

September 9, 2020, Harbor Commission Agenda Comments

The following comments on items on the Newport Beach Harbor Commission [agenda](#) are submitted by:
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Item SS1. Review and Consideration of Harbor Commission Goals and Objectives for 2021

Execution of the Harbor Commission's goals and objectives appears predicated on the existence of a number of formally-appointed committees that will, as they have in past years, meet privately to formulate recommendations. While this is allowed by California's open meetings law applicable to local agencies (the [Brown Act](#)), it is important to ensure not only that each committee consist of less than a majority of the Commission, but that (1) their activity is limited to formulating a recommendation to the full Commission (as opposed to privately guiding staff) and (2) that their assigned activity is clearly enough defined to make it obvious when their job is done and they cease to exist (as opposed to functioning as a "standing" committee formulating recommendations pertinent to a particular subject matter on an ongoing basis). If not, their meetings need to be noticed and open to the public.

In the slides posted in advance of the meeting, possible problems exist with 2.2, 3.1, 3.3, 4.3, and possibly 4.4, which, as presented, appear to exist to interact with staff or outside agencies/stakeholders rather than to themselves make a recommendation to the Commission.

Item 10.1. Minutes of August 12, 2020 Harbor Commission Regular Meeting

I have not had time to read all of these, but on page 2 (page 17 of the agenda packet), in the first paragraph of narrative, the first reference to "Standard Drawing No. 616 for the West Newport area" was probably intended to read "Standard Drawing No. 606" (see page 35 of the present agenda packet). Drawing No. 616, as the next sentence indicates, is "Datums."

Item 11.1. Waterfront Project Guidelines and Standards - Harbor Design Criteria, Commercial and Residential: Review and Approval

As the draft minutes indicate, at the August 12 meeting I commented on the revised Standard Drawing No. 616 (on pages 42 and 116 of the current agenda packet), which I apparently mistakenly referred to as representing a "tide gauge" (of perhaps more accurately "[tide staff](#)").

What I believe it does try to represent is empirical water levels compared to the geometrically fixed system of heights called NAVD88 against which such things as sea level rise are measured.

As such, as I tried to point out, I believe it creates an impression of unwarranted precision. Not only because the averages change with time due to sea level rise, but because the tide gauge in Newport Harbor reported to NOAA only from [1955 to 1993](#), which means it was operational for less than the full 18.3 year tidal "epoch," 1983-2001, over which the empirical measurements

are currently averaged. I believe that to compute the “[datums](#)” shown in Drawing No. 616, NOAA has assumed the same offsets from the heights observed by the more carefully and continuously maintained [Station 9410660](#) in LA Harbor.

In addition, Drawing No. 616 contains at least one typo: the highest tide observed during the operation of the historic Newport Harbor tide gauge (7.67’ MLLW) was observed on 1/28/1983, not 1/28/1993 as indicated on the drawing.

But it should be understood the indicated high and low water levels are only those actually observed during the operation of the gauge. The LA Harbor station [reported](#) a slightly higher tide on 01/10/2005 and a substantially lower one than that reported for Newport on 12/17/1933. Even though Newport Harbor had no tide gauge reporting on those dates, it would seem safe to assume the waters here showed similar extremes (for comparison, see also the datums for the similarly long-operating [Station 9410170](#) in San Diego Bay, which experienced its highest tide on 11/25/2015 and lowest on 12/17/1937 – both dates for which NOAA has no data from Newport).

On this subject of extreme high and low water (which I believe purposely does not include the peaks produced by short-period wave action), I might also note I am not sure I understand the intended significance of the proposed revisions to Standard Drawing No. 609 (on page 38). This drawing of a residential pier platform shows lines on the right representing Highest and Lowest observed tides. Formerly they said “NTS” (I believe for “Not to Scale”). Now they will say “HOT” (Highest Observed Tide) and “LOT” (Lowest Observed Tide). But the drawing does not explain how they affect the design. Must the bottom (or top?) of the platform be at least some distance above the HOT? If so, how far? And how does the position of the LOT affect the design, if at all?

Item 11.2. Proposed Amendments to Title 17 - 17.01 - Definition of Terms; 17.40 - Commercial Live Aboards; 17.20.020 Vessel Operations; and 17.25.020 - Anchorage, Berthing and Mooring Regulations

As the two members of the ad hoc committee know, I submitted some suggested alternative modifications to the code, too late to make the agenda packet.

While I am generally supportive of the committee’s recommendations, I have continuing trouble with the proposed definition of “Live-Aboard” (agenda packet page 120), which I think conflates regulation with definition. I think the definition should concentrate on articulating what the code means by “living aboard” and the limits on how long one can live aboard in various situations should be left to the regulations.

I could be wrong, but I have the impression that the concept of “living aboard” has primarily to do with “overnighting” on a vessel. The proposed definition makes no reference to that, and instead cites using “a vessel as a domicile for human habitation” – words that make little sense to me, especially since a “domicile” is generally understood to mean one’s permanent home, and it’s hard to see how staying on a vessel for 72 hours or even eight months, and even if one spends nights on it, makes it one’s domicile if one feels the true and permanent home they will

eventually return to is elsewhere. The Commission should also know that a mooring is a kind of “berth” according to the definitions in Title 17.

I also think the whole Harbor Commission seeing only snippets of code and not the whole chapter as proposed is a bit dangerous.

For example, it may not be obvious if a live-aboard permit goes with a person or a vessel and if the former, if each person needs a separate permit (the third sentence of the proposed Section 17.40.030 was probably intended to read “*No permit shall be issued to any live-aboard for a vessel which is not intended to serve as the principal residence of the live-aboard*”).

Also, as I have repeatedly tried to point out, the existing [Section 17.40.020](#), as revised this year, makes reference to non-existent provisions about short-term and “long-term mooring sub-permits as noted in Section 17.60.040(G).” Such permits no longer exist, so the meaning of the terms is undefined. And I remain unclear on the Harbormaster’s authority to allow live-aboard activity for more than 72 hours on guest moorings.

Finally, although not mentioned in the staff report, one of the committee’s recommendations seems to be to place no limit on the allowed number of live-aboards in commercial marinas.

As to the new regulations on the anchorages in the harbor proposed for Chapters 17.20 and 17.25 (pages 122 and 123), the Commission may wish to know these are being copied from restrictions the Council adopted in 2009 to address a problem with people anchoring vessels *in the open ocean* off Big Corona State Beach (see [Item 4](#) from the Council’s January 13, 2009, meeting, which details the problems being addressed with open ocean anchoring).

There was evidently no intention at that time to apply those rules to the very different conditions at anchorages *within the harbor*. So the Commission may wish to exercise some caution in applying exactly the same rules there.