel, and the size of the specification for the chains, weights, and tackle necessary to secure a vessel on a particular mooring for a permittee. Adjusted LOA shall be used to determine the maximum vessel length that can fit in any particular slip or side-tie.

3. 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 making the findings set forth in Section 17.05.140(D)(1) and making the following findings:

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 Council Policy for the row or mooring area in which the vessel will be moored; or

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; and

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).

4. Conditions of Approval. 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; and

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.

5. Non-compliance with subsection (M) (4) (a) or (b) will constitute grounds for the Harbormaster to terminate the amendment to the mooring

permit. In the event that the Harbormaster terminates the amendment to the mooring permit issued pursuant to this chapter, it shall be the duty of the mooring permittee to remove the moored vessel to return the mooring area where vessel was assigned to its original length at the mooring permittee's expense within thirty (30) days of written notification to do so. Rather than reverting back to the City upon such termination, 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 this title applicable to mooring permits.

#### **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.

#### **17.60.060 Public Trust Lands.**

- 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.
  - 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 2012-91 for large commercial marinas and Resolution 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.

E. Commercial uses provided under this title 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 permittee's or lessee's guests, invitees, sublessees, or licensees 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 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.

## **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 the decisions of the Public Works Director, the Community Development Director, Harbormaster and Harbor Commission under this title.

- A. Decisions of the Public Works Director, Community Development Director, and/or Harbormaster resulting from his or her administration of this title 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 title. 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.

#### **17.65.020 Time Limits.**

Appeals or calls for review shall be initiated within fourteen (14) calendar days of the decision.



### **17.65.030 Initiation.**

- A. Filing of Appeals and Calls for Review. Appeals or calls for review 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.
- C. Effect on Decisions. Except where this title authorizes the revocation of a permit by the Harbormaster, decisions that are appealed or called for review shall not become effective until the appeal or review is resolved.

### **17.65.040 Procedures.**

- A. Hearing Date. An appeal or call for review shall be scheduled for a hearing before the reviewing body within forty-five (45) days of the filing of the appeal or call for review, or the decision by the Building and Fire Code Board of Appeals if they are to hear an appeal first, unless both appellant and the reviewing authority consent to a later date.
- B. Notice and Public Hearing. An appeal or call for review hearing shall be a public hearing. Notice of the hearing shall be provided and the hearing shall be conducted in compliance with Section 17.05.140.
- C. Plans and Materials. At an appeal or call for review hearing, the reviewing body shall consider the application, plans and project-related materials that were the subject of the original decision.
- D. Hearing.
1. At the hearing, the reviewing body shall review the record of the decision and hear testimony of the appellant, and any other interested party. An appeal or call for review shall be de novo.
  2. The failure of the appellant or his or her authorized representative 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 and any relevant evidence may be considered.

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 reviewing body shall make the findings prescribed in Section 17.05.140(D)(1) or state why it cannot make the findings 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 reviewing body shall issue a written decision within a reasonable time. The written decision shall state the specific reasons for the decision and shall be served on the appellant in accordance with Section 1.05.030.

#### **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.

## **Chapter 17.70**

### **ENFORCEMENT**

#### **Sections:**

- 17.70.010 Declaration of Nuisance-Abatement.**
- 17.70.020 Grounds for Revocation of Permit.**
- 17.70.030 Impound of Vessels or Structures.**
- 17.70.040 Abandoned Vessels or Structures.**
- 17.70.050 Other Remedies.**

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

Any building, structure, or vessel 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 may, commence action or proceedings for the abatement and removal and enjoinder thereof in the manner provided by law, and may take such other steps and apply to such courts as may have jurisdiction to grant such relief as will abate and remove such building, structure, or vessel 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.

#### **17.70.020 Grounds for Revocation of Permit.**

##### **A. Grounds for Revocation.**

1. General Grounds for Revocation. Except as provided in subsections (A) (2) and (3), in addition to any specific grounds for revocation of a permit provided for herein, any permit heretofore or hereafter granted for any structure, work, use or activity under and pursuant to this title may be revoked upon any of the following grounds:

- a. The development work, structure, use or activity has become detrimental to commerce, navigation or fishing;
  - b. The development work, structure, use or activity is detrimental to the use, operation or development of Newport Harbor or the Pacific Ocean;
  - c. The development work, structure, use or activity has become a source of pollution of Newport Harbor or the Pacific Ocean;
  - d. The development work, structure, use or activity does not comply with the permit or does not meet the standards adopted for such development work or structure;
  - e. The permittee has failed for a period of sixty (60) days to pay any rent or fee heretofore or hereafter imposed for the occupancy or use of tidelands, filled tidelands or submerged lands;
  - f. The development work or structure has fallen into a state of disrepair;
  - g. The space occupied by such work or structure is over public trust land and such space is to be devoted to a more necessary public use;
  - h. The permittee has breached or failed to comply with the terms or conditions contained in the permit or upon which the permit was granted or provided false or misleading information which was not known at the time in obtaining a permit;
  - i. The development work, structure, use or activity violates the terms of the tidelands trust grants to the City; or
  - j. There has been a violation of any provision of this title, State or Federal law.
2. Grounds for Revocation of a Live-Aboard Permit. In addition to the grounds for revocation set forth in subsection (A)(1), any permit granted pursuant to Chapter 17.40 may be revoked upon a determination that:
  - a. Permittee has violated, or failed to comply with, any of the provisions or requirements of Chapter 17.40 or this title;

- b. Permittee has discharged raw or treated sewage into the bay or otherwise violated the provisions of Section 17.40.100;
  - c. Permittee has failed to pay any fee required to be paid pursuant to the provisions of Chapter 17.40 and/or resolution of the City Council; or
  - d. 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.
- 3. Grounds for Revocation of Mooring Permit. A mooring permit may be revoked upon any of the grounds set forth in subsection (A)(1) 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 by the Harbormaster;
  - b. The mooring permittee or person authorized by the mooring permittee has failed or refused to allow an inspection of the vessel to determine if it is safe, seaworthy and operable, a public nuisance, or in compliance with applicable marine sanitation device requirements including placement of a dye tablet in the marine sanitation device;
  - c. A person has lived aboard a vessel assigned to a mooring without a live-aboard permit, unless otherwise noted in subsection 17.60.040(H); or
  - d. The mooring permittee has sublet their mooring in violation of this title.

**B. Notice and Hearing.**

- 1. General Notice and Hearing Procedures. Except as provided in this title or subsections B(2) and (3), any revocation shall require a public hearing before the Harbor Commission at which the permittee has an opportunity to be heard.
  - a. At least fourteen calendar (14) days' notice of such hearing shall be given in accordance with Section 1.05.030 to the permittee

shown on such permit, setting out the date, time and place of hearing, and specifying the facts which constitute the grounds for revocation.

b. The Harbor Commission shall preside over the hearing. The Harbor Commission may continue a hearing from time to time and request additional information from city staff or the permittee before rendering its decision. The permittee's nonappearance at the hearing shall constitute a failure to exhaust his or her administrative remedies.

c. 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 and any relevant evidence may be admitted.

2. Procedure for Revocation of Live-Aboard Permits. If the Harbormaster determines there are grounds for revocation of a live-aboard permit as provided in subsection 17.70.020(A)(2), he or she shall provide written notice of revocation with service of the notice in accordance with Section 1.05.030, stating the grounds for the action, the effective date of the decision and the right of the permittee to appeal the decision to the Harbor Commission. The permittee shall have fourteen (14) calendar days from the date on which notice is deemed served to request a hearing.

If the permittee does not request a hearing within fourteen (14) calendar days of the date the notice is deemed served, the decision of the Harbormaster, shall be final.

3. Procedure for Revocation of Mooring Permits. If the Harbormaster determines there are grounds for revocation of a mooring permit as provided in subsection 17.70.020(A)(3), he/she shall provide written notice of the revocation with service of the notice in accordance with Section 1.05.030 to the permittee shown on such permit, stating the grounds for the action, the effective date of the decision and the right of the permittee to appeal the decision to the Harbor Commission. The permittee shall have fourteen (14) calendar days from the date on which notice is deemed served to request a hearing.

If the permittee does not request a hearing within fourteen (14) calendar days of the date the notice is deemed served, the decision of the Harbormaster, shall be final.

C. Decision and Notice. Within a reasonable time of the conclusion of any revocation hearing before the Harbor Commission, the Harbor Commission shall render a decision. The City Clerk shall notify the permittee or applicant of the decision of the Harbor Commission and serve the notice in accordance with Section 1.05.030.

D. Effective Date. Except as provided in subsections (B)(2) and (3), the decision to revoke a permit shall become final once the time period for an appeal or call for review has expired.

**17.70.030 Impound of Vessels or Structures.**

The Harbormaster may authorize the impound of a vessel or structure located in or over the waters of Newport Harbor or the Pacific Ocean under any of the following circumstances:

A. Unless otherwise permitted under this title, the vessel or structure is attached to a mooring that is not the vessel or structure identified on the mooring permit.

B. An unpermitted vessel or structure is attached to a public mooring, dock, or slip.

C. A vessel or structure is in violation of the anchorage or berthing requirements of this title.

D. The vessel or structure is left unattended and is moored, docked, beached, or made fast to land in a position that obstructs the normal movement of traffic or in a condition that creates a hazard to other vessels using the waterway, to public safety, or to the property of another.

E. The vessel or structure interferes with, or otherwise poses a danger to, navigation or to the public health, safety, or welfare.

F. The vessel or structure poses a threat to adjacent wetlands, levees, sensitive habitat, any protected wildlife species, or water quality.

G. A vessel or structure is found or operated upon a waterway with a registration expiration date in excess of one (1) year before the date on which it is found or operated on the waterway.

H. The vessel or mooring permittee does not have proper insurance or owes a debt to the City.

I. Federal or state law permits the City or any peace officer, lifeguard, or marine safety officer employed by the City to remove, and, if necessary, store a vessel removed from a public waterway.

The City may charge or bring action in the courts of this state to recover any costs pursuant to impounding a vessel or structure.

**17.70.040 Abandoned Vessels or Structures.**

Any vessel or structure that has been impounded pursuant to Section 17.70.030 that has not been claimed by the owner or, has been claimed by the owner and the owner has not paid the impound fees owed to the City for a period in excess of thirty (30) days shall be deemed abandoned and may be disposed of by the City in any manner prescribed by law.

**17.70.050 Other Remedies.**

Notwithstanding the specific enforcement remedies referenced herein, the City may undertake other enforcement action as provided in the Code, State or Federal law to enforce the provisions of this title.