

Subject: FW: Title 17 Comments
Attachments: Title17redline11719.Peotter Comments.17.60.pdf

From: Scott Peotter <scott@taxfighter.com>
Sent: Saturday, February 08, 2020 1:48 AM
To: Dept - City Council <CityCouncil@newportbeachca.gov>
Subject: Fwd: Title 17 Comments

To: <citycouncil@newportca.gov>
Cc: Paul Blank <pblank@newportbeachca.gov>, <scunningham@newportbeachca.gov>, <ibeer@newportbeachca.gov>, <wkenney@newportbeachca.gov>, <dyahn@newportbeachca.gov>, <mmarston@newportbeachca.gov>, <sscully@newportbeachca.gov>, Aaron Harp <aharp@newportbeachca.gov>

Dear City Council

I know the Harbor Commission has been working on this a long time and that there is more work to do. I apologize for the late input, but I hope that you will consider this in your adoption this time around if possible. I know it may require a new first reading of the ordinance.

I have made some comments on your adoption of Title 17, specifically section 17.60.060 Public Trust Lands, page 103 and 104 of 115 of the current redline version posted on the city website.

In the proposed Ordinance, 17.60.060 Section A "Leases and Permits" adds paragraph 3, the last sentence which reads:
"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, and to interpret waive provisions, and enter into amendments thereof."

This seems to indicate that the city manager can unilaterally issue a Permit or Lease that would supersede the permit, public notice and public hearings required elsewhere in this title. The "Permits" in paragraph A.2. also doesn't specify what kind of permit it refers to.

I would ask that you add some clarifying language specifying the type of permit that this section is referring to and also clarifying that other permits may still be required under either a lease or permit to use Public Trust Land. This will help protect the public hearing process prescribed by this title.

I have attached a copy of current redline pages 103 and 104 with my comments (in green), as well as below:

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. Leases shall not eliminate or supersede the permit requirements found elsewhere in this Title. All leases are subject to having a valid permit for the leased premises.
2. Permits to use the public trust lands, and no other permits required under this Title, 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. These premises and improvements granted use of Public rust Lands under these permits do not alleviate the need for other approvals or permits required under this Title.



[SCOTT PEOTTER](#)
Newport Beach City Councilman Emeritus
949-250-7118
Sign up to receive my bi-weekly newsletter [HERE](#)
14252 Culver Drive, Suite A-305, Irvine, CA 92604

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 the subsection (N) (4) (a) or (b) will constitute grounds for the Harbormaster to revoke the amendment to the mooring permit in accordance with Subsection 17.60.040(K). In the event that the Harbormaster determines that there are grounds to revoke the amendment to the mooring permit issued pursuant to this chapter, the Harbormaster shall proceed in the manner described by Section 17.70.020. Upon revocation, it shall be the duty of the mooring permittee to remove the moored vessel and, upon such revocation, to return the mooring area where vessel was assigned to its original length at the mooring permittee's expense within thirty (30) days of written notification to do so. Rather than reverting back to the City upon such revocation, the mooring permittee may thereafter continue to use the mooring in accordance with all of the terms and conditions of the original offshore mooring permit and subject to all of the terms and provisions of 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.

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

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

1. Leases shall provide lessees with a leasehold interest in the property for a period of at least five (5) years, not to exceed a period of time as limited by the City Charter or applicable State law. LEASES SHALL NOT ELIMINATE/SUPERCEDE THE PERMIT REQUIREMENTS FOUND ELSEWHERE IN THIS TITLE. ALL LEASES SHOULD BE SUBJECT TO HAVING A VALID PERMIT FOR THE LEASED PREMISES.

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. These premises and improvements granted use of Public trust Lands under these permits do not alleviate the need for other approvals or permits required under this Title.

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, and to interpret waive provisions, and enter into amendments thereof.

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

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

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

E. Commercial uses provided under this ~~Title 17~~ 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