

## Biddle, Jennifer

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**From:** joe bergman <jbergman3333@gmail.com>  
**Sent:** Tuesday, August 25, 2020 6:16 PM  
**To:** Title 17 Review  
**Subject:** Re: Meeting for Title 17 Review  
**Attachments:** NB liveboards.docx

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

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Thank for allowing my thoughts to Harbor Commission and Newport Beach City Council.  
J. Bergman , Golden Hills Properties, LLC

Sent from [Mail](#) for Windows 10

## NB liveboards

Living aboard vessels is no different than increasing the number of floors, density and additional parking spaces of apartment buildings.

Adding liveboards is also creating considerable addition of cars, i.e., parking spaces and increased traffic on Highway One.

Would the city of Newport Beach allow more three, four or five story apt buildings to alleviate the need for living space such as wanted by those wanting more slips for living aboard.

The City can't add nor allow more liveboard space stacked on top of existing boat slips. How many two or three story slips can be added to the harbor surrounded by Newport Beach. Where will the parking spaces for added liveboards come from?

Newport Beach doesn't have parking for visitors to the sand and the surf, certainly no additions of boats that will require one more parking space, or more likely three or five more parking spaces.

Living aboard is an addition much like having much larger charter boats to drift around the harbor much like cars drifting along PCH.

Keep adding and adding and adding. Maybe enlarge.

The more boats and people for living aboard will raise the water level to the top of the sea walls as they now exist.

Which is better? More liveboard boats, charter boats or much higher water level.

## Biddle, Jennifer

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**From:** Janet Friedrich <jfriedrich@burnhamusa.com>  
**Sent:** Tuesday, August 25, 2020 12:28 PM  
**To:** Title 17 Review  
**Subject:** Title 17 - Harbor Code Review  
**Attachments:** Letter to City of NB re Title 17 Harbor Code Review.pdf

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

**[EXTERNAL EMAIL]** DO NOT CLICK links or attachments unless you recognize the sender and know the content is safe.

Please see the attached letter from Scott Burnham regarding the Title 17 Harbor Code Review.

## BURNHAM USA

Janet Friedrich, Administrative Manager  
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August 25, 2020

Carol Jacobs  
Assistant City Manager  
City of Newport Beach  
100 Civic Center Drive  
Newport Beach, California 92660

Re: City of Newport Beach – Title 17 – Harbor Code Review

To Whom It May Concern:

We are in receipt of your letter dated August 14, 2020 regarding the outstanding issue of allowing individuals to live-aboard year-round in the Newport Harbor marinas.

We wanted to take this opportunity to voice our strong opposition to this change that's being considered to the Harbor Code.

We believe that this would change the entire culture and character of our Newport Harbor marinas, as well as adding sanitation and cleanliness issues which would bring impact to not only the marinas, but to the public health at large.

Thank you in advance for your consideration in this matter.

Sincerely,

The Waterfront at Lido, L.P.  
By: Burnham USA Equities, Inc.



Scott T. Burnham  
Chairman/CEO

**Biddle, Jennifer**

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**From:** Jim Mosher <jimmosher@yahoo.com>  
**Sent:** Friday, August 28, 2020 4:39 PM  
**To:** Kenney, William, Jr.; Don Yahn  
**Cc:** Title 17 Review  
**Subject:** Title 17 live-aboard discussion follow-up  
**Attachments:** Live Aboards Follow-up - Jim Mosher (2020-08-28).docx

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

**[EXTERNAL EMAIL]** DO NOT CLICK links or attachments unless you recognize the sender and know the content is safe.

Chair Kenney & Commissioner Yahn,

I thank you for the effort on Wednesday to address the live aboard issue, although I have searched diligently through my recent emails and can find only the Zoom confirmation and instructions -- nothing containing the mark-up that was discussed during the workshop.

I have attached some further thoughts on the matter, including some history you may find interesting as to where the existing 7% limit on off-shore mooring live-aboards came from.

One further thought I have is that since the regulation of off-shore live-aboards originated primarily as a response to water quality issues, it might make sense to ask our Water Quality/Coastal Tidelands Committee to comment on the new proposal for commercial marinas -- with any ideas they may have as to the need and appropriate limit from a water quality perspective.

Yours sincerely,

Jim Mosher

# Thoughts on the Live Aboard Regulations in NBMC Title 17

-- Jim Mosher, August 28, 2020

## History of the Existing Provisions

### Original Enactment (and Origin of 7% Limit)

The idea of regulating live aboard activity in Newport Harbor originates with the adoption of the Live Aboard chapter (then numbered 17.23) by [Ordinance No. 89-7](#). This was one of two pieces of legislation recommended by the City's [Harbor Quality Committee](#) (forerunner of both today's Water Quality/Coastal Tidelands Committee and the Harbor Commission) the other being [Ordinance No. 88-18](#), requiring installation of pumpout stations at certain kinds of sailing clubs and commercial docks.

Both ordinances contain extensive "Purpose" sections detailing the reasons for which they were enacted, the last paragraph of which for Ordinance No. 89-7 remains in Title 17 (and may now make less sense out of its original context).

Both were intended to address a growing concern with pollution in the harbor. The specific concerns motivating Ordinance No. 89-7 included:

- Improper disposal of trash and sewage generated by vessels on off-shore moorings
- Increased parking demand generated by persons living aboard same
- Greater noise disturbance likely to be caused by off-shore live aboard vessels compared to comparable vessels berthed in commercial marinas

The solution was to:

- Limit the future number of live-aboards to no more than the existing number (taken as 7% of the moorings)
- Both enforce that limit and tighten regulations on them through a permitting process.

More specific detail as to why 7% was chosen can be found in the Council discussion on the night the ordinance was introduced: see [page 18](#) of the February 13, 1989, minutes (officially, Volume 43, page 47). In short, 7% was chosen because it represented 51 off-shore moorings, which was thought to be a reasonable upper-limit estimate of the number of live aboards then existing. The number was thought to be closer to 30, but if more than 51 applied for permits they would have to vacate and go on a waiting list.

### Uncertainties about Original Intent

Consistent its title, Ordinance No. 89-7 defined the regulated act of being a "live-aboard" as applying exclusively to persons living aboard vessels on off-shore moorings with a carve-out for those on guest moorings (who were apparently not regulated). It further restricts the definition to those who regard the vessel as their domicile as defined in what was then California Elections Code Section 200.<sup>1</sup> Essentially, for those otherwise qualified to vote in California, to be

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<sup>1</sup> The text of what was then Elections Code Sec. 200 and disagreements over what "domicile" was intended to mean in it can be found in the California Supreme Court case of *Walters v. Weed*, [45 Cal.3d 1](#) (1988). The US Supreme Court justices disagreed the next year over the meaning of "domicile" in a piece of federal legislation: *Mississippi Band of Choctaw Indians v. Holyfield*, [490 US 30](#) (1989).

considered a “live-aboard” in Newport Harbor your off-shore moored vessel would have to be the address you would register to vote at (that is, the one you consider your “home”).

It seems clear from Ordinance No. 89-7’s statement of findings that **persons living onboard vessels berthed at docks were not intended to be regarded as “live-aboards”** and hence did not require permits and were not regulated. The assumption seems to be they had access to and used on-shore restrooms and trash facilities.

Curiously, though, in a slight bit of logical inconsistency Section 17. 23. 020 explicitly prohibited live-aboard activity on vessels on *onshore* moorings – even though “live-aboard” activity is not possible there according the definition in Section 17.23.010 even if one considered it one’s domicile (because it is not an off-shore mooring).

However that may be, what is not clear is whether people living for extended periods on off-shore moored vessels they did not consider the vessel their domicile needed permits to do so.

### Subsequent Changes to the Regulations

The live aboard chapter (then number Chapter 17.23) appears to remained unchanged at least though the comprehensive update of [Ordinance No. 2002-18](#) (which changed only the appeal paragraph, Section 17.23.085, at the very end of the chapter).

More consequential changes were made in the comprehensive Title 17 clean-up culminating in [Ordinance No. 2008-2](#). In addition to renumbering Chapter 17.23 to 17.40, those changes included deleting all of the original "Purpose" section except the last paragraph and adding as a "clarification" a 8-month minimum commitment as principal residence to be eligible for a live aboard permit: see the staff report for Council [Item 19](#) from January 8, 2008, for an explanation of the overall update.

This clean-up also seems to have deleted the Election Code reference and added to the definitions section of Title 17 the statement that anyone staying more than 72 hours in a 30 day period was a live aboard, but retaining the term “domicile” -- creating not only a logical contradiction<sup>2</sup> but the contradiction the Commission continues to struggle with today. Assuming this was intentional, **the intent seems to have been to prohibit living onboard for more than 72 hours in 30 days but less than 8 months** (while likely forgetting to address the former exemption for guest moorings).

**Ordinance No. 2008-2 also added**, in Section 17.40.020, **the prohibition on living aboard vessels berthed “at piers that are bayward of residentially zoned areas.”** This was presumably prompted by noise concerns rather than sanitary ones.

[Ordinance No. 2010-26](#) added the since abandoned concept of long- and short-term mooring permits, with live-aboards permitted on the short-term ones issued by Harbor Resources Manager (possibly without a separate live-aboard permit for which they would not qualify due to the shortness of stay?).

[Ordinance No. 2018-17](#) replaced references to the “Harbor Resources Manager” with “Harbormaster.”

### Most Recent Changes

The most recent changes were made by [Ordinance No. 2020-5](#), with the redline changes visible starting at [page 184](#) of the Council staff report for Item 7 from February 11, 2020.

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<sup>2</sup> One would rarely regard a place one stays at for only a few nights a month as one’s “[domicile](#)”.

It added to the “*as a domicile*” in the definition of “live-aboard” the phrase “*or for human habitation while at its dock, berth, or mooring*” (which I think makes “domicile” superfluous).

It also retained what I believe are obsolete references to long- and short-term mooring permits in [Sections 17.40.020.B & C](#).

## Remaining Problems

Under the present Title 17, a person living on a vessel anywhere in the harbor is defined as a live-aboard, but permits are required (and allowed) only for those with off-shore moorings. In addition, living onboard is prohibited on piers adjacent to residential areas.

The proposal is to require live-aboard permits for vessels in commercial marinas (presumably at slips not adjacent to residential property).

Some of the problems I see remaining are:

- The confusing reference to “domicile” in the definitions section should be removed.
- The question of whether the 8-month/243 day rule applies to the vessel (which may not be in Newport Harbor the whole time) or to the mooring needs to be resolved.
- The obsolete references to long- and short-term mooring permits in [Section 17.40.020](#) should be removed.
- Rules for live-aboards on guest moorings need to be added (including whether times longer than 72 hours but less than 243 days are allowed).
- If a rule such as the 15% limit for commercial marinas is considered, it needs to be made clear whether the 15% is (1) a limit for each marina separately or (2) whether the number of live-aboards at all commercial berths not adjacent to residential must be less than 15% of the total number of such berths in the harbor.<sup>3</sup>

## Houseboats

Finally, as a historical note, the present prohibition on houseboats (permanently connected to landside facilities) began as a plan to permit houseboat marinas in the harbor: see (the unfortunately missing) [Ordinance No. 1029](#) from 1963.

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<sup>3</sup> Jim Parker seemed to assume the 15% limit would apply to each commercial marina individually, including his. If it is a cumulative limit for all marinas, then his could have many more (up to 100%) if the other marinas didn't allow the practice.