



CITY OF NEWPORT BEACH HARBOR COMMISSION AGENDA

City Council Chambers - 100 Civic Center Drive

Wednesday, November 13, 2019 - 6:30 PM

Harbor Commission Members:

Paul Blank, Chair
Scott Cunningham, Vice Chair
Ira Beer, Secretary
William Kenney, Jr., Commissioner
Marie Marston, Commissioner
Steve Scully, Commissioner
Don Yahn, Commissioner

Staff Members:

Carol Jacobs, Assistant City Manager
Kurt Borsting, Harbormaster
Jennifer Biddle, Administrative Support Specialist

The Harbor Commission meeting is subject to the Ralph M. Brown Act. Among other things, the Brown Act requires that the Harbor Commission agenda be posted at least seventy-two (72) hours in advance of each regular meeting and that the public be allowed to comment on agenda items before the Commission and items not on the agenda but are within the subject matter jurisdiction of the Harbor Commission. The Chair may limit public comments to a reasonable amount of time, generally three (3) minutes per person.

The City of Newport Beach's goal is to comply with the Americans with Disabilities Act (ADA) in all respects. If, as an attendee or a participant at this meeting, you will need special assistance beyond what is normally provided, we will attempt to accommodate you in every reasonable manner. Please contact Carol Jacobs, Assistant City Manager, at least forty-eight (48) hours prior to the meeting to inform us of your particular needs and to determine if accommodation is feasible at (949) 644-3001 or cjacobs@newportbeachca.gov.

NOTICE REGARDING PRESENTATIONS REQUIRING USE OF CITY EQUIPMENT

Any presentation requiring the use of the City of Newport Beach's equipment must be submitted to the Harbor Department 24 hours prior to the scheduled meeting.

1) CALL MEETING TO ORDER

[Additional Material Presented at Meeting - Humor Slide 11-13-2019](#)

2) ROLL CALL

3) PLEDGE OF ALLEGIANCE

4) PUBLIC COMMENTS

Public comments are invited on agenda and non-agenda items generally considered to be within the subject matter jurisdiction of the Harbor Commission. Speakers must limit comments to three (3) minutes. Before speaking, we invite, but do not require, you to state your name for the record. The Harbor Commission has the discretion to extend or shorten the speakers' time limit on agenda or non-agenda items, provided the time limit adjustment is applied equally to all speakers. As a courtesy, please turn cell phones off or set them in the silent mode.

5) APPROVAL OF MINUTES

1. Draft Minutes of October 9, 2019, Harbor Commission Regular Meeting

[10-09-2019 Harbor Commission draft minutes](#)

6) **CURRENT BUSINESS**

1. **Referral of Marine Activities Permit Application to Harbor Commission**

SoCal Cycleboats Inc., a commercial operation interested in providing a human powered multi-passenger cycleboat experience on the waters of Newport Harbor, has submitted a Marine Activities Permit Application for consideration. Since no similar business currently operates in the Harbor, there is no basis of comparison for staff to evaluate if this operation will adversely affect the health, safety or welfare of those who use, enjoy, or own property near Newport Harbor. As such, the Harbormaster is referring the application to the Harbor Commission for their recommendation, as to whether or not a Marine Activities Permit should be issued for this type of operation (such referrals for Harbor Commission consideration are provided for in NBMC Section 17.10.050).

Recommendation:

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

2) Provide staff direction regarding the request for issuance of a Marine Activities Permit for the SoCal Cycleboats Inc. proposal, subject to any additional approvals from other City Departments or outside agencies with authority over the proposed business.

[Staff Report](#)

[Attachment A - Marine Activities Permit Application](#)

[Attachment B - Cascade Cycleboats - US Coast Guard Info Sheet](#)

[Attachment C - Powerpoint - Newport Beach Project Description and Justification](#)

[Additional Material Received Correspondence - Ford 11-13-2019](#)

[Additional Material Presented at Meeting Applicant](#)

[Presentation 11-13-2019.docx](#)

[Additional Material Presented at Meeting Correspondence to Marine Activities](#)

[Permit 11-13-2019.docx](#)

2. **Lower Bay Dredging Update**

Public Works Manager Chris Miller will update the Harbor Commission on the latest planning efforts on the future Lower Bay dredging project.

Recommendation:

1) Determine that the project is exempt from the California Environmental Quality Act ("CEQA") pursuant to Sections 15060(c)(2) and 15060(c)(3) of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, because it will not result in a physical change to the environment, directly or indirectly.

2) Receive and file.

[Staff Report](#)

[Additional Material Presented at Meeting Dredging Staff
Presentation 11-13-2019](#)

3. Proposed Changes to Title 17 - Harbor Code

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

Recommendation:

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

2) Approve the recommended changes to Title 17 and forward to the City Council for their consideration.

[Staff Report](#)

[Attachment A – Recommended changes to Title 17 \(clean\)](#)

[Attachment B – Recommended changes to Title 17 \(redline\)](#)

[Attachment C – Public Comments](#)

[Additional Material Received Correspondence - Gribble 11-13-2019](#)

[Additional Material Received Correspondence - Delaney 11-13-2019](#)

[Additional Material Presented at Meeting Correspondence Received Title
17 11-13-2019](#)

4. Proposed City Council Policy - Offshore Mooring Extensions

At the Harbor Commission meeting of June 12, 2019, the Harbor Commission reviewed proposed amendments regarding offshore mooring extensions in conjunction with their 2018 Goals and Objectives to “Establish policies for modifications to mooring sizes”. The Commission reviewed and approved a Harbor Department Policy based on this recommendation. After further review, it is recommended that the Harbor Commission recommend a new City Council Policy establishing how and when moorings may be extended.

Recommendation:

1) Determine this action is exempt from the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(2) and 15060(c)(3) of the CEQA Guidelines because this action will not result in a physical change to the environment, directly or indirectly;

2) Approve the proposed City Council Policy on mooring extensions and request staff to present to City Council for consideration.

[Staff Report](#)

[Attachment A – Proposed City Council Policy – Mooring Extensions \(including](#)

[Attachment A to the policy\)](#)

[Attachment B - Aerial Photos of Mooring fields](#)

5. Create a Subcommittee to work with the Parks, Beaches and Recreation Commission to Explore a Community Pool at Lower Castaways Park

At the City Council meeting of November 5, 2019, the City Council directed the Parks, Beaches and Recreation Commission and the Harbor Commission to work together to explore the possibility of a community pool at Lower Castaways Park.

Recommendation:

1) Determine this action is exempt from the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(2) and 15060(c)(3) of the CEQA Guidelines because this action will not result in a physical change to the environment, directly or indirectly;

2) Appoint three members of the Harbor Commission to a subcommittee to work with the Parks, Beaches and Recreation Commission on a community pool at Lower Castaways Park.

[Staff Report](#)

[Attachment A – Staff Report from Recreation and Senior Services](#)

[Attachment B – Site Map](#)

6. Harbor Commission 2020 Objectives and Subcommittee Reports for Progress of Current Objectives

The Harbor Commission has completed a number of Objectives since the last full update of the Objectives in 2018. At the October 9, 2019 meeting, the Harbor Commission created a subcommittee to review the current updated Objectives. They were tasked with adding to, deleting and modifying the current Objectives for the City Council's Consideration in January 2020. The subcommittee for Objective Review will report their recommendations for consideration of the full Harbor Commission. Each subcommittee will also report their progress from the last month.

Recommendation:

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

2) Review and approve updates to the Harbor Commission Objectives for 2020, and recommend that they be forwarded to the City Council for consideration.

3) Receive and file current subcommittee reports.

[Staff Report](#)

[Attachment A - Harbor Commission Objectives 2019](#)

7. Harbormaster Update - October 2019

The Harbormaster is responsible for the on-water management of the City's moorings, the Marina Park Marina and Code Enforcement on the water. This report will update the Commission on the Harbor Department's activities for October 2019.

Recommendation:

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

2) Receive and file.

[Staff Report](#)

[Attachment A – Harbor Department Statistics, Fiscal Year through October 2019](#)

- 7) **COMMISSIONER ANNOUNCEMENTS (NON-DISCUSSION ITEMS)**
- 8) **QUESTIONS AND ANSWERS WITH STAFF ON HARBOR RELATED ISSUES**
- 9) **MATTERS WHICH COMMISSIONERS WOULD LIKE PLACED ON A FUTURE AGENDA FOR DISCUSSION, ACTION OR REPORT (NON-DISCUSSION ITEM)**
- 10) **DATE AND TIME FOR NEXT MEETING: Wednesday, December 11, 2019**
- 11) **ADJOURNMENT**



**Welcome to the Harbor Commission Meeting
November 13, 2019**

NEWPORT BEACH HARBOR COMMISSION REGULAR MEETING MINUTES
Council Chambers – 100 Civic Center Drive, Newport Beach CA
Wednesday, October 9, 2019
6:30 PM

1) CALL MEETING TO ORDER

The meeting was called to order at 6:30 p.m.

2) ROLL CALL

Commissioners: Paul Blank, Chair
Scott Cunningham, Vice Chair (absent)
Ira Beer, Commissioner
William Kenney, Jr., Commissioner
Marie Marston, Commissioner
Steve Scully, Commissioner
Don Yahn, Commissioner

Staff Members: Carol Jacobs, Assistant City Manager
Kurt Borsting, Harbormaster
Jennifer Biddle, Administrative Support Specialist
Mayor Diane Dixon

3) PLEDGE OF ALLEGIANCE – Commissioner Marston

Mayor Dixon presented a Proclamation to U.S. Coast Guard Auxiliary Flotilla 61.

Commissioner Kenney appreciated Flotilla 61's presence and inspection of vessels during opening day at Balboa Yacht Club.

4) PUBLIC COMMENTS

None

5) APPROVAL OF MINUTES

1. Minutes of August 14, 2019, Regular Meeting

Commissioner Scully noted Recommendation 2 for Item 2 on page 7 should state "add Commissioner Yahn to Objective 4.1." In addition, Chair Blank moved the action.

Chair Blank clarified that the recommendation is wrong, but the Minutes reflect the correct action. He inquired as to the accuracy of the subcommittee meeting 24 times as stated in Assistant City Manager Jacobs' presentation for Item 7.1 on page 4.

Assistant City Manager Carol Jacobs stated she counted a total of 24 meetings.

Commissioner Yahn moved to approve the Minutes of the August 14, 2019 meeting with the correction to the motion. Commissioner Beer seconded the motion. The motion carried by the following roll call vote:

Ayes: Chair Blank, Commissioner Beer, Commissioner Kenney, Commissioner Marston,
Commissioner Scully, Commissioner Yahn

Nays: None

Abstaining: Vice Chair Cunningham

Absent: None

6) **CURRENT BUSINESS**

1. **Council Policy H-1 – Harbor Commission Review and Recommendation**

At the June 25, 2019 meeting, the City Council revised Council Policy H-1 to clarify the Policy's intent and process in order to assist staff and the Harbor Commission when considering future applications. The City Council also directed the Harbor Commission to review the recent changes and to make recommendations to the City Council regarding any proposed revisions thereto. At the July meeting, the Harbor Commission directed the subcommittee to review the Policy and return to the Commission by October with recommended changes, if any. The Harbor Commission will review the proposed changes, and if approved, recommend they be forwarded to the City Council for consideration.

Recommendation:

- 1) Find the Project exempt from the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment) and Section 15060(c)(3) (the activity is not a project as defined in Section 15378) of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3 because it has no potential for resulting in physical change to the environment, directly or indirectly; and
- 2) Review and approve updates to Council Policy H-1 and recommend that it be forwarded to the City Council for final approval.

Assistant City Manager Jacobs reported the City Council revised Council Policy H-1 in June 2019 and referred the Policy to the Harbor Commission for review.

Chair Blank advised that the subcommittee reviewed the purpose of Policy H-1, its relationship to Title 17, recent revisions of Council Policies, specifically Policy H-1, and unique and unusual conditions in Newport Harbor related to the application of pierhead lines. In addition, the subcommittee considered the difficulty current and succeeding Council Members, Commissioners, and staff may have in interpreting and applying consistently the language of Policy H-1. Policy H-1 is applicable to several unique and unusual conditions in Newport Harbor. The Code prohibits construction of a pier bayward of the pierhead line, but land lies within the pierhead line at many locations in the Harbor. The subcommittee's recommendations include adding the word "bayward" to references to extensions "beyond the pierhead line;" adding the phrase "all of the following conditions are met" before the enumerated five conditions; improving the formatting and layout of the enumerated conditions; adding the word "navigation" to Condition 5(d) as an item that shall not be negatively impacted; and adding a paragraph for clarity of situations where a pierhead line is irrelevant.

In response to Commissioner Yahn's inquiries, Chair Blank explained that Policy H-1 currently does not give staff the authority to approve over the counter a request for like-for-like reconstruction of a structure or system that does not comply with Title 17. The Council added the five conditions to Policy H-1 in June.

In reply to Commissioner Cunningham's queries, Chair Blank indicated an application where there is no record of a previous approval of the float would be presented to the Harbor Commission. The Harbor Commission could approve the application if it could make the findings for all five conditions. Commissioner Kenney clarified that an applicant could appeal the Harbor Commission's decision to the City Council.

In answer to Commissioner Marston's question, Chair Blank stated the phrase "limited exceptions exist as described in this Policy" refers to the second-to-last paragraph of the Policy. Commissioner Marston suggested including the word "exceptions" in the second-to-last paragraph to link it to the first two paragraphs. Commissioner Beer suggested revising the first paragraph to state "limited exceptions that existed prior to the adoption of this Policy and as further described herein."

Agreed wording for the first paragraph of Policy H-1: Consistent with Title 17's purposes described in the Newport Beach Municipal Code Section 17.05.020, the City Council's general policy is not to approve piers and floats beyond the pierhead line. Limited exceptions existed prior to the adoption of this Policy as described herein; however, the Harbor Commission is directed to use this general policy and the underlying

purposes of Title 17 as a default rule that can only be excepted by making specific findings concerning such exceptions.

In response to Commissioner Beer's hypothetical scenario of several adjacent or nearby floats exceeding the pierhead line and one property owner wanting to extend his float beyond the pierhead line similar to the others, Chair Blank advised that the Council would have to approve such a project. The motion could state that the Harbor Commission finds the project complies with conditions 1, 2, 4, and 5 but not 3; therefore, the Harbor Commission denies the application. However, the Harbor Commission recommends the applicant appeal the decision to the City Council, who can provide an exception to the policy. Commissioner Kenney disagreed in that the Harbor Commission can only approve, conditionally approve, or deny a project. The Harbor Commission cannot advise an applicant to appeal. Assistant City Manager Jacobs concurred.

Jim Mosher suggested the first sentence state in effect that this is the general policy but exceptions can be granted if the procedure herein is followed and the Harbor Commission or Council can make the findings. He inquired about the significance of changing "legally permitted" to "previously permitted." The Policy, as referred to the Harbor Commission, clearly intends that a project without documentation of prior approval and proposing to extend a pier beyond the pierhead line should be redesigned to fit within the pierhead line. The intent of like-for-like replacement is not clear. Like-for-like replacement should be acceptable throughout the Harbor, not solely in areas without pierhead lines. For applications in areas without pierhead lines, it is important for the Harbor Commission to make the finding for Condition 5 whether the project proposes like-for-like replacement or otherwise.

Chair Blank related that the change from "legally permitted" to "previously permitted" has to do with people challenging the authority of the body making the decision or granting the permit.

In reply to Len Bose's question, Blank indicated the definition of float is in Title 17.

Commissioner Yahn moved to approve the proposed revisions to Policy H-1, including revisions made during discussion of the Policy, and recommend staff forward them to the City Council for final approval. Vice Chair Cunningham seconded the motion. The motion carried by the following roll call vote:

Ayes: Chair Blank, Vice Chair Cunningham, Commissioner Beer, Commissioner Kenney, Commissioner Marston, Commissioner Scully, Commissioner Yahn

Nays: None

Abstaining: None

Absent: None

Assistant City Manager Jacobs advised that the revisions are scheduled for Council review on November 5.

2. Harbor Commission 2018 Objectives – Updated and Revised as of July 2019

The Harbor Commission has completed a number of Objectives since the last full update of the Objectives in 2018. It is recommended that the Harbor Commission create a subcommittee to review the current updated Objectives and return to the November meeting to add, delete, or modify the Objectives for City Council consideration in January 2020. The subcommittees will report on their progress from the last month.

Recommendation:

- 1) Find the Project exempt from the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment) and Section 15060(c)(3) (the activity is not a project as defined in Section 15378) of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3 because it has no potential for resulting in physical change to the environment, directly or indirectly; and
- 2) Appoint subcommittee to review Objectives and return to the Harbor Commission in November with recommendations to add, delete, or modify the Harbor Commission's Objectives.

Assistant City Manager Jacobs reported the Harbor Commission last updated its Objectives in 2018. The Chair recommended the Harbor Commission review the Objectives and revise them as needed. Staff recommends the Harbor Commission form a subcommittee to review the Objectives, revise them as needed, and propose additional Objectives.

Commissioner Kenney suggested the Harbor Commission review the status of Objectives prior to forming a subcommittee. Chair Blank preferred the subcommittee contact subcommittee chairs for status of the Objectives. Assistant City Manager Jacobs urged caution in Commissioners contacting other Commissioners so as not to violate the Brown Act.

Functional Area 1: Vice Chair Cunningham related that Objective 1.1 could be divided into two Objectives, one for deep-water dredging of 1.2 million cubic yards and one for deep-water dredging beyond the next five years. Objectives 1.2 and 1.3 could remain as-is.

Functional Area 2: Commissioner Beer wanted to review derelict vessels brought into the Harbor from other authorities and jurisdiction under Objective 2.1 and a new float system that could consolidate spaces in the mooring fields. A meeting with the Coast Guard is tentatively scheduled for the end of the month to review the Coast Guard's conditions for approving the West Anchorage.

Functional Area 3: Commissioner Kenney related that Objective 3.1 will extend well into 2020. The subcommittee may have recommendations for revising Title 17 for the Harbor Commission in November.

Functional Area 4: Commissioner Scully believed Objective 4.1 will extend into 2020 and beyond. Subcommittee members are familiarizing themselves with the issues and work accomplished thus far.

Functional Area 5: Chair Blank advised that the subcommittee has discussed conducting additional outreach sessions and the timing of the sessions.

In answer to Commissioner Kenney's query, Assistant City Manager Jacobs suggested Commissioners propose new Objectives by emails addressed to her. She could draft a staff report regarding the proposals and agendize a Harbor Commission discussion of them. Alternatively, Commissioners could submit their proposals via email to her. Assistant City Manager Jacobs could compile a list of proposed Objectives and submit the list to the subcommittee. The subcommittee could then decide how to handle the list.

Commissioners agreed to Assistant City Manager Jacobs' alternative method of proposing new Objectives.

Vice Chair Cunningham, Commissioner Yahn, and Commissioner Scully volunteered to serve on the subcommittee.

Commissioner Kenney moved to convene a subcommittee composed of Vice Chair Cunningham and Commissioners Yahn and Scully to review existing and any proposed new Objectives. Vice Chair Cunningham seconded the motion.

Jim Mosher felt a Harbor Commission discussion of proposed Objectives would be more appropriate and compliant with the Brown Act. The City's Finance Committee will meet tomorrow to discuss an audit of the charter fleet's compliance with the requirement to pay fees per passenger for services.

Chair Blank suggested any Objectives the subcommittee does not recommend for adoption be placed on a list of Objectives for consideration at a future time. Commissioners should submit their proposals to Assistant City Manager Jacobs on or before October 16.

The motion carried by the following roll call vote:

Ayes: Chair Blank, Vice Chair Cunningham, Commissioner Beer, Commissioner Kenney, Commissioner Marston, Commissioner Scully, Commissioner Yahn

Nays: None

Abstaining: None

Absent: None

3. Harbormaster Update – August & September 2019

The Harbormaster is responsible for on-water management of the City's moorings, the Marina Park Guest Marina and Harbor on-water code enforcement activities. This report will update the Commission on the Harbor Department's activities for July 2019.

Recommendation:

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

Harbormaster Kurt Borsting reported nine abandoned vessels were sold at auction in mid-August, and the auction generated \$1,850 in revenue. Another auction is scheduled for the end of October. The Orange County Sheriff's Department has held its auction concurrent with the Harbor Department's auction so that the two can share resources and benefit from a larger number of potential bidders. He attended the California Association of Harbor Masters and Port Captains annual conference. Harbor Department staff attended a planning meeting for the Christmas Boat Parade scheduled for December 18-22, 2019. During the Boat Parade, the Harbor Department's primary responsibility will be supporting activities at Marina Park. One of the Harbor Department's vessels will serve as a marshal vessel. A "Day in the Life of the Newport Beach Harbor Department" aired in August on Spectrum News One. The segment featured staff serving the community. On September 26, he presented information about the Harbor and the Harbor Department to Newport Beach and Company's Board of Directors. The Harbor Department has purchased ad space in *The Log* newspaper. The lifestyle ad promotes short-term rentals at Marina Park, available moorings, and the public anchorage area. The ad will be updated to promote the availability of online reservations and will run through April 2020. The Harbor Department's new 21-foot patrol vessels are being fabricated and should be delivered by late November. The vessels will display identifying numbers, the radio frequency being monitored, and a telephone number for assistance. Staff has begun outreach to commercial liquid waste haulers. Code Enforcement Supervisor Matt Cosylian conducted an inspection of one hauler on September 9. Staff will coordinate inspections with the Orange County Environmental Health Division. Staff has confirmed that Marina Park received 147 reservations and hosted 399 stays in August 2018 and August 2019. The decrease in use of Marina Park sand lines was caused by the removal of moorings from a navigational area. Staff attributes the decrease in mooring sub-permittees to the increase in rates. Revenue increased by 33 percent in August 2019 and 39 percent in September compared to the same months in 2018. Year over year, revenue has increased 23 percent. While the total number of mooring users has decreased significantly, the corresponding revenue decrease is small.

Commissioner Yahn remarked that the decrease in mooring users was an unfortunate consequence of the rate increase.

In reply to Commissioners' questions, Harbormaster Borsting related that the new vessels will have radar systems, but he would have to investigate whether they will have AIS. Code Enforcement Supervisor Cosylian will provide information regarding the enforcement of discharge/pollution statistics. On September 30, the Orange County Sheriff's Department notified staff of a sunken vessel in the J field. A 30-foot pleasure craft had sunk and was not discharging pollutants. The vessel was raised the same day and removed from the Harbor the following day. After the required ten-day period for the owner to collect the vessel, the Harbor Department may destroy the vessel and pursue the owner for costs. There was no evidence the boat sank due to foul play or a collision with another vessel. Assistant City Manager Jacobs indicated the next court hearing for the *Wild Wave* is scheduled for October 18. The judge will not make a decision at that hearing.

7) COMMISSIONER ANNOUNCEMENTS (NON-DISCUSSION ITEM)

Commissioner Kenney reported the Water Quality Control Board has scheduled a meeting regarding copper TMDLs.

Chair Blank advised that the Harbor Department sent mooring permittees a notice regarding anticipated wind events. The Water Quality Committee is making progress on adopting a polystyrene ordinance and has proposed a presentation for the Harbor Commission.

8) QUESTIONS AND ANSWERS WITH STAFF ON HARBOR-RELATED ISSUES

In answer to Commissioner Kenney's queries, Harbormaster Borsting indicated a meeting with the Coast Guard regarding the West Anchorage is scheduled for October 21. The Coast Guard denied the City's original application for the West Anchorage. After meeting with the Coast Guard, the City submitted a revised application. In September, the Coast Guard relayed additional requirements for a navigational and safety risk assessment and a five-step assessment tool. Assistant City Manager Jacobs advised that the timeline for a decision in the *Wild Wave* case is unknown. At this time, staff prefers not to provide an update regarding the vessel *Dire Straits*.

9) MATTERS WHICH COMMISSIONERS WOULD LIKE PLACED ON A FUTURE AGENDA FOR DISCUSSION, ACTION, OR REPORT (NON-DISCUSSION ITEM)

Commissioner Kenney requested items for the status of the *Wild Wave* litigation and subcommittee recommendations for Title 17 revisions.

Assistant City Manager Jacobs announced a community meeting for proposed revisions to Section 17.10, Marine Activity Permit, will be held October 21.

10) DATE AND TIME FOR NEXT MEETING: Wednesday, November 13, 2019

11) ADJOURNMENT

There being no further business to come before the Harbor Commission, the meeting was adjourned at 8:04 p.m.



CITY OF NEWPORT BEACH

Harbor Commission Staff Report

November 13, 2019
Agenda Item No. 6.1

TO: HARBOR COMMISSION

FROM: Kurt Borsting, Harbormaster
kborsting@newportbeachca.gov

TITLE: Referral of Marine Activities Permit Application to Harbor Commission

ABSTRACT:

SoCal Cycleboats Inc., a commercial operation interested in providing a human powered multi-passenger cycleboat experience on the waters of Newport Harbor, has submitted a Marine Activities Permit Application for consideration. Since no similar business currently operates in the Harbor, there is no basis of comparison for staff to evaluate if this operation will adversely affect the health, safety or welfare of those who use, enjoy, or own property near Newport Harbor. As such, the Harbormaster is referring the application to the Harbor Commission for their recommendation, as to whether or not a Marine Activities Permit should be issued for this type of operation (such referrals for Harbor Commission consideration are provided for in NBMC Section 17.10.050).

RECOMMENDATION:

- 1) Find this action exempt from the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment) and 15060(c)(3) (the activity is not a project as defined in Section 15378) of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, because it has no potential for resulting in physical change to the environment, directly or indirectly.
- 2) Provide staff direction regarding the request for issuance of a Marine Activities Permit for the SoCal Cycleboats Inc. proposal, subject to any additional approvals from other City Departments or outside agencies with authority over the proposed business.

FUNDING REQUIREMENTS:

There is no fiscal impact related to this item.

DISCUSSION:

The operator's proposed cycleboat will feature ten cycle stations and could accommodate up to 16 passengers and 2 crew. The proposed vessel is 31 feet in length overall, and features a 25 foot pontoon as well as a paddle wheel propulsion system. The vessel is human powered, and is proposed to operate at speeds between three to five miles per hour. As proposed the vessel will also be equipped with a 30 HP gas motor, for use when peddlers tire or when called for to maneuver safety.

Passenger loading and unloading is proposed by the applicant, at a commercial dock located at 2406 Newport Blvd., Newport Beach, CA 92663. The commercial operator associated with the aforementioned property (Mr. G's at Peninsula Kitchen and Bar) has provided a letter of agreement, extending use of this private dock for the applicant's planned use.

Off-site parking is proposed by the applicant, at 2000 West Balboa Boulevard, Newport Beach, California 92663. This location is estimated at .2 miles from the proposed passenger loading and unloading location. As planned, applicant would have exclusive use of up to five parking spaces at this location, under an agreement with the controlling party of that parking lot. This parking arrangement would be subject to a limited term permit, issued by the City of Newport Beach Community Development Department.

Proposed operational characteristics of the business include:

- Seven days a week operating hours, beginning at 9 a.m. continuing through 10 p.m.
- Customer bookings are proposed at one and a half hours long.
- Vessel will be operated/captained by SoCal Cycleboats' staff.
- Applicant has proposed an approximate four mile route for the vessel, running along both the Lido Channel and Newport Channel (see attached map for route specifics).
- No food or beverage service is proposed by the applicant. As proposed, customer provided food and beverages (including alcoholic beverages) would be allowed, subject to any State of California Department of California Alcoholic Beverage Control (ABC) requirements.
- The vessel will be equipped with a speaker system for amplified music. As proposed, this equipment will be under the control of SoCal Cycleboats' staff to manage noise control.

To-date, applicant has not provided information associated with the intended storage location for the proposed vessel.

ENVIRONMENTAL REVIEW:

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

NOTICING:

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

ATTACHMENTS:

Attachment A – Marine Activities Permit Application

Attachment B – Cascade Cycleboats (vessel manufacturer) U.S. Coast Guard Info Sheet

Attachment C – Powerpoint – Titled "Newport Beach – Project Description and Justification"



MARINE ACTIVITIES PERMIT APPLICATION

PUBLIC WORKS / HARBOR RESOURCES

100 Civic Center Drive, Newport Beach, CA 92660
(949) 644-3044

SMALL BOAT RENTAL-TYPE COMPANIES

New Application	<input type="checkbox"/>	Property Owner	<input type="checkbox"/>
Renewal Request	<input type="checkbox"/>	Small Boat Rental Company	<input checked="" type="checkbox"/>

Applicant Information

Business Name:	SoCal Cycleboats Inc.
Contact Name:	Michael Kapusta
Address:	1650 Park Newport #215 Newport Beach 92660
Phone Number(s):	(630) 550-1472
Mailing Address:	1650 Park Newport #215 Newport Beach CA 92660
Email:	
Newport Beach Business License Number:	Upon Approval
Property Owner:	
Mailing Address:	
Phone Number(s):	
Marina / Property Manager Name/Number(s):	

Please submit:

1. **Small Boat Rental Fleet Information Form.**
2. **Parking Information Form.**
3. **Evidence of Insurance** naming the City as additionally insured.
4. **Application Fee.** (Please call Harbor Resources for the current fee.)

I declare under penalty of perjury that the foregoing is true and correct:

Michael Kapusta 7/30/19
Applicant's Signature Date

Approved by:	
Planning Department: _____	Date: _____
Public Works, Transportation: _____	Date: _____
Inspected and Approved by:	
Harbor Resources: _____	Date: _____

Denied by: _____ Title: _____ Date: _____

SMALL BOAT RENTAL FLEET INFORMATION FORM
(Page 2 of 2)

Other information pertinent to traffic, parking, noise, pollution, trash or other matters which could adversely affect the health, safety and welfare of those in Newport Harbor.

Other rentals/activities included? (i.e. stand up paddle boards etc...)

- See attached Project description and Justification / Method of operation
- See attached safety docs / waiver
- Hours of operation: 9 AM - 10 PM
- Winter Hours - same as above
- 1 vessel total - max occupancy 18 passengers
- Noise - JBL UB4100 soundsystem will be controlled by captain

* limited term permit upon approval

PARKING INFORMATION FORM

(Page 1 of 1)

Small Boat Rental Company/Applicant: SoCal Cycleboats, Inc.

1. Describe peak occupancy of all vessels combined. Required parking is one space for every three occupants (passengers + crew) of all vessels in operation at a given time.

5 spot approved - Max passengers on vessel - 15

Peak occupancy - Afternoons and weekends

2. Identify the location(s) of off-street parking and the number of spaces at each location, if applicable. (Specifics required, including schematic. Public street parking not permitted.)

Balboa Fun Tours - 2000 W Balboa Blvd

15 spaces total - 10 required, 5 for SoCal Cycleboats - spots will be marked

3. Identify when are you entitled to use the parking spaces (i.e. days of week, hours of the day) at each location.

Monday - Sunday

9 AM to 10 PM

4. How is this parking secured? (Provide authorization letter or lease from the property owner for each off-street parking location.)

See letter attached

5. Identify all *other* users that are entitled to use each parking facility including their use and hours/days of operation? Provide a copy of their parking agreements (recorded or not).

Balboa Fun Tours

Spots for SoCal Cycleboats will be marked

6. Describe any form of transportation from the off-street parking to the boarding location (i.e. shuttle service, bus etc.). Please include the number of vehicles and specific loading and unloading locations and procedures.

N/A - approx .2 miles (5 min walk)

Letter of Agreement

SoCal Cycleboats Inc. Business Agreement

Date: 7/30/2019

To Whom it may concern:

We (*Mr G's at Peninsula Kitchen & Bar*) have reached an agreement with *SoCal Cycleboats Inc.* for them to use our private docks for business purposes of passenger loading and unloading.

The terms of the agreement apply for an initial 12 months and can be renewed during which *SoCal Cycleboats Inc.* will offer drink/beverage vouchers to customers of the business. Voucher will indicate the offer available to customers of which *SoCal Cycleboats Inc.* will fund up to **30** drink tickets during a monthly period.

****Drink voucher: When a customer purchases an appetizer, they will receive a free drink.*

If you have any additional questions, please feel free to reach out. Our contact information is listed below.

Contact Information:

Mr. G's at Peninsula Kitchen & Bar
(949) 675-4444

Print Name: _____

Signature: _____

SoCal Cycleboats Inc.

Michael Kapusta

630-550-1472

Michael.Kapusta7@gmail.com

Signature: _____



CASCADE CYCLEBOATS™

U.S. COAST GUARD INFO

This information applies to Cycleboats that Cascade Cycleboats builds that will be operating in waterways under United States Coast Guard Jurisdiction.

All of our Cycleboats are designed and built to the United States Coast Guard regulations for Small Passenger Vessels/T-boats for commercial use.

We will provide a Marine Inspections Directory so that you can determine the District and Sector controlling your waterway and contact them to find out who your local Inspector will be. When you make contact with them, you should provide the following information:

- Map of your intended route
- Manufacturer: Cascade Cycleboats; cycleboats.com; Kyle Allen; (541) 848-8442; kyle@cycleboats.com
- Sister Vessel Hull ID: CAD69023G717; Name: Bottoms Up

Please provide us with a copy of your intended route map and the name and contact information for your local Inspector as soon as you determine it so that we can connect them with the appropriate representatives on our end.

You should try develop a positive relationship with your USCG Inspector early on because you will be working with them throughout the duration of your Cycleboat business.

Our Cycleboats are rated for 16 passengers with 1 Master Captain and 1 deckhand. Many of our clients prefer to limit passengers to 14. The specific license required to operate a Cycleboat is "Master Captain 25-ton or over with an inland waterway endorsement." You may apply to your local Inspector for an endorsement to have the deckhand requirement removed prior to your inspection; some jurisdictions have allowed it, others have not.

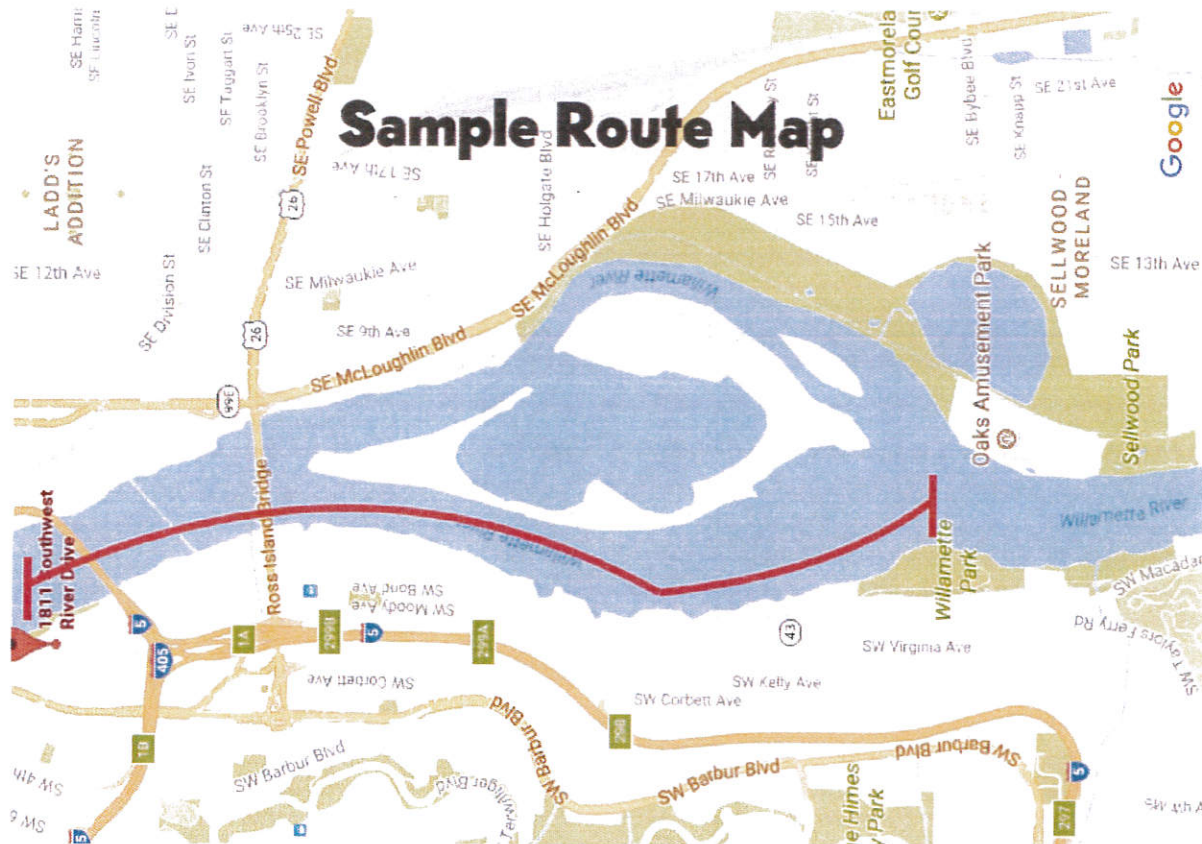
You will need to request a worklist from your Inspector for safety and operational items specific to your jurisdiction. In theory they should be the same from zone to zone but in reality that is not always the case. If you will be required to have a hard-mounted marine radio please let us know so that we can work that into your build.

Your USCG records will be associated with your Hull ID number, which we assign to your Cycleboat when we start the build and file the Application for Inspection of U.S. Vessel.

When we are building a Cycleboat that will be operating under USCG jurisdiction, our local inspectors inspect the hulls (pontoons) twice during their build in our shop and do a pressure test when they are completed. Once the entire boat is done, we meet our local USCG for an inspection on the water. We require that you to be at this inspection because this will also be your time get training regarding all the things unique to Cycleboats. You will need to sign-off that the Cycleboat has been built to your satisfaction before it is transported.

Every fifth inspected Cycleboat that we produce requires an additional USCG test called a Simplified Stability Proof Test which is conducted by Marine Safety Center Inspectors out of Washington, D.C. If your Cycleboat happens to be this fifth Cycleboat then we will schedule you to come out for your training and inspection of the Cycleboat after the stability test has been done.

At the end of the inspection on our end, our USCG will provide you will with a Temporary Certificate of Inspection (COI). When you get the Cycleboat to your operating location, you and your Captain will do an onboard inspection for safety equipment and fire suppression with your local USCG. You are responsible for scheduling this ahead of time; lead times for scheduling vary by location. Once your local inspection has been completed, the USCG will issue the final Certificate of Inspection (COI) which will include your official designated route. An inspection will be done annually thereafter.



Contact us by phone (541) 508-7926 or email: nate@cycleboats.com if you have questions about any of this information.



CASCADE CYCLEBOATS™

TRANSPORTATION

You will be responsible for arranging transportation of your Cycleboat from our shop to your operating location.

You should review any contracts and insurance forms with your attorney and/or insurance agent. Some shippers have required a down payment prior to transport.

The Cycleboat is 10 feet wide and it is considered an oversized load so shipping companies are required by law to obtain permits in each state that it travels through.

We will give you about two weeks notice of your boat completion and Coast Guard inspection date. Please allow 3-5 business days after the inspection before transport.

When ready for transport, it can be picked up at our shop during our regular business hours (M-Thursday 7am – 4pm; Friday 7am – 12pm) and sometimes by special arrangement outside of those hours. The address is 340 SE Logsdon Street, Suite 150, Bend, Oregon 97702.



Trailer Stats:

- Trailer Width: 10 feet
- Trailer Length: 30 feet
- Loaded Trailer Length: 37 feet
- Loaded Height: 11.5 feet
- Loaded Weight: ~ 7000 pounds
- Hitch: 2" or 2 5/16"
- Surge or Electric Brakes

SoCal Cycleboats



- SoCal Cycleboats seeks to provide a unique and exciting new tour boat to Newport Beach.
- Passengers will have the option of bringing along their own food and drinks for a 1.5-hour booking.
- This would be the first Cycleboat in all of Southern California

- **IT'S GREEN** – Operation powered by humans. Solar panels power the electronics.
- **IT'S ACTIVE** – Riders get exercise while powering the boat
- **IT'S FUN** – Perfect for any special occasion & group outings. We provide the captain - you provide the party.



Hours of operation: 9 am to 10 pm based on pre-bookings and weather permitting.

Have questions or want to know more? socalcycleboats@gmail.com (630)550-1472

SOCAL CYCLEBOATS



Newport Beach - Project Description & Justification

BUSINESS DOCUMENTATION & PROPOSED ACTIVITY

We are interested in bringing a unique entertainment group experience to the Newport Beach area different from your traditional boating tours.

We are looking to purchase a "built to order" Pontoon Cycle Boat from Cascade Cycleboats in Bend, Oregon for the purpose of operating a commercial tour business.

Cascade Cycleboats has placed over 40 Cycleboats in major cities like Chicago, Seattle, and Portland; this would be the first Cycleboat in all of Southern California. Our tours would last for roughly 90 minutes.

We have incorporated the business with the California Secretary of State as SoCal Cycleboats, Inc.



A UNIQUE BOATING EXPERIENCE

- IT'S GREEN – The operating time is powered by humans. Solar panels power the electronics.
- IT'S ACTIVE – Riders get exercise while powering the boat
- IT'S FUN – Perfect for any special occasion & group outings



BOAT SPECIFICATIONS



Our cycleboat will have 10 cycle stations and accommodates 14-16 passengers and 1-2 crew members. It sits on a 25 foot pontoon, has a 10 foot beam and measures 9.5 feet tall sitting on the water with a 2 foot draft. With the paddle wheel, it measures 31 feet in length.

Under purely human power, the cycleboat goes about 3-5 mph. The pedaling is easy like a beach cruiser and the captain can change the resistance by raising or lowering the paddlewheel. The cycleboat will also have a 30 HP gas motor to relieve tired peddlers and maneuver safely around other boats and docks.

The cycleboat is designed and built to Coast Guard regulations for Small Passenger Vessels for commercial use "for hire." Our cycleboat will be operating in Coast Guard controlled waterways and is inspected multiple times throughout the build by regional inspectors. We understand that the local Coast Guard in Newport Beach will need to do a final inspection before we are issued a Certificate of Inspection (COI).

PROJECT DETAILS

Dedicated Parking - 2000 W Balboa Blvd, Newport Beach, CA 92663

Parking is located at Balboa Fun Tours as off-site parking for our tours. The off-site parking is .2 miles (approximately 5 min walk) away from where the boat will pick up and drop off passengers.

Pick Up & Drop off Location - 2406 Newport Blvd, Newport Beach, CA 92663

Passengers will walk to Mr. G's at the Peninsula Kitchen and Bar where our boat will pick them up and drop them off.



PROJECT DETAILS (CONTINUED)



- We will not be selling any food or beverages and will reach out to California ABC to make sure we are in compliance for any beverages the passengers bring on board.
- Hours of operation: 9 am to 10 pm depending on booking schedule and weather.
- Each booking will be 1.5 hours long. We will provide a captain for the operation of the boat. There will NEVER be any instance of our operation where a customer will be in control of the boat.
- Noise control: the pontoon will have a speaker system that will be controlled by the captain.

CONTACT US

Have questions or want to know more?

SocalCycleboats@gmail.com

Michael Kapusta
(630)550-1472

Chris Ferren Cirino
(530)902-4193

Biddle, Jennifer

Subject: FW: Letter of Support | Operators of Sac Brew Boat

From: Blank, Paul <pblank@newportbeachca.gov>
Sent: Tuesday, November 12, 2019 3:59 PM
To: Scott Ford <sford@downtownsac.org>
Cc: Biddle, Jennifer <JBiddle@newportbeachca.gov>
Subject: RE: Letter of Support | Operators of Sac Brew Boat

Mr. Ford:

Thank you for your thoughtful and thorough communication.

I will make an effort to ensure the other Commissioners and related staff see it before our deliberations tomorrow evening.

Best,

Paul Blank
Chair
Newport Beach Harbor Commission

From: Scott Ford [<mailto:sford@downtownsac.org>]
Sent: Tuesday, November 12, 2019 3:37 PM
To: Blank, Paul <pblank@newportbeachca.gov>
Cc: Biddle, Jennifer <JBiddle@newportbeachca.gov>
Subject: Letter of Support | Operators of Sac Brew Boat

Good afternoon Chairman Blank:

On behalf of the Old Sacramento Waterfront district office of the Downtown Sacramento Partnership, please find the attached letter of support for the operators of the Sac Brew Boat, who have submitted a Marine Activates Permit Application to the Newport Beach Harbor Commission.

Mr. Ferren-Cirino and his partners have proved to be outstanding operators since launching the Sac Brew Boat in 2018, in addition to Sac Brew Bike which has operated in Sacramento since 2014. The introduction of Sac Brew Boat to the Old Sacramento Waterfront last year has proved to be a dynamic addition to our central city, and I encourage the commission to strongly consider approving the SoCal Cycleboats Inc. permit application.

Please do not hesitate to contact me with any questions or if I may provide additional information for your consideration.

Respectfully,

Scott

Additional Material Received
Referral of Marine Activities Permit Application to Harbor Commission
November 13, 2019 Harbor Commission Meeting

Scott Ford

**DISTRICT OPERATIONS MANAGER
OLD SACRAMENTO WATERFRONT**

sford@downtownsac.org

OFFICE 916-970-5226

1014 2nd Street, Suite 200, Sacramento, CA 95814

DowntownSac.org + OldSacramento.com



November 12, 2019

Paul Blank, Chair
City of Newport Beach Harbor Commission
100 Civic Center Drive
Newport Beach, CA 92660

RE: Letter of Support for Operators of Sac Brew Boat

Dear Mr. Blank and Newport Beach Harbor Commissioners,

On behalf of the Old Sacramento Waterfront office of the Downtown Sacramento Partnership, I am writing in support of Chris Ferren-Cirino and the operators of the Sac Brew Boat, which has been a tremendous addition to the Old Sacramento Waterfront since launching operations in 2018.

My experience with Mr. Ferren-Cirino and his team has been outstanding, noting that they run a very professional operation with the highest commitment to guest safety. The team has proved to be a valuable addition to economic development along our waterfront, and has integrated seamlessly with neighboring businesses and private dock users.

I applaud their efforts to expand their business to Southern California and wish them nothing but continued success.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Scott Ford', is written over a horizontal line.

Scott Ford
District Operations Manager
Old Sacramento Waterfront

SOCAL CYCLEBOATS
DBA: NEWPORT BEACH CYCLEBOATS



Newport Beach - Project Description & Justification

BUSINESS DOCUMENTATION & PROPOSED ACTIVITY

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We are looking to purchase a “built to order” Pontoon Cycle Boat from Cascade Cycleboats in Bend, Oregon for the purpose of operating a commercial tour business.

Cascade Cycleboats has placed over 40 Cycleboats in major cities like Chicago, Seattle, and Portland; this would be the first Cycleboat in all of Southern California. Our tours would last for roughly 90 minutes.

We have incorporated the business with the California Secretary of State as SoCal Cycleboats, Inc.



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The cycleboat is designed and built to Coast Guard regulations for Small Passenger Vessels for commercial use "for hire." Our cycleboat will be operating in Coast Guard controlled waterways and is inspected multiple times throughout the build by regional inspectors. We understand that the local Coast Guard in Newport Beach will need to do a final inspection before we are issued a Certificate of Inspection (COI).

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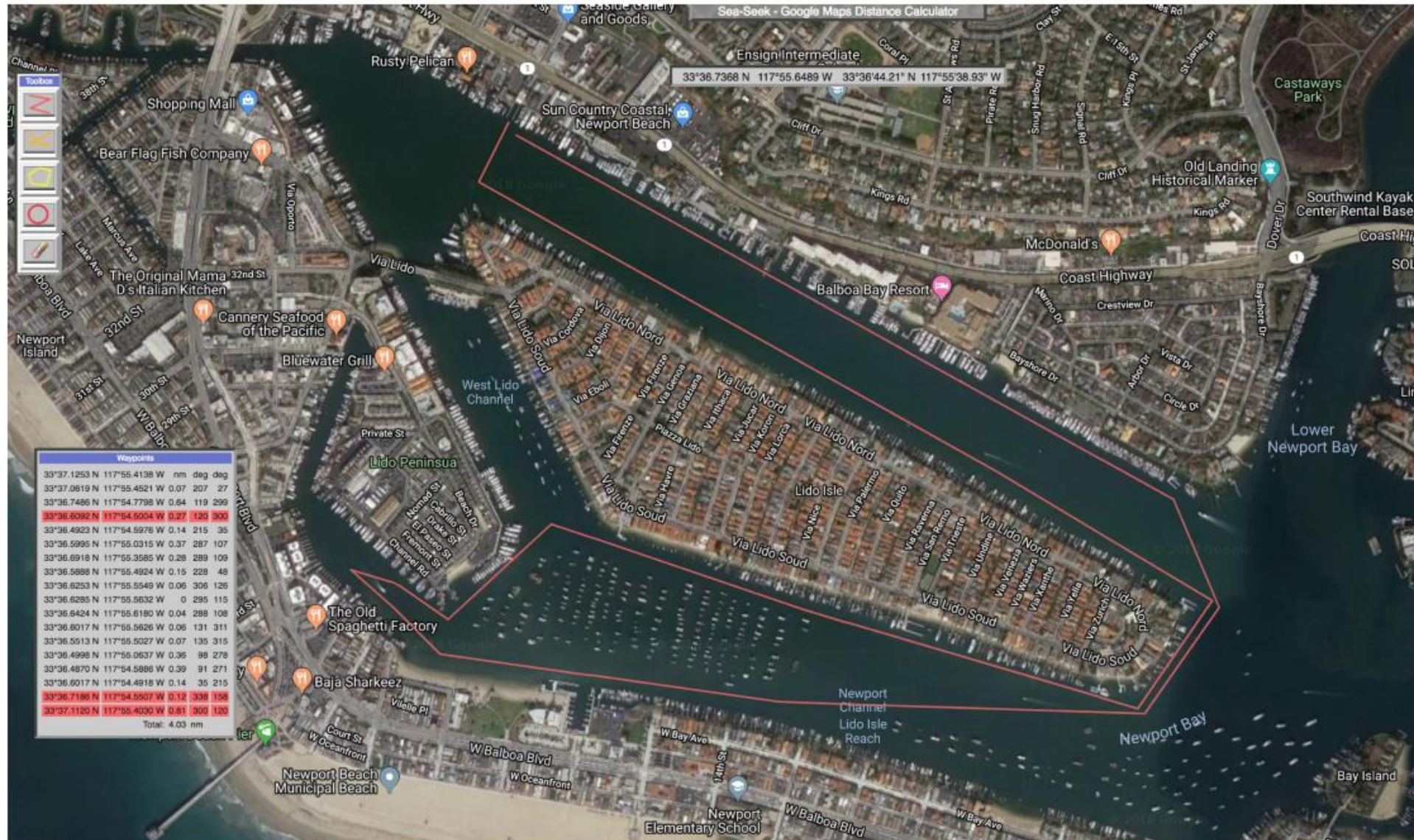


PROJECT DETAILS (CONTINUED)



- We will not be selling any food or beverages and will reach out to California ABC to make sure we are in compliance for any beverages the passengers bring on board.
- Hours of operation: 9 am to 10 pm depending on booking schedule and weather.
- Each booking will be 1.5 hours long. We will provide a captain for the operation of the boat. There will NEVER be any instance of our operation where a customer will be in control of the boat.
- Noise control: the pontoon will have a speaker system that will be controlled by the captain.

INTENDED ROUTE - NEWPORT BEACH ~4 MILES



CONTACT US

Have questions or want to know more?

SocalCycleboats@gmail.com

Michael Kapusta

(630)550-1472

Chris Ferren Cirino

(530)902-4193



1519 19th Street, Sacramento, California, 95811
(916) 952-7973

April, 16, 2019

Senator Richard Pan
California State Capitol- RM 5114
Sacramento, CA 95814

RE: SB 543 (Pan) – Sac Brew Bike - SPONSOR

Dear Honorable Senator Pan,

I'm writing to inform you of our sponsorship of SB 543 (Pan), which supports the continued growth and development of a new and exciting industry throughout California. We are proud to sponsor this bill which will allow small businesses to continue to operate uninterrupted since the 2015 approval of SB 530 (Pan), with safety being of the utmost importance.

The unanimous Legislature approval of SB 530 (Pan) in 2015 established state regulations governing the operation and safety requirements of Pedal-Powered Quadricycles. If alcoholic beverages are consumed on the quadricycles, the law also requires that it must be authorized by local ordinance, and that there is an onboard safety monitor.

The quadricycle industry has seen tremendous growth throughout California since the passage of the law. The law has helped further legitimize an emerging industry, by establishing boundaries for the safe operation of these vehicles that are to be regulated at the local level. As a result, new quadricycle operations have since emerged across California; Santa Barbara, Palm Springs, Healdsburg, Fresno, and Sacramento. In turn, our industry has helped promote the service and tourism industry within our local communities, by providing happy customers looking to celebrate birthdays, conduct team building events, and enjoy city sightseeing tours with food and drink.

The statute is set to sunset January, 2020. SB 543 would simply eliminate the sunset date.



Sac Brew Bike has operated a pedal-powered quadricycle business in Sacramento California since May of 2014. Since SB 530 went into effect in 2016, our company has seen tremendous growth: we've grown from 2 to 5 quadricycles, we've opened a brick and mortar bar to host our patrons, and we've been proud to participate in many local community events. We've seen much of the same exciting developments by other quadricycle operators throughout the state.

For the reasons above, Sac Brew Bike is proud to sponsor SB 543.

Sincerely,

Chris Ferren-Cirino, Sarah Ferren-Cirino, and Matthew See
Owners/Operator of Sac Brew Bike
1519 19th Street, Sacramento, California, 95811

City of
SACRAMENTO
Police Department

Additional Material Presented at Meeting
Marine Activities Permit - Correspondence
November 13, 2019 Harbor Commission Meeting

DANIEL HAHN
Chief of Police

5770 Freeport Blvd., Suite 100
Sacramento, CA 95822-3516

April 22, 2019
Ref: COP 4-11

(916) 808-0800
Fax: (916) 808-0818
www.sacpd.org

The Honorable Dr. Richard Pan
California State Senate
State Capitol, Room 5114
Sacramento, CA 95814

Re: Support for Senate Bill 543 "Pedal-Powered Quadricycles"

Dear Senator Pan, M.D:

I am writing to express my support of Senate Bill 543 (Pan).

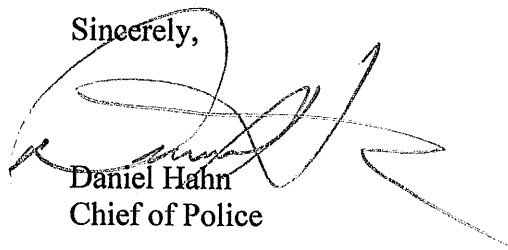
Pedal-powered quadricycles currently operate in multiple municipalities in California such as Sacramento and San Diego. They are multi-passenger bicycles that primarily rely on human power for momentum and are driven by an individual who does not pedal.

In 2015, the Legislature unanimously approved SB 530 (Pan) that establishes state regulations governing the operation and safety requirements of Pedal-powered Quadricycles. If alcoholic beverages are consumed on the quadricycle, the law also requires that it must be authorized by local ordinance, and that there is an onboard safety monitor.

Since passage of the law, Sacramento is seeing small businesses expanding, supporting local businesses through their team building events, food, wine and sightseeing tours. The industry has proven to be safe and responsible. According to the California Highway Patrol, no accidents have been reported since the law was enacted.

SB 543 would ensure these small businesses can continue to flourish while operating safely on city streets. Your direct efforts to ensure a safe and thriving Sacramento are appreciated.

Sincerely,



Daniel Hahn
Chief of Police

DH:jp

November 8, 2019

Harbor Commission
City of Newport Beach
100 Civic Center Drive
Newport Beach, Ca 92660

Commissioners,

The Midtown Association (MA) is a Property and Business Improvement District that is working to make Midtown the center for culture, creativity & vibrancy in Sacramento's urban core. MA represents over 1200 properties in Midtown and over 600 businesses. We are writing today to support the application of a cycle boat permit by the owner and operator of Sac Brew Bike.

Sac Brew Bike has been a business and community partner in Sacramento since 2014. Their unique business concept offers a twist on transportation and tourism that draw visitors to Midtown on a daily basis. The business has been responsible to community concerns, and has worked closely with the neighborhood to address any worries that have been raised. Additionally, this specific business has been responsible in directly supporting other established businesses in Midtown by offering a one of a kind tour to regularly rotating restaurants and entertainment venues.

Sac Brew Bike has proven they can operate in a responsible and considerate manner. They've raised awareness for other businesses in the community all while using an active transportation method. For the last five years the owners of Sac Brew Bike have demonstrated they have been good partners in Midtown and we gladly offer our support for their application to expand into Newport Beach with a cycle boat operation. Please contact me if you have any additional questions regarding our support of this application.

Sincerely,



Emily Baime Michaels, Executive Director
Midtown Association
Emily@exploremidtown.org



MIDTOWN
ASSOCIATION

**THE CENTER FOR CULTURE, CREATIVITY
& VIBRANCY IN SACRAMENTO'S URBAN CORE.**



== CITY OF ==

NEWPORT BEACH

Harbor Commission Staff Report

November 13, 2019
Agenda Item No. 6.2

TO: HARBOR COMMISSION

FROM: Kurt Borsting, Harbormaster – 949-270-8158,
kborsting@newportbeachca.gov

PREPARED BY: Chris Miller, Public Works Manager – 949-644-3043,
cmiller@newportbeachca.gov

TITLE: Lower Bay Dredging Update

ABSTRACT:

Public Works Manager Chris Miller will update the Harbor Commission on the latest planning efforts on the future Lower Bay dredging project.

RECOMMENDATION:

1. Determine that the project is exempt from the California Environmental Quality Act (“CEQA”) pursuant to Sections 15060(c)(2) and 15060(c)(3) of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, because it will not result in a physical change to the environment, directly or indirectly.
2. Receive and file.

FUNDING REQUIREMENTS:

There is no fiscal impact related to this item.

DISCUSSION:

Staff will review the progress to date as well as the current planning efforts for the Lower Bay dredging project.

ENVIRONMENTAL REVIEW:

Staff recommends the Harbor Commission find this action 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) and 15060(c)(3) (the activity is not a project as defined in Section 15378) of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, because it has no potential for resulting in physical change to the environment, directly or indirectly.

NOTICING:

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



Lower Newport Harbor Channel Dredging with In-Harbor Material Placement

Harbor Commission
November 13, 2019

Additional Material Presented at Meeting
Dredging Update Staff Presentation
November 13, 2019 Harbor Commission Meeting



Project Goal: Restore Harbor to design depth to provide necessary navigation and to improve tidal flushing.

Army Corps
& City
Partnership

Phase I: 2012

600,000 cy

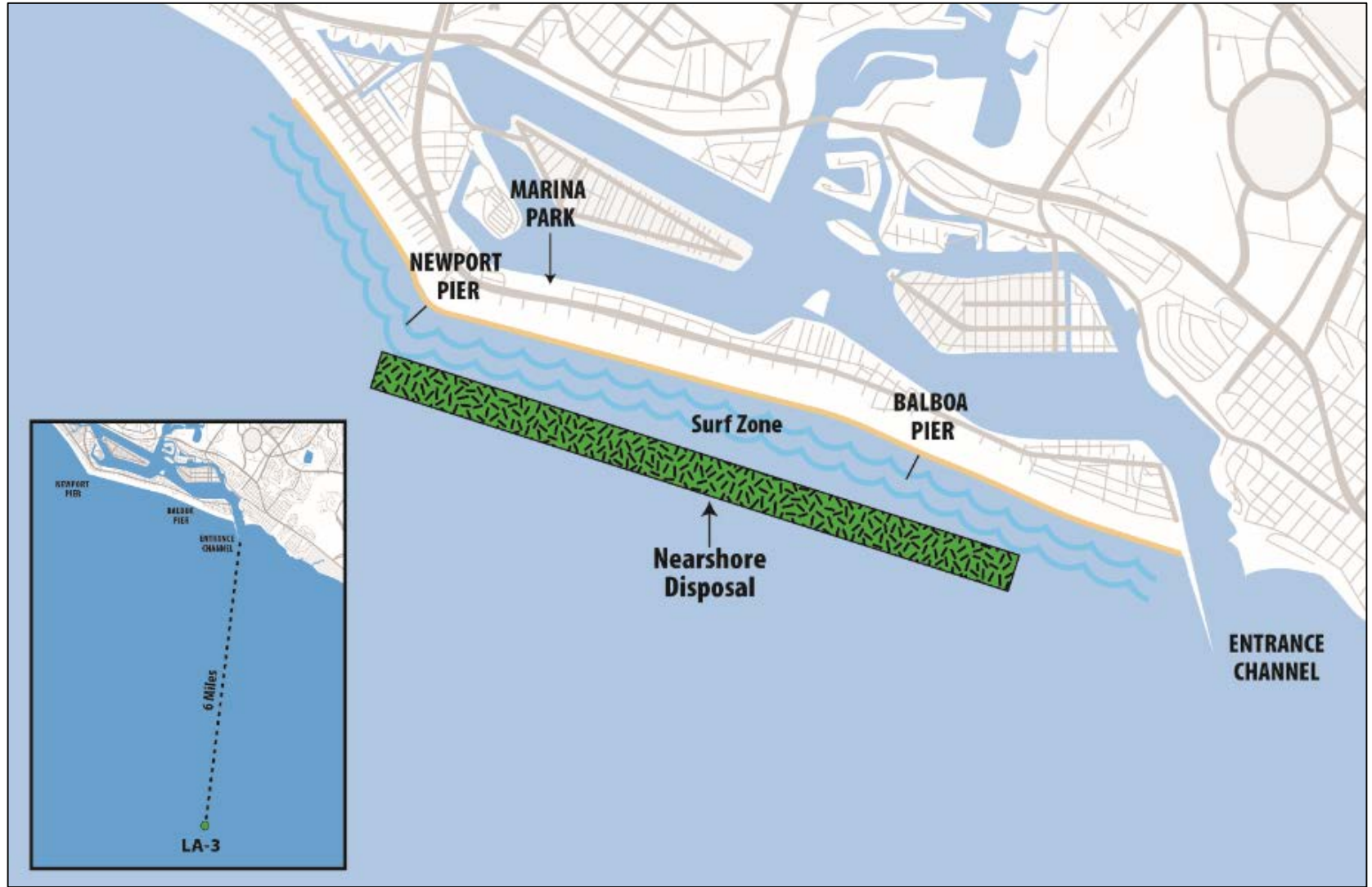
Phase II: 2021

1,200,000 cy



49

Most Sediment Suitable for Open Ocean Disposal



50

Lower Newport Bay Federal Channels



51

Additional Material Presented at Meeting
Lower Newport Harbor Channel Dredging Update Staff Presentation
 with In-Harbor Material Placement November 13, 2019 Harbor Commission Meeting

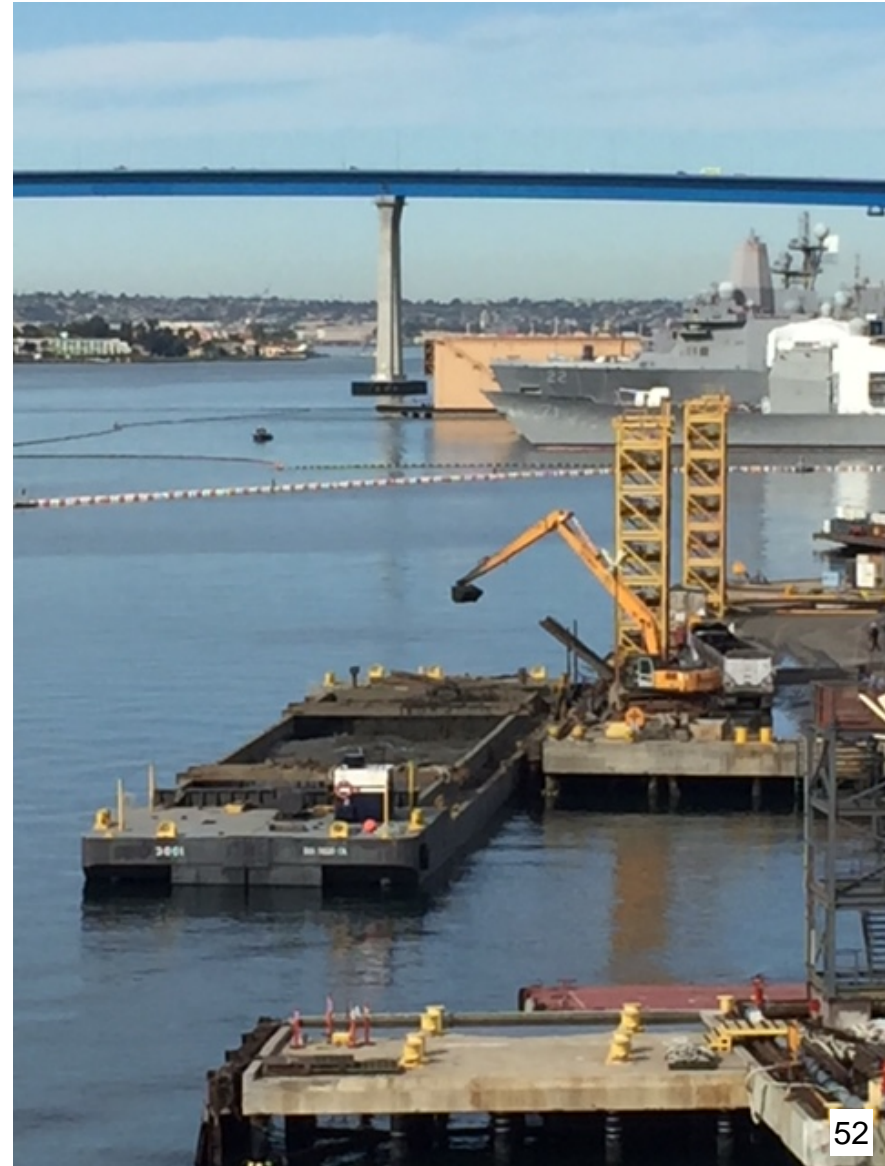


OPTIONS: Sediment Unsuitable for Ocean Disposal



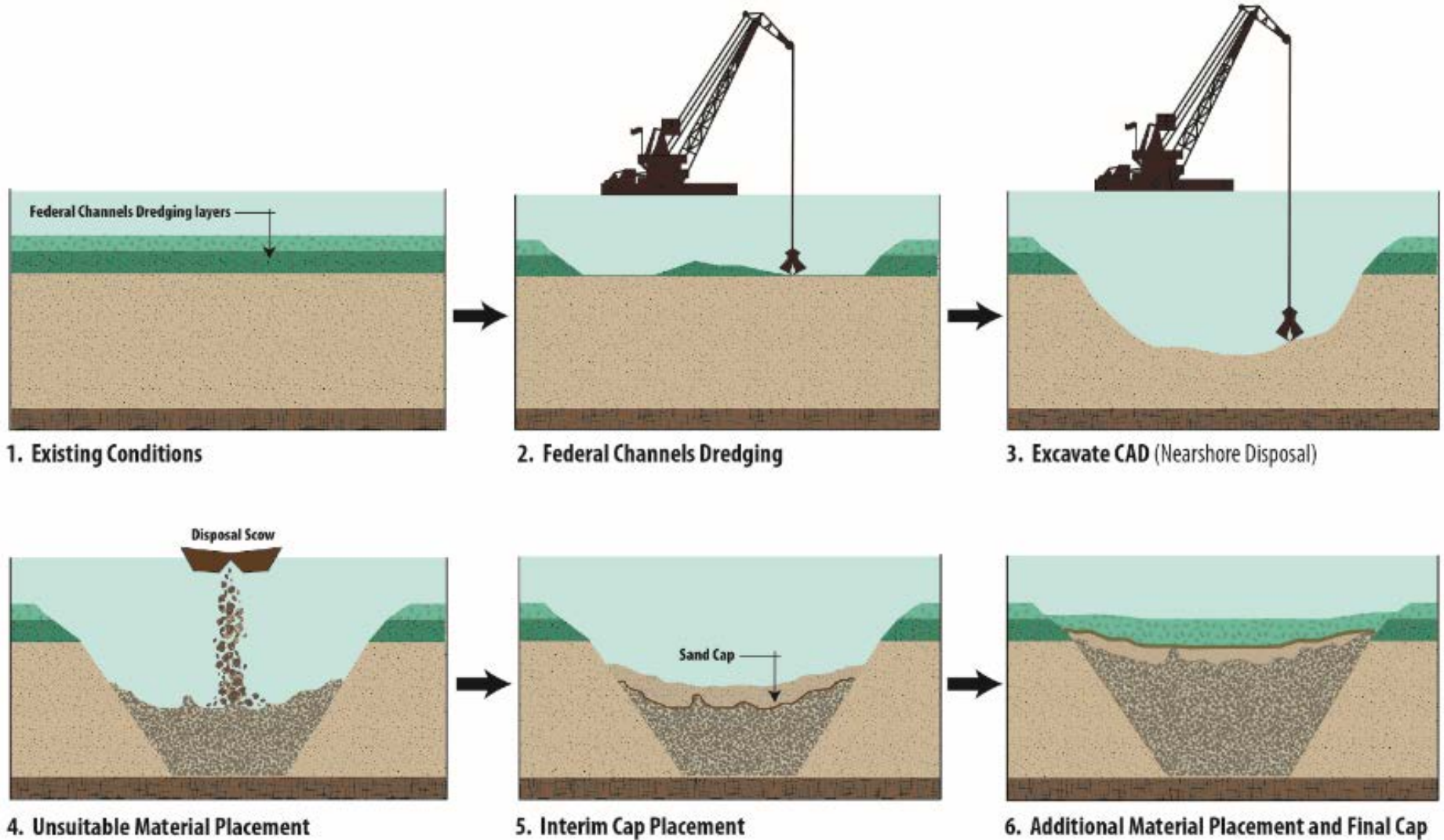
**Port of Long Beach - Middle Harbor
Fill Site**

Upland Disposal in San Diego



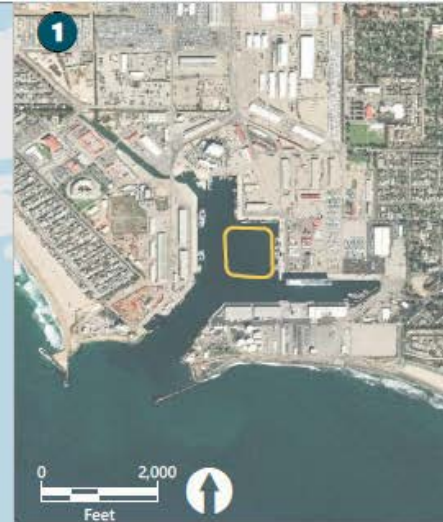
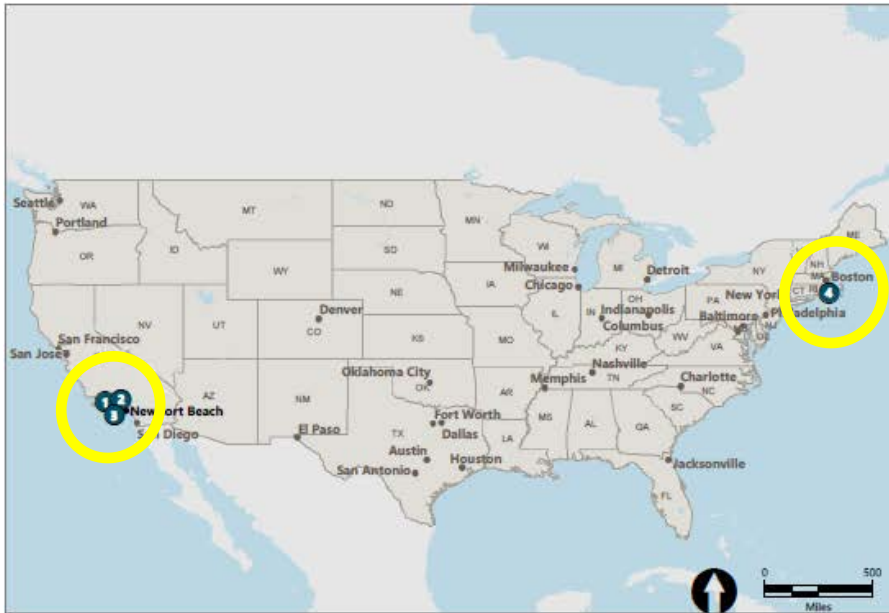
52

In Harbor Disposal – Construction Process



53

CAD: Agency Approved and Preferred

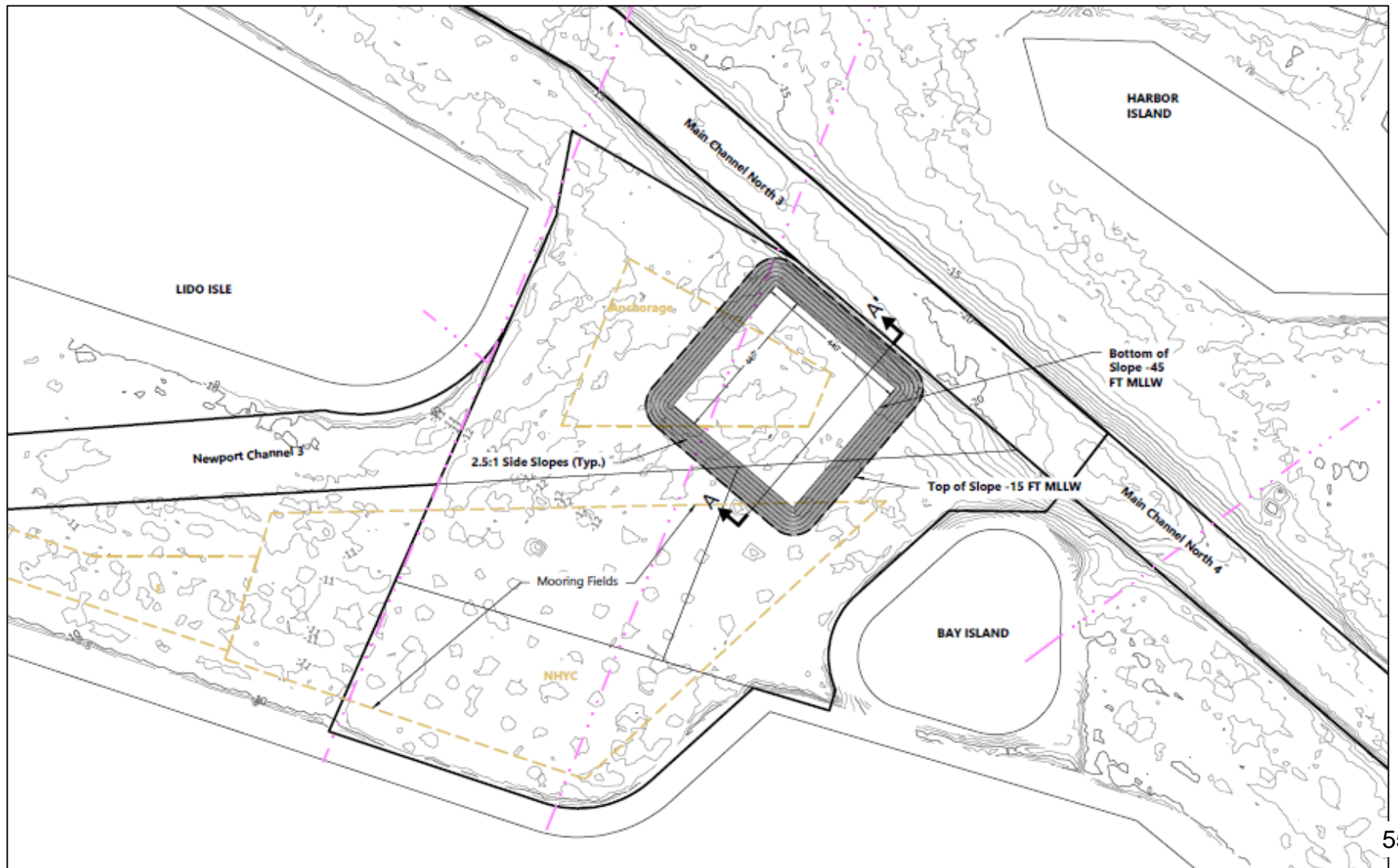


LEGEND:

- ① Port Hueneme
- ② North Energy Island Borrow Pit
- ③ Port of Long Beach Outer Harbor Sediment Placement and Ecosystem Restoration (OHSPER)
- ④ New Bedford CAD
- Approximate CAD Cell

Other CAD Examples

Newport Harbor CAD Site Location



55

CEQA Process – Next Steps

Public Scoping Meeting

Main Library – Friends Room
Wednesday, December 4, 2019
6:00 p.m.

Public Outreach (October-November)

Community Groups, HOA's etc...

- Balboa Island Improvement Association
- Balboa Yacht Club
- Bay Island Homeowners Association
- Chamber of Commerce
- CoastKeeper
- Curci Companies
- Harbor Commission
- Hill's Fuel Dock
- Irvine Company
- Island Marine Fuel
- Lido Isle Mayor Town Hall
- Newport Harbor Yacht Club
- Still Protecting Our Newport (SPON)
- Water Quality Coastal Tidelands Committee

57



Questions





CITY OF

NEWPORT BEACH

Harbor Commission Staff Report

November 13, 2019
Agenda Item No. 6.3

TO: HARBOR COMMISSION

FROM: Carol Jacobs, Assistant City Manager - 949-644-3313,
cjacobs@newportbeachca.gov

TITLE: Proposed Changes to Title 17 – Harbor Code

ABSTRACT:

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

RECOMMENDATION:

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

FUNDING REQUIREMENTS:

There is no fiscal impact related to this item.

DISCUSSION:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Chapter 17.70: Enforcement.

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

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

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

ENVIRONMENTAL REVIEW:

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

NOTICING:

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

ATTACHMENTS:

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

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**
- 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, 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, boards, or other public agencies 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 pier 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 procedure set forth in the California Building Code section [A] 104.11.
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 for development in areas where the Coastal Commission 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 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, as well as in 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. **City.** The term “City” shall mean the City of Newport Beach.
6. **City Council.** The term “City Council” shall mean the City Council of the City.
7. **City Manager.** The term “City Manager” shall mean the City Manager of the City or his or her respective designee.
8. **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.
9. **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.
10. **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 Coastal Act and for review of coastal permits on appeal from local agencies.
11. **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).

12. Code. The term “Code” shall mean the Newport Beach Municipal Code.
13. 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.
14. 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 the fish and game permit or license.
15. Community Development Director. The term “Community Development Director” shall mean the Community Development Director of the City or his or her designee.
16. Current. The term “current” 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. Currents are often classified by location, such as longshore current, surface current or deep ocean currents. Different currents can occur in the same general area resulting in different water flows. For example, a rip current can flow perpendicular to the shore through the surf zone, a long shore current may flow southerly, parallel to the coast and seasonal deep water current may flow to the north.

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 the 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 end of the mooring buoy on either side of the fairway as set forth in 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.

H. Definitions: H.

1. Harbor Commission. The term “Harbor Commission” shall mean the Harbor Commission of the City.

2. 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.

3. 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.

4. 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. All vessels under this definition may also be referred to as “work boats.”

5. 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.

6. Harbor Structures. The term “harbor structures” refers to any pier, float, piling, bulkhead, seawall, reef, breakwater or any other structure 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.

7. Habitat. The term “habitat” shall mean the locality, including the physical and biological environment, in which a plant or animal lives.

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 structure on or in any waterway, 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 while at its dock, berth, or mooring for a period exceeding seventy-two (72) hours in any thirty (30) day period.

3. Live Load. The term “live load” refers to the weight of all temporary loads such as pedestrians and berthing loads.

4. Local Coastal Program (LCP). The term “Local Coastal Program” or “LCP” shall mean a local government’s: (a) land use plans, (b) zoning ordinances, (c) zoning district maps, and (d) within sensitive coastal resources areas, other implementing actions which, when taken together, meet the requirements of, and implement the provisions and policies of the Coastal Act at the local level.

5. Longshore. The term “longshore” shall mean parallel to and near the shoreline.

6. Lower Newport Bay. The term “Lower Newport Bay” shall mean the area of the bay south of Coast Highway.

J. Definitions: M.

1. Maintenance Construction. The term “maintenance construction” shall mean the reconstruction or replacement within the existing footprint of no more than twenty (20) percent, or less, of the total replacement value of the 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 and established by the City..

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 vessels are continuously wet-stored (in water) and/or dry-stored (on land/racks).

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. Marine Sales and Services, Uses and Vessels. The term “marine sales and services, uses and vessels” shall mean related business activities which provide repair, maintenance, new construction, parts and supplies, fueling, waste removal, cleaning, and related services to vessels berthed in, or visiting, Newport Harbor.

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

7. 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.
8. 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.
9. Mooring Area. The term “mooring area” shall mean an area designated for a group of moorings.
10. Motorboat. The term “motorboat” shall mean any vessel being propelled by machinery.
11. Mud Line. The term “mud line” shall mean the highest elevation of accumulated sediments.
12. 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, 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 City..
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 Marine Park.

4. Nonprofit Organization. The term “nonprofit organization” shall mean an entity 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. 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 and 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 and 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, the City, or 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. See, City of Newport Beach Waterfront Project Guidelines and Standards, Harbor Design Criteria, Commercial and Residential Facilities.)

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

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 historic 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 zoned for residential use or areas designated for residential use as part of a Planned Community (PC) or Specific Area Plan.

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 for any period of time less than thirty (30) days.

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. 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 the bay north of the Coast Highway.

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

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/Width. The term “vessel length/width” are terms described as follows:

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. Width, also known as beam, includes all vessel attachments including, but not limited to, boarding steps, rub rails, and fixed fenders.

d. 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 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.

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, except where otherwise provided in this title. Any activity or action or use of Newport Harbor 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, however, that some or all of the duties necessary to be performed in the administration may be performed by the Harbormaster.

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 thereof from the vessel, or owner thereof;
- 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 such duties as assigned to the Harbormaster in this title, , coordinate with the resource 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 Harbormasters 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 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. Issue approvals in concept or harbor development permits for development located on tidelands or submerged lands that do not involve a discretionary action authorized 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 individual chapters of 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 within Newport Harbor;

B. Approve, conditionally approve, or disapprove applications on all permits where the Code assigns the authority for the decision to the Harbor Commission;

- C. Serve as an appellate and reviewing body for administrative decisions on permits, leases, and other harbor-related administrative matters where the Code assigns such authority to the Harbor Commission;
- D. Advise the City Council on proposed harbor-related improvements;
- E. Advise the City Council, Planning Commission and/or 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, and policies of the Harbor and Bay Element of the General Plan.

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 until June 27, 2043.
 - 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;
2. Protect, and where feasible, expand and enhance low-cost public launching facilities, such as trailer launch ramps, boat hoists, commercial landing facilities, and organized recreational boating launch facilities;
3. Provide a variety of berthing opportunities reflecting State and regional demand for slip size and affordability throughout Newport Harbor;
4. Protect, and where feasible, enhance and expand marinas and dry boat storage facilities;
5. Protect shore moorings and offshore moorings as an important source of low-cost public access to the water and harbor;
6. Protect, and where feasible, enhance and expand dinghy docks, guest docks at public facilities, yacht clubs and at privately owned marinas, restaurants and other appropriate locations;
7. 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, pumpout stations and other features through City, County, and private means;
8. Protect, and where feasible, expand and enhance facilities necessary to support vessels berthed or moored in the harbor, such as boat haul-out facilities;
9. 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;

10. Support private sector uses, such as vessel assistance, that provide emergency, environmental enhancement and other services that are not provided by the public sector and that are essential to the operation of a harbor; and

11. Provide, expand and enhance, where feasible, 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 California Coastal Commission, the Army Corps of Engineers, California Department of Fish and Wildlife, U.S. Fish and Wildlife Service, 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 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, or successor law.

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) days before the scheduled hearing to all the following:
 - (i) Project Site Owners and Applicant. The owners of the property being considered in the application, or the owners' agent, and the applicant or the applicant's agent;
 - (ii) Nearby Property Owners. All owners of real property located within a three hundred (300) foot radius, including 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;
 - (iii) Persons Requesting Notice. A person who has filed a written request for notice with the City and has paid the required fee for the notice.
 - 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) 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 shall be responsible for maintaining the sign(s) in a satisfactory condition; and
 - (iv) The project applicant shall remove the sign(s) at the end of the appeal period.
 - 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 is consistent with the Code, and complies with any applicable design criteria, 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 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, restrict or impair the public's use of the bay or beach in the vicinity of the existing structure or 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 the variance from the standards of this title and design criteria only after making all of the following findings:

a. Special circumstances applicable to the property, including location, shape, size, surrounding topography or other physical features, the strict application of the Code and design criteria otherwise applicable to the property denies the property owner privileges enjoyed by other property owners in the vicinity;

b. Strict compliance with this code and design criterial 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 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;

f. Granting of the variance will not be in conflict with the intent and purpose of Title 17, council policies and design criteria.

E. Decision. The Harbor Commission 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 17.10

MARINE ACTIVITIES PERMIT

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Chapter 17.20

VESSEL LAUNCHING AND OPERATION

Sections:

- 17.20.010 Vessel Launching and Hauling.**
- 17.20.020 Vessel Operation.**
- 17.20.040 Trespass or Injury to Vessel.**
- 17.20.050 Abandoned or Unattended Vessels and Property.**
- 17.20.060 Air and Water Propulsion Vessels Prohibited.**
- 17.20.070 Vessel Races.**

17.20.010 Vessel Launching and Hauling.

A. Where Permitted. No person shall launch or remove any vessel 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, of 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 or watercraft being launched or recovered shall not be permitted within one hundred (100) feet of such launching sites.
3. Only hand-carried vessels or watercraft may be launched from designated sites.
4. No motorized devices may be used for purposes of launching any vessel or watercraft at such locations, 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 hereinafter provided.

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 or watercraft 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 15th, 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 15th, 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, 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. It is unlawful for any person operating a vessel to tow any object, structure or vessel at a distance in excess of seventy-five (75) feet astern of the towing vessel.

E. 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.

17.20.040 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, except for those 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, except for those 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, except for those authorized by the Harbormaster for the maintenance of harbor operations.

17.20.050 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 property shall be dealt with as provided in the appropriate provisions of Chapter 1.20, or Section 510 et seq. of the California Harbors and Navigation Code, as the same now read or may hereafter be amended. Proceeds of any sale of such property shall be deposited in the general fund of the City. 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: any nighttime hours (sunset to sunrise); any time period when a Small Craft Advisory or greater has been issued by the National Oceanic and Atmospheric Administration; or daylight hours for more than three (3) hours.

17.20.060 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.

17.20.070 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), or any successor subsection.

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 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 in Newport Harbor, or permit the same to remain at such location after finishing loading or unloading such vessel, without the consent of the 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, or any successor chapter. 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) of this section.

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. The dock markings shall have the meanings as herein set forth:

- 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.

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 and 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 (g) 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 12:00 a.m. 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 the 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 (I) 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. It is unlawful and a public nuisance for any person owning, leasing, occupying or having charge or possession of any vessel to: (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 to which the pier is connected in accordance with Section 17.35.020, or any successor section.

2. Any boat berthed at a pier or slip shall not extend bayward a distance of more than the maximum width of its beam beyond the end of the pier or slip. 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 from 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. Maintenance. All moorings shall be kept in good and serviceable condition in the location assigned by the Harbormaster.

I. 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 vessels 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 an 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 in accordance with the service requirements of Section 1.05.030, or any successor section, to the permittee 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) days upon service of the written notice of such determination and complete repairs within ninety (90) 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) 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) 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. It is unlawful and a public nuisance for any person owning, leasing, occupying or having charge or possession of any vessel in the City to 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 it is unsafe, unsightly or poorly maintained, including, but not limited to: broken windows, unsecured doors or hatches, excessive marine growth attached to the vessel, the vessel is inoperable for its intended use, partially destroyed or partially repaired for more than three (3) continuous months, provides access to marine mammals, is 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 excess 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, (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 the 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.

In the event that the City determines that a vessel is a public nuisance, the City may commence public nuisance abatement per Chapter 10.50, or any successor chapter.

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, or any successor section, 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 other available remedy 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.

J. 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 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), or any successor section, 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, watercraft, 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 17.60.020 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.

17.30.010 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 Chief pursuant to Section 105.6 of the California Fire Code and Chapter 9.04, Fire Code, of Title 9 of this Code. An application for a permit to load or unload any hazardous materials shall be filed with the Fire Chief or Fire Code Official in accordance with Section 17.60.015. The Fire Chief or Fire Code Official 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 Chief or Fire Code Official may impose any conditions on the issuance of the permit necessary to protect the health, safety and welfare of the public.

17.30.030 Live Bait and Sea Life.

A. Live Bait and/or Sea Life Receivers Defined. A live bait or sea life receiver is 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.

B. 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.

C. 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.

D. Commercial Bait Boats, Bait and Sea Life Receivers. All boats used to catch or furnish live bait or sea life receivers 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.

E. Disposal of Bait. No person shall place or allow to be placed any live or dead bait or other sea life debris in the unconfined waters of Newport Harbor except when it is attached to a hook or hooks in the act of fishing.

F. 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.

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 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 alternative 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 the California Building Code [A] 104.11.

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 minimize 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, also flagmen employed, all as may be required by the particular work in progress. 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. If the display of lights and signals on any work authorized is not otherwise provided by law, as may be prescribed by the U.S. Coast Guard, they shall be installed and maintained at the expense of the permittee.

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.

G. 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 or any department, officer, or employee thereof, though, by reasons of, or in connection with such work, permittee shall defend, indemnify and hold them and each of them, harmless from such claim.

H. 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.

I. 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 will be borne by the permittee.

J. 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 user of the same.

K. 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.

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. Shore-connected 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. Shore-connected 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 (D) 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 Harbor Commission or Planning Commission as appropriate.
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 feet from the prolongation of the side property line.

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

3. The prolongation of the property line bayward of 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 feet.
- 2. The minimum setbacks from the prolongations of the side property lines shall be five feet.

3. No float shall be permitted within one 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 and overall height to include the enclosed portion of the locker or box.

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;
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 Work Director shall immediately so 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 shall fail or neglect 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, and 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 Department. 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.

Permits for floating dry docks are issued for one (1) location only. A new permit must be obtained to move a floating dry dock from one (1) 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 Department 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." U.S. Bulkhead Station No. 104 for the addresses at 2209, 2223, 2227,

2231 and 2233 Bayside Drive. Approval of a 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 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 maintenance permit. 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, 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 and maintain 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 shore moorings or pier platforms fronting on alleys, avenues or other public easements terminating on the canal. There shall be no new permits issued for shore 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 shore 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 shore mooring.
4. Any shore 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 Title 20 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 Pumpout Facilities.**
- 17.40.090 Compliance with Law.**
- 17.40.100 Discharge Log.**
- 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 insuring, 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).
- D. Live-aboards are not permitted bayward of residentially owned properties.

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 or a valid rental agreement from a commercial marina,. No permit shall be issued to 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, 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;
- E. Other information the Harbormaster reasonably believes is necessary or helpful to the efficient administration of the provisions of this chapter.

Applications will be accepted only from persons holding a valid mooring permit issued pursuant to Chapter 17.60 of this Code or a valid rental agreement from a commercial marina. 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 10 gallons or a sufficient in capacity 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; or
- 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) 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 for any of the reasons 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 Pumpout Facilities Disposal of Trash.

Permittees shall use pumpout facilities on a regular basis or otherwise discharge human waste in a legal manner. The permittees and others living aboard pursuant to permit shall not deposit any garbage or trash in Newport Harbor or on property surrounding in 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 pumpout 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 pumpout 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. Additionally, live aboard permits in each commercial marina shall not exceed seven (7) percent of the total number of commercial marina slips available, that are 30 feet or larger, for live-aboards.

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 Pumpout Facilities.

17.45.030 Waste and Refuse—Small Vessel Moorage.

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, one for women and one for men, 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. Sewage Pumping Facilities. Permission may be granted to install and operate sewage pumping facilities for boats moored to shore-connected structures providing such installations are first approved by the Public Works Department and the Community Development Department.

17.45.020 Required Pumpout Facilities.

A. Pumpout Facility Required.

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

2. All pumpout 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 pumpout facility permit or any other permit required prior to installation.
3. The application for permit shall be accompanied by appropriate plans and specifications setting forth in detail the work to be done.
4. 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 pumpout station complies with all applicable ordinances, rules and regulations. A separate permit will be required from the Building Official prior to installation of the pumpout facility.
5. Maintenance. Permittee shall maintain the pumpout 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 Pumpout Facilities. The owner and operator of every commercial marina with a capacity of fifty (50) or more vessels shall provide a permanent holding tank pumpout 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 vessels, 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, in a civil action.

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.**
- 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 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. 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 certain standards of this title and design criteria when, because of special circumstances applicable to the property, including location, shape, size, surrounding topography or other physical features, the strict application of the Code and design criteria otherwise applicable to the property denies the property owner privileges enjoyed by other property owners in the vicinity.

E. 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 a harbor development permit, variance or approval in concept shall be filed with the Community Development Department in writing on forms prescribed by the Community Development Department .

B. Required Materials. Applications shall be accompanied by all plans, maps, and other materials required by the prescribed forms, unless specifically waived by the department. The department may request additional materials deemed necessary to support the application. Plans accompanying the application must comply with the Newport Beach Administrative Code adopted by the City. 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.

C. 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. The application must be signed by the applicant or his or her authorized agent.

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

17.50.030 Processing of Application.

A. The application and plans and specifications shall be reviewed by the Community Development Department, Public Works Department, and other City departments, as necessary, to determine whether the proposed development meets all the requirements of this Code, 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 City 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 City 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 prior to the applicant applying for a coastal development permit. The City will 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 tideland's 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.
4. Approval in Concept. All development in areas where the Coastal Commission retains coastal development permit authority shall require conceptual approval from the Public Works Director prior to application to the Coastal Commission that indicates the proposed development conforms in concept to all applicable provisions of this title only and does not provide approval for any applicable land use and property development regulation.

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 director of the reviewing department identified in Section 17.50.020(A) shall approve and issue a harbor development permit and/or approval in concept if the application conforms to the provisions of this Code, design criteria and all applicable standards and Council policies, after review and approval by other City departments, as necessary.

b. Before issuing an approval in concept 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 Public Works Director 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 by the Public Works Director.

c. The application shall be approved or denied within ten (10) days, unless both the applicant and the department consent to a later date. The director of the reviewing department shall provide notice of the decision to the applicant and publish notice of the decision for fourteen (14) days on the City's website. If no appeal or call for review of the decision is filed within the fourteen (14) days, the decision is final.

d. 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, variance, and/or approval in concept shall be referred to the Harbor Commission for a public hearing, as set forth in Section 17.05.040, to determine if a harbor development permit or approval in concept 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 application does not conform to the provisions of this Code, the Local Coastal Program, the design criteria 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; or

d. 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, that 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.

B. Notice of Decision. Notice of the decision shall be posted on the City website within one day of the date of the decision. No permit shall be issued until the appeal period or call for review, in accordance with Chapter 17.65, expires.

17.50.050 Permits - Conditions.

A. In granting any such application, the permit or approval in concept 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 the Newport Bay. The Southern California *Caulerpa* Action Team (SCCAT) shall be immediately notified if *Caulerpa taxifolia* is found.

C. Acceptance of Provisions. 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.

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 one hundred eighty (180) days from the date of approval per the Newport Beach Administrative Code.

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, Enforcement.

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 the Harbormaster 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. Alternative Materials. The Building Official's decision on use of alternative materials in accordance with the "Alternative Material, Design and Methods of Construction" shall be made in accordance with Chapter 15.80.

B. Except as provided in subsection (A), all other appeals or calls for review 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 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 Leases/Permits of 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.

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 tideland to be leased for residential purposes for rolling fifty (50) year lease terms.

2. Balboa Bay Resort. The Beacon Bay Bill (Chapter 74 of the Statutes of 1978) and Assembly Bill 3139 (Chapter 728, Statutes of 1994) allow Parcel D of the Balboa Bay Resort to be leased for residential purposes until December 31, 2044.

3. Harbor Island. Chapter 715, statutes of 1984 allow the filled or reclaimed land on Harbor Island to be leased for nonpermanent recreational and landscaping purposes for a term no greater than forty-nine (49) years.

17.60.015 Application for Harbormaster Permits.

A. Required Forms. Except for marine activities permits, live aboard permits, and approvals in concept/harbor development permits issued pursuant to Chapters 17.10, 17.40, and 17.50, 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 a permit to be 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 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. 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. 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 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, Subsection 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 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 the Promontory Bay and the 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, except as noted in subsection (B)(3)(f) 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 as of May 11, 2017. 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 annually 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 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) natural 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, naming the City as an additional insured on a vessel as may be determined by 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 and 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 May 11, 2017. . These designated mooring areas may not be expanded. The boundaries of these mooring areas are graphically depicted by National Oceanographic and Atmospheric Administration (“NOAA”) Chart Number 18754. Yacht clubs shall be entitled to a maximum number of moorings as can be accommodated in the mooring fields designated in NOAA Chart Number 18754 and at a minimum the current number of moorings assigned to them as of the effective May 11, 2017.

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 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 may be 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 a shore mooring, a photograph of the new assigned vessel if it is not subject to vessel registration laws; 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)(e) 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)(9), 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 (E) 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 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 current 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 will 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 will 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 the City Council;

7. Sub-permittees may stay aboard the vessel pending vessel inspection, for a period not to exceed fifteen (15) days in any twelve (12) month period. The Harbormaster may grant any extension(s) beyond fifteen (15) days;

8. 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;

9. Subject to the Harbormaster's approval, a mooring may be loaned by the mooring permittee to a vessel other than the assigned vessel subject to all provisions of the sub-permittee rental agreement including payment of sub-permit fees provided that:

a. The mooring permittee provides the Harbormaster with written notice identifying the vessel that will use the mooring;

b. The vessel owner authorizes the City, or its designee, to move the vessel on the mooring to another location when deemed necessary by the Harbormaster.

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 charge 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 may be publicly auctioned by the City, or the City's designated representative, or the mooring 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.

- 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 appropriate 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 (a) the required mooring size of a particular vessel, (b) 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 17.05.040 (D) 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 the Harbor Commission for the row or mooring area in which the vessel will be

moored, and (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 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.

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, 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.

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 or Harbormaster for the issuance or denial of a permit pursuant that are subject to appeal may be appealed to the Harbor Commission by the 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 where the Code assigns such authority to the Harbor Commission. 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 of decisions of the Public Works Director, Community Development Director or Harbormaster shall be made in writing to the City Clerk on forms provided by the City Clerk. Appeals or calls for review of decisions of the Harbor Commission 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. 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 unless both appellant and the City Manager 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 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 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(1) 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.**
- 17.70.040__ 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, in accordance with the provision of this section:

- 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 this chapter and/or resolution of the City Council;
- 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 or sub-permit may be revoked upon any of the grounds set forth in Section 17.70.020(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 sub-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(G);
- d. The mooring permittee has sublet their mooring in violation of this title.

B. Notice and Hearing.

1. a. General Notice and Hearing Procedures. Except as provided in 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. At least fourteen calendar (14) days' notice of such hearing shall be given in accordance with Section 1.05.030, 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, 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. The notice shall state the grounds for revocation, the effective date of the decision, and the right of the permittee to appeal the decision to the Harbor Commission.

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.

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, levies, 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. These vessel or structure is deemed abandoned under this Code.
- 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.
- J. The vessel or mooring permittee does not have proper insurance or owes a debt to the City.

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 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.

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**
- 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, 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 Municipal~~ 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, boards, or other public agencies are to those of the City ~~of Newport Beach~~, unless otherwise indicated.
- E. All references to public officials are to those of the City ~~of Newport Beach~~, 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 pier 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 procedure set forth in the California Building Code section [A] 104.11.

3. Anchorage or Anchorage Area. The terms “anchorage” and “anchorage area” shall mean any portion of Newport Harbor ~~outside of navigation channels~~ 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.

~~43.~~ **Applicant.** The term “applicant” shall mean a person applying for a permit under this title. ~~the owner of the business or vessel, an authorized representative of the owner or a person as defined further herein.~~

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 for development in areas where the Coastal Commission retains jurisdiction, which indicates the proposed development conforms in concept to this Code and the design criteria.

~~64.~~ **Assigned Vessel.** The term “assigned vessel” shall mean a vessel lawfully owned and registered, ~~owned~~ 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; ~~i.e., at the water line where the boat directly interfaces the dock, and as well as at the walking deck; i.e., the widest point of the vessel.~~ 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. —Reserved.~~

~~67.~~ 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.

~~78.~~ 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.

~~89.~~ Bulkhead or Seawall. The term “bulkhead” or “seawall” shall mean the retaining wall that separates dry land areas and water areas.

~~910.~~ 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~~the 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.

~~101.~~ 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 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, as well as in 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. City. The term “City” shall mean the City of Newport Beach.
6. City Council. The term “City Council” shall mean the City Council of the City ~~of Newport Beach~~.
7. City Manager. The term “City Manager” shall mean the City Manager of the City ~~of Newport Beach~~ or his or her respective designee.
8. 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.
9. 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.
10. 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 Coastal Act and for review of coastal permits on appeal from local agencies.

11. 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).

12. Code. The term “~~C~~code” shall mean the Newport Beach Municipal Code.

13. 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.

14. Commercial Fishing Vessel. The term “commercial fishing vessel” shall mean a vessel registered by the Department of Fish and ~~Wildlife Game~~ 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 the fish and game permit *or license*.

15. Community Development Director. The term “Community Development Director” shall mean the Community Development Director of the City ~~of Newport Beach~~ or his or her designee.

16. Current. The term “current” 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. Currents are often classified by location, such as longshore current, surface current or deep ocean currents. Different currents can occur in the same general area resulting in different water flows. For example, a rip current can flow perpendicular to the shore through the surf zone, a long shore current may flow southerly, parallel to the coast and seasonal deep water current may flow to the north.

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 of Newport Beach, 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.

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

34. 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.

54. 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.

65. 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 the 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 feeds into a channel, and which is used for direct access to slips or moorings. When associated with slips, The-the fairway ~~water area~~ 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 water area is defined as lying between the outer end of the mooring buoy on either side of the fairway as set forth in 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 ~~of Newport Beach~~ 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 ~~of Newport Beach~~ 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. ~~Generally, two conditions are of interest when referring to freeboard: (i) dead load only freeboard, and (ii) dead plus live load freeboard.~~

~~Dead load refers to the weight of all construction materials and equipment that may be permanently attached to the docks. Live load refers to the weight of all temporary loads such as pedestrians and berthing loads.~~
 - 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 deckgunwhale.
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.

23. 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 series of groins acting together to protect a section of beach is known as a groin system or groin field.~~ 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.

H. Definitions: H.

1. Harbor Commission. The term “Harbor Commission” shall mean the Harbor Commission of the City ~~of Newport Beach.~~

2. Harbor Department. The term “Harbor Department” shall mean the Harbor Department of the City ~~of Newport Beach.~~ Any provision within this Code or any uncodified ordinance or resolution referring to the Harbor Resources Division shall mean the Harbor Department.

3. 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 ~~Governments.~~ 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.

4. 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. All vessels under this definition may also be referred to as “work boats.”

5. Harbormaster. The term “Harbormaster” shall mean the Harbormaster of the City ~~of Newport Beach~~, 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.

~~6. Harbor Regulations. The term “harbor regulations” refers to Title 17.~~

~~67.~~ Harbor Structures. The term “harbor structures” refers to any pier, float, piling, bulkhead, seawall, reef, breakwater or any other structure 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 ~~of Newport Beach or adjoining waters.~~

~~78.~~ Habitat. The term “habitat” shall mean the locality, including the physical and biological environment, in which a plant or animal lives.

~~89.~~ 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. ~~The term “marginal walk” is synonymous with “headwalk.”~~

~~940.~~ Houseboat. The term “houseboat” shall mean any vessel or structure on or in any waterway, 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. — LCP. See Local Coastal Program.~~

~~23.~~ Live-Aboard. The term “live-aboard” shall mean the use or occupancy of a vessel as a domicile while at its dock, berth, or mooring for a period exceeding seventy-two (72) hours in any thirty (30) day period.

~~34.~~ Live Load. The term “live load” refers to the weight of all temporary loads such as pedestrians and berthing loads.

4. Local Coastal Program (LCP). The term “Local Coastal Program” or “LCP” shall mean a local government’s: (a) land use plans, (b) zoning ordinances, (c) zoning district maps, and (d) within sensitive coastal resources areas, other implementing actions which, when taken together, meet the requirements of, and implement the provisions and policies of the Coastal Act at the local level.

5. Longshore. The term “longshore” shall mean parallel to and near the shoreline.

6. Lower Newport Bay. The term “Lower Newport Bay” shall mean the area of the bay ~~southerly~~ of ~~the~~ Coast Highway.

J. Definitions: M.

1. Maintenance Construction. The term “maintenance construction” shall mean the reconstruction or replacement within the existing footprint of construction work relating to no more than twenty (20) percent, or less, of the total replacement value of the existing pier, float, gangway, piling, bulkhead, seawall, reef, breakwater or other structure~~dock~~, 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 and established by the City ~~of Newport Beach.~~ ~~Maintenance construction only requires City of Newport Beach approval.~~

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 vessels are continuously 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. Marine Sales and Services, Uses and Vessels. The term “marine sales and services, uses and vessels” shall mean related business activities which provide repair, maintenance, new construction, parts and supplies, fueling, waste removal, cleaning, and related services to vessels berthed in, or visiting, Newport Harbor. ~~Typical service uses include, but are not limited to, all uses and vessels described under Section 20.05.050 of the City of Newport Beach Municipal Code.~~

~~6. Mean High Water. The term “mean high water” shall mean the nineteen (19) year average of the higher high water heights (for diurnal tides, high water and higher high water are the same).~~

~~7. Mean Higher High Water. The term “mean higher high water” shall mean the nineteen (19) year average of only the higher high water heights.~~

~~8. Mean Low Water. The term “mean low water” shall mean the nineteen (19) year average of the lower low water heights (for diurnal tides, low water and lower low water are the same).~~

~~69. Mean Lower Low Water (MLLW). The term “mean lower low water” or “MLLW” shall mean the nineteen (19) year average of only the lower low water heights. MLLW is refers to the datum used to define elevations of structures within the bay, and along the coastline, and for navigation. For landside developments using an MSL (mean sea level) datum, add two and seventy six hundredths (2.76) feet to MSL elevations to equate to MLLW elevations.~~

~~710.~~ 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.

~~814.~~ 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. ~~The term “mooring” shall mean and includes~~ any ~~appliance apparatus~~ used to secure a vessel in Newport Harbor ~~other than a pier,~~ which is not carried aboard such vessel as regular equipment when under way.

~~912.~~ Mooring Area. The term “mooring area” shall mean an area designated for a group of moorings.

~~103.~~ Motorboat. The term “motorboat” shall mean any vessel being propelled by machinery.

~~114.~~ Mud Line. The term “mud line” shall mean the highest elevation of accumulated sediments ~~adjacent to the structure in question.~~

~~125.~~ Multiple Vessel Mooring System. The term “multiple vessel mooring system” shall mean a floating platform secured to a single ~~or double anchor system point mooring only~~ 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, 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 work relating to fifty (50) percent or more of the total replacement value of the dock, 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 and established by the City. ~~of Newport Beach. New construction requires City, State and Federal approvals.~~

2. Newport Bay. ~~The terms “Newport Bay” and “Newport Harbor” are often used interchangeably.~~ The term “Newport Bay” shall mean the estuary consisting of the Lower Newport Bay and the Upper Newport Bay.

3. Newport Harbor. ~~See also Newport Bay.~~ 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 Marine Park.

4. Nonprofit Organization. The term “nonprofit organization” shall mean an entity 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, ~~or any successor statute.~~

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. 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, ~~or any successor statute.~~

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 ~~of Newport Beach~~ from the beach ~~to a point, as defined in Section 17.01.030(B)(3), seaward~~ 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 and 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 and 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, the City, or 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 City Council Harbor Commission. ~~Vessels may extend channelward of the pierhead line.~~
7. Police Chief. The term “Police Chief” shall mean the Chief of Police of the City ~~of Newport Beach~~ or his or her respective designee ~~or by the City Council~~.

8. **Project Lines.** The term “project lines” shall mean the harbor water area channel lines of the improvements constructed by the Federal Government in 1935-1936, ~~and as shown on navigation charts of Newport Harbor. Also referred to as the “Federal channel” (See, City of Newport Beach Waterfront Project Guidelines and Standards, Harbor Design Criteria, —Commercial and Residential Facilities.)).~~

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

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. ~~Public trust lands include and includes all~~ 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 ~~(from California Code of Regulations, Section 13577; see tidelands and submerged lands).~~

11. **Public Works Director.** The term “Public Works Director” shall mean the Public Works Director of the City ~~of Newport Beach,~~ or his or her designee.

N. Definitions: R.

1. **Residential.** The term “residential” shall mean those properties that are ~~designated identified by the Zoning Code in Title 20 of this Code as a district zoned for a residential use, or areas designated for residential use as part of a Planned Community (PC) or Specific Area Plan. as opposed to commercial.~~

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 ~~a public agency~~ 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 ~~of Newport Beach,~~ 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 sailing club operated~~ of boats owned or operated by the club for ~~by~~ its membership.
3. Seaworthy. The term “seaworthy” shall mean that the vessel ~~s~~ 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. ~~and not leaking fluids.~~
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 approximatinges the mean low tide water line ~~from~~ at the time the chart was prepared.
- ~~6. — Reserved.~~
- ~~67.~~ Side Tie. The term “side tie” shall mean a berth where the dock is alongside only one side of the boat.
- ~~78.~~ 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.
- ~~89.~~ Sport Fishing Charter. The term “sport fishing charter” shall mean a vessel chartered solely for sport fishing outside of Newport Harbor.
- ~~940.~~ Submerged Lands. The term “submerged lands” shall mean lands which lie below the line of mean low tide ~~(from California Code of Regulations, Section 13577).~~
- ~~104.~~ Sub-Permits.

~~a. Sub-Permits—Long Term. The term “long term sub-permit” shall be defined as those mooring sub-permits issued by the City for the temporary use of a deemed vacant or a noticed vacant mooring for a period of between one month to twelve (12) months.~~

~~ba. Sub-Permits—Short Term. The term “short term sub-permit” shall mean be defined as a those mooring sub-permits permit issued by the Harbormaster City for a the temporary use of a deemed vacant or noticed vacant mooring for any period of time less than thirty (30) days as determined by the Harbormaster.~~

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 ~~of Newport Beach~~ by State or Federal legislation and the terms and conditions of any such legislative grant.

~~3. Turning Basin. The term “turning basin” shall refer to an area, often designated on nautical charts, that is connected to a channel which is large enough to allow vessels to maneuver or turn around. The term “turning basin” shall mean that portion of any channel which has been so designated pursuant to law and approved by the Federal Government, for the purpose of permitting vessels to turn around or permitting their course or direction to be altered therein.~~

Q. Definitions: U.

1. 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 the bay north~~erly~~ of the Coast Highway ~~Bridge~~.

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

R. Definitions: V.

1. Vessel. The term “vessel” shall mean ~~any and include every description of~~ watercraft used ~~or capable of being used~~ as a means of transportation on water, ~~whether mechanically powered, human powered or wind powered, - This~~

~~includes all vessels of~~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. any size home-ported, launched/retrieved, or visiting in Newport Harbor, arriving by water or land, and registered or unregistered under State or Federal requirements, except a seaplane on the water. “Vessel” shall also mean and include human-powered vessels and wind-powered vessels.

a. ~~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.~~

b. ~~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.~~

2. Vessel Length/Width. The term “vessel length/width” are terms ~~to~~described as follows: the overall vessel length (Lo) and overall vessel width (Wo) that include all vessel attachments such as boarding and/or swim steps, bow extensions, sprits, rub rails, etc.

a. The 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. Width, which also known as beam, includes all vessel attachments including, but not limited to, boarding steps, rub rails, and fixed fenders.

d. 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 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 as~~t~~ 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. ~~If the vessel is recently purchased, the vessel~~

~~owner must obtain registration from the Department of Motor Vehicles or United States Coast Guard within six months.~~

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.
<u>17.05.062</u>	<u>Duties of the Community Development Director.</u>
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.
<u>17.05.140</u>	<u>Public Hearings.</u>

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 ~~of Newport Beach~~, except where otherwise provided in this title. Any activity or action or use of ~~the harbor~~ Newport Harbor 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, however, that some or all of the duties necessary to be performed in the administration may be performed by the Harbormaster.

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 ~~all harbor regulations~~ 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 thereof from the vessel, or owner thereof;
- 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 such duties as assigned to the Harbormaster in this title, coordinating with appropriate department directors for services falling within their respective functions as defined in Title 2, and coordinating as required, coordinate with the resources agencies and and private organizations, as set forth in Section 17.05.100, other governmental agencies and with 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, ~~or any successor title;~~
- C. Administer the harbor-related policies adopted by the City Council and the Harbor Commission, and ~~to~~ recommend to the City Manager appropriate changes and modifications to harbor-related policies; ~~and~~
- 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 Harbormasters 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 or any successor title, and coordinate with 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. Issue approvals in concept or harbor development permits for development located on tidelands or submerged lands that ~~do~~ not involve a discretionary action authorized 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 individual chapters of 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 within Newport Harbor;
- B. Approve, conditionally approve, or disapprove applications on all permits where the ~~City of Newport Beach Municipal~~ Code assigns the authority for the decision to the Harbor Commission;
- C. Serve as an appellate and reviewing body for administrative decisions ~~of the City Manager~~ on permits, leases, and other harbor-related administrative matters where the ~~City of Newport Beach Municipal~~ Code assigns such authority to the Harbor Commission;
- D. Advise the City Council on proposed harbor-related improvements;
- E. Advise the ~~Planning Commission and~~ City Council, Planning Commission and/or 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, and policies of the Harbor and Bay Element of the General Plan.

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. 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.~~

AB. 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.

BE. Exceptions. State legislation has modified public trust restrictions for the historic tidelands in Beacon Bay, the Balboa Bay Club, and Harbor Island. ~~as~~ 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 until June 27, 2043.
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 ~~insure~~ 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;
2. Protect, and where feasible, expand and enhance low-cost public launching facilities, such as trailer launch ramps, boat hoists, commercial landing facilities, and organized recreational boating launch facilities;
3. Provide a variety of berthing opportunities reflecting State and regional demand for slip size and affordability throughout Newport Harbor;
4. Protect, and where feasible, enhance and expand marinas and dry boat storage facilities;
5. Protect shore moorings and offshore moorings as an important source of low-cost public access to the water and harbor;

6. Protect, and where feasible, enhance and expand dinghy docks, guest docks at public facilities, yacht clubs and at privately owned marinas, restaurants and other appropriate locations;
7. 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, pumpout stations and other features through City, County, and private means;
8. Protect, and where feasible, expand and enhance facilities necessary to support vessels berthed or moored in the harbor, such as boat haul-out facilities;
9. 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;
10. Support private sector uses, such as vessel assistance, that provide emergency, environmental enhancement and other services that are not provided by the public sector and that are essential to the operation of a harbor; and
11. Provide, expand and enhance, where feasible, 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 California Coastal Commission, the Army Corps of Engineers, California Department of Fish and ~~Game~~ Wildlife, U.S. Fish and Wildlife Service, National Marine Fisheries Service, other resource management agencies, and private organizations, as applicable, shall be required ~~in the review of development applications in order~~ to ensure the protection of marine resources.

~~Continue to cooperate with the State and Federal resource protection agencies and private organizations to protect 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 specific site, 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 ~~written administrative interpretation.~~ 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 the Harbor Commission, ~~as provided~~ in compliance with Chapter 17.65.

17.05.120 Payment of Fees.

~~Any application for a permit or other approval required by this title shall not be considered complete and will not be processed for approval unless accompanied by payment of all applicable fees established by resolution of the City Council. All fees shall be established and paid in compliance with this section and Chapter 3.36 of this Code.~~

A. Date of Payment. All permit fees required to be paid under ~~any provision of~~ 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.

~~C. — Penalty for Failure to Pay Fees. Any owner or permit holder who fails to pay any fee required by this title after same is due shall be subject to a penalty in the amount established in Chapter 3.36, or any successor chapter. Failure to pay the fee, plus any accrued penalty, within one hundred twenty (120) days of when the fee was due, shall constitute grounds for revocation of the permit by the Harbormaster.~~

~~D. — Administration. The Harbormaster and/or Public Works Director shall administer the provisions of this title, except for the collection of fees, which shall be the responsibility of the Finance Director.~~

17.05.130 Permits Nontransferable.

Unless otherwise authorized in this title, any permit, ~~license or approval~~ issued under this title is personal to the person receiving such permit, ~~license or approval~~ 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, ~~license or approval.~~

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, or successor law.

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) days before the scheduled hearing to all the following:

(i) Project Site Owners and Applicant. The owners of the property being considered in the application, or the owners' agent, and the applicant or the applicant's agent;

(ii) Nearby Property Owners. All owners of real property located within a three hundred (300) foot radius, including – 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;

(iii) Persons Requesting Notice. A person who has filed a written request for notice with the City and has paid the required fee for the notice.

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) 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 shall be responsible for maintaining the sign(s) in a satisfactory condition; and

(iv) The project applicant shall remove the sign(s) at the end of the appeal period.

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, ~~T~~the reviewing authority may approve or conditionally approve a permit only after making all of the following findings:

a1. The use is consistent with the Code, and complies with any applicable design criteria, 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 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, 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 the variance from the standards of this title and design criteria only after making all of the following findings:

a. Special circumstances applicable to the property, including location, shape, size, surrounding topography or other physical features, the strict application of the Code and design criteria otherwise applicable to the property denies the property owner privileges enjoyed by other property owners in the vicinity;

b. Strict compliance with this code and design criteria 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 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;

f. Granting of the variance will not be in conflict with the intent and purpose of Title 17, council policies and design criteria.

E. **Decision.** The Harbor Commission 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 17.10

MARINE ACTIVITIES PERMIT

INTENTIONALLY REMOVED FROM CONSIDERATION

Chapter 17.20

VESSEL LAUNCHING AND OPERATION

Sections:

- 17.20.010 Vessel Launching and Hauling.**
- 17.20.020 Vessel Operation.**
- 17.20.040 Trespass or Injury to Vessel.**
- 17.20.050 Abandoned or Unattended Vessels and Property.**
- 17.20.060 Air and Water Propulsion Vessels Prohibited.**
- 17.20.070 Vessel Races.**

17.20.010 Vessel Launching and Hauling.

A. Where Permitted. No person shall launch or remove any vessel 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, of 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 ~~eight~~ seven a.m. and ~~eight p.m.~~ sunset.
2. The use of motors on any vessel or watercraft being launched or recovered shall not be permitted within ~~two~~ one hundred (~~2~~100) feet of such launching sites.
3. Only hand-carried vessels or watercraft may be launched from designated sites.
4. No ~~trailers, dollies, rollers or other mechanical~~ motorized devices may be used for purposes of launching any vessel or watercraft at such locations, 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 hereinafter provided.

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 or watercraft 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 15th, the channel between Bay Island and the Balboa Peninsula is designated as a closed area for the use and/or operation of motorboats. from and including June 1st through September 15th of each year; no person shall operate any motorboat into or through such channel.
2. From and including June 1st through September 15th, the Grand Canal is designated as a closed area; from and including June 1st through September 15th of each year; 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 race, regatta, parade or other event held 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, 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. It is unlawful for any person operating a vessel to tow any object, structure or vessel at a distance in excess of seventy-five (75) feet astern of the towing vessel.

E. 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 (dusk to dawn 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~~daily for no more than three (3) hours.

17.20.040 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, except for those 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, except for those 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, except for those authorized by the Harbormaster for the maintenance of harbor operations.

17.20.050 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 property shall be dealt with as provided in the appropriate provisions of Chapter 1.20, or Section 510 et seq. of the California Harbors and Navigation Code, as the same now read or may hereafter be amended. Proceeds of any sale of such property shall be deposited in the general fund of the City. 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: any nighttime hours (~~sunset to sunrise~~dusk to dawn); any time period when a Small Craft Advisory or greater has been issued by the National Oceanic and Atmospheric Administration; or daylight hours for more than three (3) hours.

17.20.060 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.

17.20.070 Vessel Races.

A. The Harbormaster may issue a permit to a person, as defined in Chapter 17.01, ~~or any successor chapter,~~ 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), or any successor subsection. ~~Notwithstanding the foregoing, no person shall operate any vessel in an unsafe, uncontrolled, or unseamanlike manner, and in no event at a speed that endangers the safety of persons or property.~~

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.

~~CB.~~ 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.

~~DC.~~ 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.

~~ED.~~ 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 ~~City~~ 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 to or arises from permittee's event/activity; ~~and~~ (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.

~~FE.~~ Notwithstanding the process set forth in Chapter 17.70 for the revocation of permits, aAny 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.

~~GF.~~ Any decision of the Harbormaster under this section may be appealed pursuant to Chapter 17.65, or any successor chapter.

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 in Newport Harbor, or permit the same to remain at such location after finishing loading or unloading such vessel, without the consent of the 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, or any successor chapter. 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 the Hharbor for this purpose; or (b) a vessel is taking refuge from inclement weather and no other mooring or berthing space is available in Newport the Hharbor 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) of this section.

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. The dock markings shall have the meanings as herein set forth:

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.

~~de.~~ Yellow markings shall mean vessels may be tied up or secured for seventy-two (72) hours maximum.

~~ef.~~ Red markings shall mean vessels shall not be tied up or secured for any amount of time.

~~fg.~~ Orange markings shall mean the maximum length vessel permitted to be tied up or secured is nine (9) feet.

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 the a Rhine Wharf permit is issued, adjacent to the Rhine Wharf public pier, the Rhine Wharf shall not be used by vessels for any purpose, except with a valid Rhine Wharf permit issued by the Harbormaster, and 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, ~~or~~ engaged in temporary repairs or taking refuge from inclement weather and no other mooring or berthing is available.; ~~and~~

~~d. The Harbormaster may authorize an extension of the four-hour period where special circumstances dictate such an extension.~~

3. When dock markings and signs are posted giving notice of the time limits ~~and/or~~ size restrictions in subsections (C)(1)(a) through (g) 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 on the 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 ~~public pier or dock~~ shall be closed between the hours of 12:00 a.m. 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 the 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 (I) 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. It is unlawful and a public nuisance for any person owning, leasing, occupying or having charge or possession of any vessel to: (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 ~~projection-prolongation~~ of the side property lines of the property to which the pier is connected in accordance with Section 17.35.020, or any successor section.
2. Any boat berthed at a pier or slip shall not extend bayward a distance of more than the maximum width of its beam beyond the end of the pier or slip. 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 from 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. Maintenance. All moorings shall be kept in good and serviceable condition in the location assigned by the Harbormaster.

I. 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 vessels 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 an safe, seaworthy and operable ~~and seaworthy~~ 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 in accordance with the service requirements of Section 1.05.030, or any successor section, to the permittee 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) days upon service of the written notice of such determination and complete repairs within ninety (90) 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) 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) 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. It is unlawful and a public nuisance for any person owning, leasing, occupying or having charge or possession of any vessel in the City to 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, ~~and-or~~ boxes that ~~are~~is 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~~and 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 it is unsafe, unsightly or poorly maintained, including, but not limited to: broken windows, unsecured doors ~~or~~and hatches, excessive marine growth attached to the vessel, the vessel is inoperable for its intended use, partially destroyed or partially repaired for more than three (3) continuous months, provides access to marine mammals, is actively seeping hazardous or toxic material into the surrounding waters, ~~or~~and would present a physical danger to public safety personnel during emergency access;

g. Operation of its mechanical or electrical systems creates excess 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 ~~of Newport Beach~~;

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, (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~~and 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;

1. Attachment to a mooring in such a way that the vessel regularly drifts ~~orand~~ impedes safe navigation in the bay; ~~orand~~

m. Installation of a marine sanitation device that is not connected directly to an internal holding tank at all times while in Newport Bay.

In the event that the City ~~of Newport Beach~~ determines that a vessel is a public nuisance, the City ~~of Newport Beach~~ may commence public nuisance abatement per Chapter 10.50, or any successor chapter.

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, or any successor section, 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 other available remedy authorized by this Code. In the event the Harbormaster issues an administrative citation, and 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.

~~5. With the exception of the sea lion deterrence requirements, the requirements of this section are not applicable to vessels used in marine construction or marine contracting services.~~

~~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 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), or any successor section, no mooring may be leased or rented by the permittee to another person except with the written permission of the Harbormaster.

M. ~~5. With the exception of the sea lion deterrence requirements, the requirements of this section are not applicable to vessels used in marine construction or marine contracting services.~~

N. ~~Administration. The Harbormaster shall administer all provisions in this section dealing with moorings and buoys, except the revocation of permits by the Harbor Commission and collection of all fees hereafter.~~

17.25.030 Storage Regulations.

A. Vessel or Trailer Storage on Beaches Prohibited—Exceptions. No person shall store any vessel, watercraft, 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 ~~two~~ 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 17.60.020 and issued if the Harbormaster makes the findings set forth in Section 17.05.140 (D) and ~~A vessel storage permit shall be approved only if~~ 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.

17.30.010 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 Chief pursuant to Section 105.6 of the California Fire Code and Chapter 9.04, Fire Code, of Title 9 of this Code. An application for a permit to load or unload any hazardous materials shall be filed with the Fire Chief or Fire Code Official in accordance with Section 17.60.015. The Fire Chief or Fire Code Official 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 Chief or Fire Code Official may impose any conditions on the issuance of the permit necessary to protect the health, safety and welfare of the public.

17.30.030 Live Bait and Sea Life.

A. Live Bait and/or Sea Life Receivers Defined. A live bait or sea life receiver is 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.

B. Requirements for Live Bait/Sea Life Receivers. All live bait/sea life receivers used within the waters of Newport Harbor shall be ~~provided-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.

C. 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.

D. Commercial Bait Boats, ~~and~~ Bait and Sea Life Receivers. All boats used to catch or furnish live bait or sea life receivers 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.

E. Disposal of Bait. No person shall place or allow to be placed any live or dead bait or other sea life debris in the unconfined waters of Newport Harbor except when it is attached to a hook or hooks in the act of fishing.

F. 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., ~~except that d~~ 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.

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 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 alternative 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” ~~appeals—processes~~ provided in the California Building Code [A] 104.11.

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 minimize 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, also flagmen employed, all as may be required by the particular work in progress. 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. If the display of lights and signals on any work authorized is not otherwise provided by law, as may be prescribed by the U.S. Coast Guard, they shall be installed and maintained at the expense of the permittee.

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.

G. 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, though, by reasons of, or in connection with such work, permittee shall defend, indemnify and hold them and each of them, harmless from such claim.

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

I. 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 will be borne by the permittee.

J. Rights to Impose Rental or Other Charges. The approval of permits or leases by the City ~~of Newport Beach~~ 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 user of the same.

K. Special Event Permits. If a permittee proposes a use of ~~Newportthe h~~Harbor other than that allowed by this ~~Codee Newport Beach Municipal Code~~, he or she must first obtain a “special event permit,” as provided by Chapter 11.03 of ~~this he- Newport Beach Municipal~~ Code. Upon issuance of the special event permit, the City ~~of Newport Beach~~ 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.

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. Shore-connected 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. Shore-connected 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 (D) 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 Harbor Commission or Planning Commission as appropriate.
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 feet from the prolongation of the side property line.

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

3. The prolongation of the property line bayward of 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 feet.

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

3. No float shall be permitted within one 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 and overall height to include the enclosed portion of the locker or box.

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 ~~City of Newport Beach~~ 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 of five-tenths (0.5) foot candles 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 ~~approved by the Harbor Commission~~ 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;
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.

~~Before the Harbor Commission acts on the new permit, the owner of the abutting upland property, in front of which the harbor facility encroaches, shall be notified in writing of the meeting in which the new permit will be considered.~~

G. Defective Piers. Upon learning that any pier is in a defective or dangerous condition, the Public Work Director~~Harbor Resources Manager~~ shall immediately so 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 shall fail or neglect to do so, the Public Works Director~~Harbor Resources Manager~~ may place barriers as necessary for the protection of the public and charge the cost thereof to such person, and 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 ~~the Newport Harbor~~ and, if they shall fail to do so, the Public Works Director~~Harbor Resources Manager~~ 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 ~~by~~ in compliance with Council ~~P~~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 ~~Harbor Resources Division~~ Public Works Department.; 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: ~~subject to the following conditions:~~

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 ~~is~~ in waters bayward of commercial, manufacturing or unclassified zones; and

~~32.~~ The prior approval of Aa Hharbor Use-development Ppermit has previously been approved by the Harbor Commission.;

3.—Permits for floating dry docks are issued for one (1) location only. A new permit must be obtained to move a floating dry dock from one (1) 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 ~~Harbor Resources Division~~ Community Development Department 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." U.S. Bulkhead Station No. 104 for the addresses at 2209, 2223, 2227,

2231 and 2233 Bayside Drive; Approval of a staff recommendation for 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 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 Resources Division and~~ 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 maintenance permit. 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. ~~Revision~~ The alteration, reconstruction or replacement of to any existing structures-permitted noncommercial pier, 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 ~~revised structure~~ shall be equal to or less than the square footage of the permitted non-commercial pier; structure;
2. The ~~revised structure~~ noncommercial pier, as proposed for alteration, reconstruction or replacement shall ~~does~~ 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 ~~P~~policy; and
3. The ~~revised structure~~ noncommercial pier, as proposed for alteration, reconstruction or replacement shall be ~~is~~ 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, ~~to the Harbor Commission, a~~ public hearing shall be held by the Harbor Commission in accordance with the procedures set forth in Section 17.05.140. ~~all property owners (according to the~~

~~latest equalized assessment roll prepared by the County of Orange and available to the City) within three hundred (300) feet of the exterior boundaries of the parcel for which the application is submitted shall be notified in writing by the Harbor Resources Division of the pending application. The applicant shall provide the Harbor Commission with a list of property owners and envelopes addressed with postage prepaid.~~

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. ~~T~~That the permittee shall be responsible and maintain the area delineated on the harbor development permit free and clear from floating rubbish, debris or litter at all times; and
2. ~~That~~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 shore moorings or pier platforms fronting on alleys, avenues or other public easements terminating on the canal. There shall be no new permits issued for shore 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 ~~of Newport Beach.~~
2. All vessels (maximum length eighteen (18) feet) moored in the Grand Canal shall be tied off to pier platform structures or shore moorings. Floating platforms or slips will not be allowed. Vessels tied to the bulkhead or by alternate methods not approved by the Harbor Department Resources Division shall be prohibited.
3. The permittee shall be allowed no more than one (1) vessel per shore mooring.
4. Any shore mooring approved for the Grand Canal shall display a permit number issued by the Harbor ~~Department Resources Division.~~

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 Title 20 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 Pumpout Facilities.**
- 17.40.090 Compliance with Law.**
- 17.40.100 Discharge Log.**
- 17.40.110 Limitation on Number of Permits.**
- 17.40.120 Transfer Prohibited.**
- 17.40.130 ~~Revocation/Cancellation~~ Termination of Permit.**
- ~~17.40.140 Suspension and Revocation.~~**
- ~~17.40.150 Procedure for Suspension or Revocation.~~**
- ~~17.40.1650 Appeal or Call for Review.~~**

17.40.010 Purpose.

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

A.—This chapter will promote the public health, safety and welfare by regulating the number of persons living aboard vessels on offshore moorings and insuring, 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).

D. Live-aboards are not permitted bayward of residentially owned properties.

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 or a valid rental agreement from a commercial marina, ~~or any successor chapter~~. No permit shall be issued to 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 ~~eight months~~ 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, 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;
- E. Other information the Harbormaster reasonably believes is necessary or helpful to the efficient administration of the provisions of this chapter.

Applications will be accepted only from persons holding a valid mooring permit issued pursuant to Chapter 17.60 of ~~this Newport Beach Municipal Code~~ or a valid rental agreement from a commercial marina. 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 10 gallons or a sufficient in capacity to ~~insure~~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 ~~the bay~~Newport Harbor; or

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) 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 for any of the reasons 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 ~~insure~~ 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 ~~insure~~ 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 Pumpout Facilities Disposal of Trash.

Permittees shall use pumpout facilities on a regular basis or otherwise discharge human waste in a legal manner. The permittees and others living aboard pursuant to permit shall not deposit any garbage or trash in ~~the bay~~ Newport Harbor or on property surrounding ~~in the bay~~ Newport Harbor except in trash receptacles owned and maintained by the City ~~of Newport Beach~~ 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 ~~any~~ the permitted vessel, shall comply with all applicable State and Federal laws, the provisions of this

~~Code~~Newport Beach Municipal Code, and all conditions ~~, express and implied, to 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 Service and Log Records.

Each live-aboard permittee is required to contract with an authorized commercial pumpout 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 pumpout service provider including, but not limited to, company issued service records and invoices for the use of pumpout facilities. 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 ~~discharge~~ log and supporting material shall be made available for inspection by the Harbormaster at all reasonable hours and upon request. In additional, ~~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.

A.—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. Additionally, live aboard permits in each commercial marina shall not exceed seven (7) percent of the total number of commercial marina slips available, that are 30 feet or larger, for live-aboards.

~~B.—The Harbormaster shall establish a waiting list of persons who wish to apply for a live-aboard permit. The waiting list shall consist solely of persons who hold valid mooring permits issued pursuant to the provisions of Chapter 17.60, or any successor chapter. Any person who sells or transfers the vessel, or any ownership interest in the vessel, assigned to a mooring shall be removed from the waiting list. In the event the number of live-aboard permits falls below the limit specified in subsection (A) and subsection (B) of this section, the Harbormaster shall notify the person or persons next in order on the waiting list of the vacancy or vacancies. The notice shall specify that applications will be accepted for thirty (30) days after the date of the notice, and that failure to apply within the thirty (30) day period will result in removal of that person or persons from the waiting list. Notice shall be deemed given when deposited in the United States mail, with the first class postage prepaid, and addressed as specified by the person or persons on the waiting list. City shall not be liable for a failure to notify any person or persons on the waiting~~

~~list since placement on the list does not create any property right in any person or persons on the list nor any contractual obligation on the part of the City. An application for placement on the waiting list shall be accompanied by a fee established by resolution of the City Council, but in no event shall the fee exceed the cost of administering the waiting list.~~

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 ~~Revocation/Cancellation~~Termination of Permit.

~~The City has reserved the right to cancel live-aboard permits under certain circumstances.~~ Any live-aboard permit issued pursuant to this chapter shall be deemed cancelled/terminated upon revocation of the mooring permit or lease issued pursuant to Chapter 17.60 of this ~~Newport Beach Municipal~~ Code.

~~17.40.140 Suspension and Revocation.~~

~~A. Any permit granted pursuant to this chapter and Chapter 17.60, or any successor chapter, may be suspended or revoked by the Harbormaster upon a determination that:~~

- ~~1. The permittee has violated, or failed to comply with, any of the provisions or requirements of this chapter or Title 17;~~
- ~~2. The permittee has discharged raw or treated sewage into the bay or otherwise violated the provisions of Section 17.40.090 of this chapter;~~
- ~~3. Permittee has failed to pay any fee required to be paid pursuant to the provisions of this chapter and/or resolution of the City Council;~~
- ~~4. The 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.~~

~~17.40.150 Procedure for Suspension or Revocation.~~

~~In the event the Harbormaster determines there may be grounds for suspension or revocation of a permit issued pursuant to this chapter, the Harbormaster shall give written notice in accordance with Section 1.05.030, or any successor section, of intent to suspend or revoke the permit and the right of the permittee to request a hearing before the Harbormaster within fifteen (15) calendar days from the date on which notice is deemed served. The notice shall state the reason for the proposed~~

~~suspension or revocation and shall be accompanied by any documents in the possession of the Harbormaster that pertain to the grounds for the proposed action. If the permittee does not request a hearing within fifteen (15) calendar days of the date the notice is deemed served, the decision of the Harbormaster shall be final and permittee shall not be entitled to an appeal.~~

~~17.40.160 — Appeal or Call for Review.~~

~~Appeals or calls for review to this chapter shall be made in accordance with Chapter 17.65.~~

Chapter 17.45

SANITATION

Sections:

17.45.010 Piers, Docks and Floats.

17.45.020 Required Pumpout Facilities.

17.45.030 Waste and Refuse—Small Vessel Moorage.

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, one for women and one for men, 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. Sewage Pumping Facilities. Permission may be granted to install and operate sewage pumping facilities for boats moored to shore-connected structures providing such installations are first approved by the ~~Harbor Resources Division—Public Works Department~~ and the Community Development Department.

17.45.020 Required Pumpout Facilities.

~~A. Findings and Purpose. The City Council finds and declares as follows:~~

~~1. On July 14, 1986, the City Council created the Coastal Bay Water Quality Citizens Advisory Committee (now the Water Quality/Coastal-Tidelands Committee) in response to growing concerns about the deterioration of the quality of water in Newport Bay. The Committee was specifically empowered to develop information, and make recommendations, on proposed measures to improve water quality of the bay.~~

~~2. The Committee has, since its inception, conducted monthly meetings and received testimony from representatives of the Regional Water Quality Control~~

~~Board, the Orange County Health Department, the Harbor Master, businesses that utilize Newport Bay, and experts in the field of water quality.~~

~~3. The Committee has determined, based upon testimony presented to it, that there are valid reasons for concern about contamination of bay waters and the Pacific Ocean caused by the discharge of treated or untreated human waste from vessels using the harbor and the Pacific Ocean.~~

~~4. The United States Environmental Protection Agency has determined that recreational swimmers exposed to waters contaminated by human waste are at a higher risk of developing gastrointestinal diseases.~~

~~5. The failure to take steps to control the discharge of treated or untreated human waste into the bay and the Pacific Ocean could result in a quarantine for water contact sports, a prohibition against gathering of shellfish from the waters of Newport Harbor and the Pacific Ocean and may lead to the onset and spread of disease in humans.~~

~~6. The discharge of treated or untreated human waste into the waters of Newport Bay and the Pacific Ocean, if allowed to continue, could jeopardize the economic viability of businesses which utilize, or are located on Newport Bay and the Pacific Ocean, and severely restrict recreational use of the bay and the Pacific Ocean.~~

~~7. The number of public pumpout facilities in Newport Harbor to serve the number of vessels using the harbor and the location of those facilities are not convenient to a large number of vessels that require pumpout of holding tanks. Substantial quantities of human waste have been discharged directly into the bay because of the lack of adequate pumpout facilities.~~

~~8. The heaviest commercial users of the bay, and those which have the greatest need for adequate pumpout facilities, are sailing clubs, marine activity permittees, and certified charter operations that load and unload passengers at the docks of harbor permittees located in commercial zones.~~

~~9. The installation and use of pumpout facilities by the heaviest commercial users of Newport Bay will help insure that bacteria, coliform and human pathogen levels remain below those which would cause the adverse impacts described in this section.~~

BA. Pumpout Facility Required.

1. 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 pumpout system solely for the use of vessels associated with that activity. The pumpout facility shall be installed on dock space under the control of the club or permittee with convenient access to all vessels, owned, leased or chartered by the club or permittee. The pumpout facility shall have a capacity commensurate with the capacity of the holding tanks of the vessel or vessels of the club or permittee.
 2. All pumpout facilities required by this chapter shall be installed pursuant to permit issued by the ~~Harbor Resources Manager~~ Public Works Department. Application for permit shall be made on forms prepared, and furnished, by the ~~Harbor Resources Manager~~ Public Works Department. No fee shall be charged for the issuance of the pumpout facility permit or any other permit required prior to installation.
 3. The application for permit shall be accompanied by appropriate plans and specifications setting forth in detail the work to be done.
 4. The application, plans and specifications required by this chapter shall be reviewed by the Public Works Department ~~Harbor Resources Manager~~ to determine if the proposed work meets all requirements of this chapter and other provisions of this ~~Newport Beach Municipal~~ Code. The ~~Harbor Resources Manager~~ Public Works Department shall issue the permit if the proposed pumpout station complies with all applicable ordinances, rules and regulations. A separate permit will be required from the Building Official prior to installation of the pumpout facility.
- ~~€5.~~ Maintenance. Permittee shall maintain the pumpout facility in good condition and repair at all times.

17.45.030 Waste and Refuse—~~Small Vessel Moorage~~.

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 ~~head, toilet or similar facility—~~ marine sanitation device on a vessel into the waters of Newport ~~Bay 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 ~~head (toilet) or receptacle~~ marine sanitation device for human body wastes in the waters of Newport ~~Harbor~~**Bay** or the Pacific Ocean unless it complies with all applicable Federal, State, County and City standards.

2. Marina Pumpout Facilities. The owner and operator of every commercial marina with a capacity of fifty (50) or more vessels shall provide a permanent holding tank pumpout 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 vessels, 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 ~~Harbor Resources Manager~~
City may remove the same with or without notice, ~~at his or her option,~~ and the cost thereof may be recovered from any person owning the same, or placing or causing it to be placed on the shoreline, in a civil action.

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 Required for Harbor Structures.**
- 17.50.020 **Applications, for Harbor Development Permits.**
- 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 Required for Harbor Structures.**

A. New Construction. Except as provided in subsection (C), no person or agency shall build, cause to be built or perform any new construction maintain, extend or make structural alterations on any building, pier, piling, bulkhead, sea wall, reef, breakwater, or other structure 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 written “hHarbor Construction dDevelopment pPermit” and approval in concept from the City. Painting, replacement of rub-rails, and work considered cosmetic in nature may not require a permit and may be governed by State and Federal environmental policy and law.

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

CB. 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

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

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

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

17.50.020 Applications ~~for Harbor Development Permits.~~

A. ~~Required Forms~~Application. Application for a harbor development permit, variance or approval in concept, ~~authority to erect, revise and do maintenance work on structures~~ shall be filed ~~in the office of~~with the Community Development Department ~~and the Public Works Department~~ in writing on forms prescribed by the ~~Community Development Department~~ its Building Official. ~~Plans showing the location, extent and character of the proposed work and required fees shall accompany the application. The department that receives the application shall not issue a permit or approval in concept without prior approval of the other departments.~~

B. Required Materials. Applications shall be accompanied by all plans, maps, and other materials required by the prescribed forms, unless specifically waived by the ~~department~~Building Official. The ~~department~~Building Official may request additional materials deemed necessary to support the application. Plans accompanying the application must comply with the Newport Beach Administrative Code adopted by the City ~~of Newport Beach~~. 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.

C. Required Signatures. ~~The a~~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. The application must be signed by the ~~harbor-
permittee-~~ applicant or his or her authorized agent.

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

17.50.030 Processing of Application.

A. The application and plans and specifications shall be reviewed by the ~~Public-
Works-Director and~~ Community Development Department, Public Works
Department, and other City departments, as necessary, -as determined to be-
appropriate to determine whether the proposed work-development meets all the requirements of this Code, 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 City 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
City issuing the approval in concept or harbor development permit. The following
is a 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 prior to the applicant applying for a coastal
development permit. The City will require Pproof of prior approval of a
coastal development permit by the Coastal Commission, when applicable, from
the California Coastal Commission shall be required before issuing the issuance
of a harbor development ny 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, Pproof of prior approval of the U.S.
Corps of Engineers will- 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

tideland's prior to the issuance of an approval in concept or harbor development permit. When required, P~~proof of prior approval of the County of Orange will-shall be required before the issuance of an approval in concept or harbor development permitwhen work extends over County tidelands.~~

4. Approval in Concept. All development in areas where the Coastal Commission retains coastal development permit authority shall require conceptual approval from the Public Works Director prior to application to the Coastal Commission.~~An approval in concept from the Public Works Department~~ that indicates the proposed development conforms in concept to all applicable provisions of this title only and does not provide approval for any applicable land use and property development regulation.

~~C. Before issuing a permit for any work on oceanfront beaches or for any unusual type of harbor structure, or for a structure on which the applicant proposes a use that is not in keeping with the surrounding area, all property owners or long-term lessees within three hundred (300) feet of the proposed work shall be notified in writing by the Public Works Department of the pending application. Notice will be sent at least ten (10) calendar days prior to a decision by the Public Works Department, and after the department has rendered a decision. The permit shall not be issued until the appeal or call for review period provided in Chapter 17.65, or any successor chapter, expires.~~

~~DC.~~ Insurance. Prior to the issuance of a harbor development permit, the applicant ~~will-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. ~~The City is authorized to approve and issue new permits and revisions to existing permits that conform to the design criteria and all applicable standards and policies in conjunction with plan reviews by the Public Works Department.~~

1. Approval by City Staff.

a. Except as provided in subsection (2), the director of the reviewing department identified in Section 17.50.020(A) shall approve and issue a harbor development permit and/or approval in concept if the application conforms to the provisions of this Code, design criteria and all applicable standards and Council policies, after review and approval by other City departments, as necessary.

b. Before issuing an approval in concept 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 Public Works Director 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 by the Public Works Director.

c. The application shall be approved or denied within ten (10) days, unless both the applicant and the department consent to a later date. The director of the reviewing department shall provide notice of the decision to the applicant and publish notice of the decision for fourteen (14) days on the City's website. If no appeal or call for review of the decision is filed within the fourteen (14) days, the decision is final.

d. 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, variance, and/or approval in concept shall be referred to the Harbor Commission for a public hearing, as set forth in Section 17.05.040, to determine if a harbor development permit or approval in concept shall be issued, denied, or conditionally approved denied if:

a1. The applicant is requesting a permit pursuant to Section 17.35.020(F) or 17.35.060; does not conform to the provisions of this Code, the design criteria approved by the City Council.

b2. The proposed application is likely to create navigational congestion, or otherwise interfere with the rights of other harbor permittees within Newport Harbor, or other ocean front property owners or long-term lessees located within a three hundred (300) foot radius of the area subject to the proposed permit;

c3. The application does not conform to the provisions of this Code, the Local Coastal Program, the design criteria or other applicable standards and policies and regulations of the certified Local Coastal Program 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; or

d. 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, that 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.

B. Notice of Decision. Notice of the decision shall be posted on the City website within one day of the date of the decision. No permit shall be issued until the appeal period or call for review, in accordance with Chapter 17.65, expires.

17.50.050 Permits - Conditions.

A. In granting any such application, ~~the Public Works Director shall issue the permit or approval in concept shall be issued~~ permit to the owner or long-term lessee of the abutting upland property and ~~may impose~~ 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 the Newport Bay. The Southern California *Caulerpa* Action Team (SCCAT) shall be immediately notified if *Caulerpa taxifolia* is found.

C. Acceptance of Provisions. 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~~ Municipal Code.

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

17.50.060 Bond Requirements.

If the nature of the proposed ~~work~~ 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~~ twenty (15~~2~~0) percent of the estimated cost of the work will be required to guarantee the faithful performance of the proposed ~~work~~ 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 City-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 Public-Works-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 ~~construction permits~~ shall expire unless the ~~work-development~~ contemplated shall have been completed within one hundred eighty (180) days from the date of approval per the Newport Beach Uniform Administrative Code, adopted by the City of Newport Beach.

B. Violation of Terms. Any permit granted in accordance with the terms of this ~~Code-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, Enforcement.

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 ~~or the Pacific Ocean~~ 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 the Harbormaster 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 ~~issue an administrative citation~~ 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. Alternative Materials. The Building Official's decision on use of alternative materials in accordance with the "Alternative Material, Design and Methods of Construction" shall be made in accordance with Chapter 15.80.

B. Except as provided in subsection (A), all other~~A~~ appeals or calls for review 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

~~17.55.050 Rights of Appeal or Calls for Review~~

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. ~~In order to~~To establish that the functional capacity is being maintained, the applicant must demonstrate all of the following:

1. ~~That~~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. ~~That~~The project does not harm or destroy a species or habitat that is rare or endangered;

3. ~~That~~The project does not harm a species or habitat that is essential to the natural biological functioning of the wetland or estuary; and

4. ~~That~~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 makes the findings set forth in Section 17.05.140-(D)(1).

Chapter 17.60

HARBOR PERMITS AND LEASES

Sections:

17.60.010 ~~Permits and~~ Public Trust Lands ~~Leases~~ — General.

17.60.015 Application for Harbormaster Permits.

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

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17.60.050 Houseboats.

17.60.060 Leases/Permits of Public Trust Lands.

17.60.080 — ~~Appeal.~~

17.60.010 ~~Permits and~~ Public Trust Lands ~~Leases~~ — 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.

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 tideland to be leased for residential purposes for rolling fifty (50) year lease terms.

2. Balboa Bay Resort. The Beacon Bay Bill (Chapter 74 of the Statutes of 1978) and Assembly Bill 3139 (Chapter 728, Statutes of 1994) allow Parcel D of the Balboa Bay Resort to be leased for residential purposes until December 31, 2044.

3. Harbor Island. Chapter 715, statutes of 1984 allow the filled or reclaimed land on Harbor Island to be leased for nonpermanent recreational and landscaping purposes for a term no greater than forty-nine (49) years.

~~The State of California became the owner of tidelands on admission to the Union in 1850. The City manages those tidelands pursuant to various legislative grants from the State. The State Lands Commission, which administers tidelands, generally requires a trustee to negotiate leases on the basis of the current market value of the parcel. Failure of a trustee to receive consideration approximating the fair market value of leased tidelands could, under certain circumstances, be considered a violation of the legislatively imposed public trust. The City manages the tidelands through a series of permits, franchises and leases. The Public Works Director shall have the authority to approve, conditionally approve, or disapprove applications for the uses and activities that require a harbor permit by the individual chapters of this Code, unless the authority is specifically assigned to the City Manager, Harbormaster, Harbor Commission or the City Council.~~

17.60.015 Application for Harbormaster Permits.

A. Required Forms. Except for marine activities permits, live aboard permits, and approvals in concept/harbor development permits issued pursuant to Chapters 17.10, -17.40, and 17.50, 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 a permit to be 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 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 Permits.

- A. Required Forms. Applications for permits or leases which pertain to ~~the~~ Newport Harbor under the provisions of this ~~title~~ 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. 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 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, Subsection 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.

~~1. Rental Fee Required.~~ 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 ~~harbor structures 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 owner(s) or occupant(s) of the abutting property~~ 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 the Promontory Bay and the 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). ~~Upon the effective date of this chapter, a~~ A mooring permittee may hold up to two (2) mooring permits at any time. A mooring permittee that held or continues to hold ~~holds more~~ held more than two (2) mooring permits prior to May 11, 2017 ~~the effective date of this chapter~~ 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, except as noted in subsection (B)(3)(f) 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 as of May 11, 2017. ~~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 annually 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 ~~Yacht Club and the Balboa Yacht Club~~. An application and applicable fee for a multiple vessel mooring system shall be submitted in writing to the Harbormaster, who shall evaluate the application based upon standards ~~he or she shall have 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) natural 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, naming the City as an additional insured- on a vessel as may be determined by the ~~City's~~ 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; ~~and~~

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 and 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 May 11, 2017. the enactment of the amended ordinance codified in this section. These designated mooring areas may not be expanded. The boundaries of these mooring areas are graphically depicted by National Oceanographic and Atmospheric Administration (“NOAA”) Chart Number 18754. Yacht clubs shall be entitled to a maximum number of moorings as can be accommodated in the mooring fields designated in NOAA Chart Number 18754 and at a minimum the current number of moorings assigned to them as of the effective May 11, 2017. date of the ordinance codified in this section.

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 ~~ten (10) percent~~ 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 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 may be 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 a shore mooring, a photograph of the new assigned vessel if it is not subject to vessel registration laws; 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-rental charge fee; and

d. The transferor represents that he/she/it/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 ~~rental advance charge~~ 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 ~~rental advance charge~~ 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)(e) of this section, ~~City~~ the Harbormaster shall have the authority to assign vacant moorings to sub-permittees pursuant to the following provisions:

1. Deemed Vacant Moorings. ~~City~~ The Harbormaster may assign deemed vacant moorings through the issuance of sub-permits at ~~its~~ 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 ~~City~~ 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)(9), 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 (E) of this section.

2. Noticed Vacant Moorings. ~~City~~ The Harbormaster may assign noticed vacant moorings ~~at its own discretion~~ through the issuance of a mooring sub-permit for any period of time, up to the reoccupation date on 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 ~~City~~ 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 ~~City~~ 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 current 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 will 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 will 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 the ~~Newport Beach~~ City Council;

7. ~~Live-aboards Sub-permittees~~ may ~~be temporarily permitted as sub-permittees stay aboard the vessel~~ pending vessel inspection, for a period not to exceed fifteen (15) days in any twelve (12) month period. The Harbormaster may grant any extension(s) beyond fifteen (15) days;

8. 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;

9. Subject to the Harbormaster's approval, a mooring may be loaned ~~free of charge~~ by the mooring permittee to a vessel other than the assigned vessel subject to all provisions of the sub-permittee rental agreement including payment of sub-permit fees; ~~for no more than thirty (30) consecutive days;~~ provided, that:

a. The mooring permittee provides the Harbormaster with written notice identifying the vessel that will use the mooring;

b. ~~The mooring permittee has not loaned the mooring for more than sixty (60) days in the twelve (12) month period that immediately precedes the commencement of the current mooring loan;~~

~~e. The vessel owner requesting a loan has not previously been the recipient of loans for more than ninety (90) days in the previous twelve (12) months; and~~

~~db.~~ The vessel owner authorizes the City, or its designee, to move the vessel on the mooring to another location when deemed necessary by the Harbormaster.

I. Mooring Permit Transfer Nonrefundable ~~Rental Charge 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 charge represents a one-time nonrefundable ~~rental advance~~ transfer fee for the use of a mooring. A mooring permit transfer ~~charge 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.

~~1. — Grounds for Revocation. A mooring permit or sub-permit may be revoked upon any of the following grounds set forth in Section 17.70.020, or any successor section, 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;~~

~~b. — The mooring permittee or sub-permittee has failed or refused to allow an inspection of the vessel to determine if it is seaworthy and operable, a public nuisance or in compliance with applicable marine sanitation device requirements;~~

~~c. — Living aboard a vessel assigned to a mooring without a live-aboard permit unless otherwise noted in subsection (G) of this section;~~

~~d. — When the mooring permittee or sub-permittee fails to pay any mooring rent or fee when due and is in arrears for a period of sixty (60) days or more; or~~

~~e. — When the mooring permittee has sublet their mooring in violation of this title.~~

~~2. — Notice and Hearing. In the event the Harbormaster determines there are grounds to revoke a permit issued pursuant to this chapter, the Harbormaster shall proceed in the manner described by Section 17.70.020, or any successor section.~~

~~3. —~~ 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.

~~4.~~ 3. During any revocation proceeding ~~under this subsection~~, 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 may be publicly auctioned by the City, or the City's designated representative, or the mooring 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.

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 appropriate 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 (a) the required mooring size of a particular vessel, (b) 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 17.05.040 (D) 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 the Harbor Commission for the row or mooring area in which the vessel will be moored, and (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 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.

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, 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

(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, ~~or~~ permittee’s or lessee’s guests, invitees, sublessees, or licensees ~~occupancy or use~~, 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 ~~in~~ 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.

17.60.080 — Appeal.

~~Notwithstanding Chapter 17.65, appeals under this chapter involving any permit or lease shall be processed as follows:~~

~~A. — Time Limit. Appeals shall be initiated within twenty one (21) calendar days of the decision under appeal.~~

~~B. — Initiation. Appeals shall be made in writing to the City Clerk and shall be accompanied by a fee established by resolution of the City Council. The appeal fee shall be refunded to the appellant if he or she is successful in their appeal under this section (e.g., decision being appealed is reversed).~~

~~C. — Effect on Decisions. Decisions that are appealed shall not become effective until the appeal or review is resolved.~~

~~D. — Hearing Date. Appeals shall be scheduled by the Public Works Director and/or Harbormaster, as applicable, for a hearing before an independent hearing officer within thirty (30) days of the filing of the appeal unless both appellant and City consent to a later date.~~

~~E. — Hearing. At the hearing, the hearing officer shall review the record of the decision and hear testimony of the appellant, the applicant and any other interested~~

~~party. The hearing officer shall consider only the same application, plans and project related materials that were the subject of the original decision.~~

~~F. — Required Findings. At the hearing, the hearing officer shall make the findings prescribed in this chapter when affirming, modifying or reversing the original decision.~~

~~G. — Decision and Notice. After the hearing, the hearing officer shall affirm, modify or reverse the original decision. When a decision is modified or reversed, the hearing officer shall state the specific reasons for modification or reversal. Decisions on appeals shall be rendered within thirty (30) calendar days of the close of the hearing. The Public Works Director and/or Harbormaster, as applicable, shall mail notice of the hearing officer's decision. Such notice shall be mailed within five working days after the date of the decision to the applicant and the appellant. The decision of the hearing officer shall be final.~~

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 for the issuance or denial of a permit that is subject to appeal may be appealed to the Harbor Commission by the applicant. All other decisions of the Public Works Director, Community Development Director and/or Harbormaster for the issuance or denial of a permit 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 Code where the Code assigns such authority to the Harbor Commission. 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 of decisions of the Public Works Director, Community Development Director and/or Harbormaster shall be made in writing to the City Clerk on forms provided by the City Clerk. Appeals or calls for review of decisions of the Harbor Commission 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. 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 ~~appellate or review~~ing body within ~~thirty-fourty-five (3045)~~ days of the filing of the appeal or call for review unless both ~~applicant and~~ appellant ~~or review body and the City Manager~~ consent to a later date.

B. Notice and Public Hearing. An appeal or call for review hearing shall be a public hearing. ~~if the decision being appealed or called for review requires a public hearing. Notice of a public hearings shall be given in the manner required for the decision being appealed or called for review. 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 review hearing, the ~~deciding~~reviewing body shall consider ~~only the same~~the application, plans and project-related materials that were the subject of the original decision.

D. Hearing.

1. At the hearing, the ~~deciding~~reviewing body shall review the record of the decision and hear testimony of the appellant, ~~if any, the applicant~~ and any other interested party. An appeal or call for review shall be de novo.

2. The failure of the appellant 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 ~~deciding~~ reviewing body shall make the findings prescribed in Section 17.05.140(1) ~~the individual chapters of this Code~~ 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 appellate (or the reviewing)~~ body shall issue a written decision within a reasonable time. ~~affirm, modify or reverse the original decision. When a~~ The written decision is modified or reversed, the appellate (or reviewing) body shall state the specific reasons for the decision. ~~modification or reversal. Decisions on appeals shall be rendered within thirty (30) days of the close of the hearing. and shall be served on the~~ The written decision shall be served on the appellant in accordance with Section 1.05.030. ~~The Public Works Director and/or Harbormaster, as applicable, shall mail notice of a Harbor Commission decision and the City Clerk shall mail a notice of a City Council decision. Such notice shall be mailed within five working days after the date of the decision to the applicant and the appellant, if any.~~

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.

17.70.040 Other Remedies.

17.70.010 Declaration of Nuisance—Abatement.

Any building, ~~or~~ 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~~shall, ~~upon order of the City Council, immediately~~ commence action or proceedings for the abatement and removal and injunction thereof in the manner provided by law, and ~~shall~~may take such other steps and ~~shall~~ apply to such courts as may have jurisdiction to grant such relief as will abate and remove such building, ~~or~~ 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 s for Revocation.

1. General Grounds for Revocation. ~~Unless otherwise provided by the terms of a permit or this title, a~~Where~~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 in the waters of Newport Harbor or the Pacific Ocean may be revoked by the Harbor Commission upon any of the following grounds, in accordance with the provision of this section:~~

1a. The development work, structure, use or activity has become detrimental to commerce, navigation or fishing;

2b. The development work, structure, use or activity is detrimental to the use, operation or development of ~~the harbor~~ Newport Harbor or the Pacific Ocean;

3c. The development work, structure, use or activity has become a source of pollution of ~~the harbor~~ Newport Harbor or the Pacific Ocean;

4d. The development work, structure, use or activity does not comply with the permit or does not meet the standards adopted ~~by the Harbor Commission~~ for such development work or structure;

5e. The permittee has failed for a period of sixty (60) days to pay any rent or the fee or fees heretofore or hereafter imposed for the occupancy or use of tidelands, filled tidelands or submerged lands ~~upon which such development work or structure exists~~;

6f. The development work or structure has fallen into a state of disrepair;

7g. 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;

8h. 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;

9i. 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 this chapter and/or resolution of the City Council;
- 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 or sub-permit may be revoked upon any of the grounds set forth in Section 17.70.020(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 sub-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(G);
- d. The mooring permittee has sublet their mooring in violation of this title.

B. Notice and Hearing.

1. a. General Notice and Hearing Procedures. Except as provided in subsections B(2) and (3), ~~Any revocation such permit shall be revoked only after~~ shall require a public hearing before the Harbor Commission at which the permittee has an opportunity to be heard. At least ~~fifteen~~ **fourteen calendar** (145) days' notice of such hearing shall be given in ~~writing by first class mail with postage prepaid addressed to the address of the permittee shown on such permit~~ **accordance with Section 1.05.030**, setting out the date, time and place of hearing, and specifying the facts which constitute **the** grounds for revocation.

b. The Harbor Commission ~~may shall~~ preside over the hearing ~~or, in the alternative, appoint a Hearing Officer to conduct the hearing, receive relevant~~

~~evidence and to submit to the Harbor Commission findings and recommendations to be considered by the Harbor Commission. The Harbor Commission may continue a hearing from time to time and request additional information from city staff or the permittee before shall rendering its decision. The permittee's nonappearance at the hearing shall constitute a failure to exhaust his or her administrative remedies. within forty five (45) days from the date of the hearing or, in the event that a Hearing Officer has been appointed, within forty five (45) days from the date on which the Harbor Commission receives the findings and recommendations of the Hearing Officer. The decision of the Harbor Commission shall be final.~~

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, 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. The notice shall state the grounds for revocation, the effective date of the decision, and the right of the permittee to appeal the decision to the Harbor Commission.

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 ~~ten days~~ a reasonable time of the conclusion of ~~the 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 ~~fourteen (14) days after the date of decision, once the time period for an appeal or call for review has expired. unless appealed or called for review.~~

~~E. Rights of Appeal or Call for Review. Appeals or calls for review shall be as prescribed by Chapter 17.65, or any successor chapter.~~

17.70.030 Impound of Vessels.

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, levies, 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. These vessel or structure is deemed abandoned under this Code.

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.

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

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 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**.

Biddle, Jennifer

From: Jacobs, Carol
Sent: Monday, April 15, 2019 4:43 PM
To: Title 17 Review
Subject: Title 17 Comments

I spoke today to Mr. Tom Hynes who lives at 219 19th Street. He believes that the City has taken away a great public access when they put the “No Fishing” signs on the 19th Street dock. He would like to see fishing allowed on the dock. In addition, he would like to see enforcement on dinghy’s by chaining up boats and not hire any additional staff.



CAROL JACOBS

Assistant City Manager
cjacobs@newportbeachca.gov
949-644-3313

Biddle, Jennifer

From: Sunny Smith <sundialsunny@gmail.com>
Sent: Saturday, April 06, 2019 4:49 PM
To: Title 17 Review
Subject: Balboa island Channel

Thank you for all the fine work you do to keep our precious harbor safe and beautiful.

There is, however, one area that desperately needs your attention. That is the Balboa Island north channel. As you know, there is beachfront along the entire north bay front which makes it ideal for swimmers - many of whom are children. In summer months, there is almost a steady parade of boats - many 30' and over - motoring through the channel, down to the bridge and back. What is most frightening is that there seems to be a total disregard for the speed limit by these vessels, many of which are crowded with revelers. Needless to say, it is terrifying to be swimming around the bay only to look up to see a 25-35' power boat bearing down upon you.

We've called the Harbor Patrol numerous times but usually receive the same response: "By the time we get there, the boat will be gone."

Couldn't this channel be "off limits" to vessels over a certain size? And couldn't we occasionally have an officer ticketing those who ignore speed limits? There must be some measures that could be taken to make this lovely area fun and safe for us ALL.

Thank you again for your diligence and thank you for your consideration of this vital issue.

Sincerely;

Sunny Smith
Balboa Island Resident (24 years)

Sent from my iPad

Biddle, Jennifer

From: Sally Peterson <spete@att.net>
Sent: Monday, April 08, 2019 10:44 AM
To: Title 17 Review
Subject: 17.01.030G3

Since I am unable to attend tonight's meeting, I submit the following statement which I would hope will be entered into the discussion:

I do not feel that the current liveaboards are being monitored to prevent discharge into the bay and late night engine and generator noise. Until the City develops a plan and has sufficient staff to monitor such, the City should not extend the allowable stays by redefining live aboard.

Thank you for the opportunity to provide input.

Sally Peterson
Balboa Island Resident

Biddle, Jennifer

From: Mary Nasser <mary90403@gmail.com>
Sent: Saturday, April 13, 2019 4:54 PM
To: Title 17 Review
Subject: Harbor master meeting

I cannot attend the meetings, but I concur with those who believe large boats should not be allowed passed a certain point on the back side of balboa island.

Thank you very much,

Mary Nasser
Homeowner in Balboa

Biddle, Jennifer

From: airtimesports <airtimesports@aol.com>
Sent: Friday, April 05, 2019 10:14 AM
To: Title 17 Review
Subject: Thank you for this invitation,

1. 19th st public dock.

A. Many dinghies out in violation of 72 hr limit.

B. 19th st dock needs to be extended @ 10' into

the bay so that dinghies can make their way to the 72 hr area (back side) at low tide. Now at low tide you can not get in or out of that area.

2. Harbor use, recreational and live aboard.

A. With more and more people using the harbor each year, the key is not more restrictions, but better management.

B. mooring holders should have permits for the 72hr area at the public docks. that area should be for those permits only.

C. live aboard permits should be for 12 months,

The city should have a use permit for people like my wife and I who like many others have boats on moorings and live out of the area, and like to come to Newport and stay on their boats. I would suggest the use permit would allow 7 days per month and the boat would have to comply with pump out regulations and be inspected for compliance.

Thanks again for including my input.

My family and I have lifetime residents of this great town

John and Grace Robert's. Mooring k 12

Sent from my Verizon, Samsung Galaxy smartphone

Biddle, Jennifer

From: Jim Mosher <jimmosher@yahoo.com>
Sent: Tuesday, April 09, 2019 11:48 AM
To: Title 17 Review
Subject: Title 17 revisions: there is no "Fish and Wildlife Code"

Carol,

If I ever have a chance to review Title 17 more thoughtfully, I will undoubtedly have more comments, but before I forget, there was at least one error in the [suggested correction](#) on "**handwritten page 6**" last night in the recommended changes to the definition of "Commercial Fishing Vessel" (a term used only once, in [Sec. 17.25.010.A.2](#)).

Although the California "Department of Fish and Game" *has* [changed its name](#) to "Department of Fish and Wildlife," so that change is correct, **the code** (of which it is a small part) **is still the "[Fish and Game Code](#),"** so that name should *not* be changed.

Also, I'm not certain the specific code section referred to is the one intended. [FGC Sec. 7880](#) has to do with the *display* of the registration number.

The actual process of registering a vessel for use in commercial fishing is in [FGC Sec. 7881](#), and that seems more likely what was intended.

However, I'm not sure registering a vessel ensures one has the "permit" that seems to be referred to at the end of the definition. Commercial fishing licenses are covered in FGC [Secs. 7850 et seq.](#)

Unrelated to the above, I was also surprised by the suggested changes to the sentence on handwritten page 12 saying "*Vessels may extend channelward of the pierhead line by the maximum beam of the vessel.*" It seems to me that is the statement of a *regulation*, and has nothing to do with *defining* what a "pierhead line" is. I would hope the allowable amount of overhang is dealt with elsewhere. So rather than trying to revise that sentence, I would have deleted it (making sure overhang *is* dealt with in the "Berthing" regulations -- specifically [Sec. 17.25.020.C](#)).

Finally, as I expressed to the Harbor Commission at their last meeting, I am a bit disappointed in the decision to bring the revisions to the City Council in two parts, which precludes the possibility of comprehensively rearranging Title 17 as a whole into a more logically organized and readable form.

It also means the Council will be asked to approve some of the definitions before considering the code in which they are used.

-- Jim Mosher

Biddle, Jennifer

Subject: FW: Phone message - input for Title 17 meeting regarding live-aboards

From: Oborny, Shirley

Sent: Friday, April 5, 2019 5:50 PM

To: Jacobs, Carol <cjacobs@newportbeachca.gov>

Subject: Phone message - input for Title 17 meeting regarding live-aboards

Hi Carol,

Mr. James Woodworth called to leave his input. I asked him if he was attending the meeting and he said he was; however, the last time he stood up and spoke out against live-aboards, they keyed his car and did some other damage to his property.

He lives at 15th and Bay. He also owns three moorings. He is against live-aboards for the following reasons:

- He feels about 70% of them are not good people; and
- They're one step away from being homeless, which brings about the same kinds of issues with the homeless – more thefts in the neighborhood, scavenging through the trash, leaving litter on the docks, drug dealing, etc.

If you need to reach him his number is 949-903-2628.

Thanks Carol,

Shirley Oborny

Executive Assistant to the City Manager

City of Newport Beach

100 Civic Center Drive, 2nd Floor, Bay E

Newport Beach, CA 92660

949-644-3001 Office, 949-644-3020 Fax

www.newportbeachca.gov

Biddle, Jennifer

From: Heidi Hall <hhatcl@outlook.com>
Sent: Tuesday, April 02, 2019 10:27 AM
To: Title 17 Review
Subject: 17.30(b)

Dear Harbormaster,

I am unable to attend the meeting, but I do have a concern that is extremely important and should be addressed at your meeting. It impacts the lives of people swimming, kayaking, paddle boarding, and generally enjoying the inside channel around Balboa Island. I have lived on Balboa Island for 50 years.

As a child we would swim out in the channel beyond the buoys between the offshore moored boats off Collins Avenue and South Bayfront. We knew we were safe swimming in the inside channel because the larger boats were restricted to come down that channel. We would swim for hours and play on our old surfboards, seeing how many people we could fit on one and still stay afloat until we tipped the scales and all fell off laughing and coughing up water. We played on blow-up rafts and just floated with our eyes closed holding on to the other rafts in tandem. We played sponge tag and while we warmed ourselves in the hot sand, we watched our mothers, aunts, neighbors and grandmothers swim out to the channel so they could just float together and talk beyond our ears. We did this for hours on end every day in the summer and late spring.

As the year progressed the larger boats started encroaching on the inside channel. I am not sure when that restriction was no longer enforced. As I and hundreds of others paddleboard around the Island, we are constantly subject to the larger boats looming down on us and to be honest, most of them are not even paying attention to what and most importantly who is on the water in front of them. I've seen some close calls where boats have had to either slam it in reverse suddenly or veer off to avoid running over a small children who were playing in the water in front of their vessel. You use it every day and especially on the weekends. That happens a lot with these rented Duffy's as well. You've probably witnessed these incidents yourself when you are out enjoying the water.

These hazardous situations can and should be easily avoided; as well as a law suit to the City. Many big, and I mean 30' – 60' boats cruise through the inside channel every weekend when most of the human activity is in the channel.

Boats use to only be allowed in the inside channel if they were going to or leaving their moorings. Let's be a smart and pro-active City and make the inside Channel all the way around the Island safe for the hundreds of children, youngsters, teens and adults to enjoy again without fear of being run over by an skipper not paying attention and potentially and realistically being impacted with the reality of an oncoming propeller. A reality each party will have to live with for the rest of their lives, and you too.

The courtesy of a reply is requested. Thank you for your consideration.

HIS,
Heidi Hall
949-285-1145
hhatcl@outlook.com

Courage does not always roar. Sometimes it is a quiet voice at the end of the day saying, "I will try again tomorrow". May
Ann Radmacker

Biddle, Jennifer

From: Buzz <buzzlaw@buzzperson.com>
Sent: Monday, April 01, 2019 8:25 AM
To: Title 17 Review
Subject: typos.. or little fixes...

Do you mean "LoA" in 17.01.030 R.2. I have always seen it as "LOA."

The added language to 17.25.10 C.1.f needs to be cleaned up a bit....

vessels tied up or secured in marked areas designated for **either twenty-four (24) hours or seventy-two (72) maximums** may not continue to use that same dock area beyond those established periods by relocating

Perhaps with "either twenty four (24) hour or seventy two (72) hour maximums."

Biddle, Jennifer

From: Atef Rafla <araflamd@gmail.com>
Sent: Thursday, March 28, 2019 8:23 PM
To: Title 17 Review
Subject: Comments on Title 17

Please do something about the eye soars of the abandoned boats and the non maintained boats that are occupying different moorings , obviously owners don't care , so city has to confiscate and get rid of them at owners expense its a health and environmental hazard along with giving /Newport harbor a bad reputation and

ATEF RAFLA MD

2019 TITLE 17 HARBOR UPDATE PUBLIC COMMENT

BY BRIAN H. OUZOUNIAN

1222 E. BALBOA BLVD., BALBOA, CA 92661

310-466-7960

EMAIL:brian.oci@sbcglobal.net

04-08-19

-REVIEW AND REVISE MOORING RATES TO BE IN LINE WITH STATE LANDS COMMISSION STATE SURVEY. I HAVE THE DOCUMENTS FOR YOU IF DECISION MAKERS AND I COULD MEET TO DISCUSS MY FINDINGS. CURRENTLY THE STATE LANDS COMMISSION SURVEY SHOWS \$.337/SF AND WE AS A CITY ARE OVERCHARGING IN THE DOUBLE DIGITS. BECAUSE NEWPORT BEACH IS AN AFFLUENT AREA THERE SEEMS TO BE A PERCEPTION THAT WE ARE ENTITLED TO CHARGE MORE BUT THIS IS AN INCORRECT PERCEPTION. THE SLC HAS THE DUTY TO ASSURE THAT NO HARBOR OVERCHARGES THE CALIFORNIA BOATING PUBLIC NOR GIFTS THEM RATES BECAUSE THE RATES ARE TO BE "FAIR" UP AND DOWN THE STATE. A RETRO CORRECTION (CREDIT) SHOULD ALSO BE MADE FOR THE OVERCHARGING THAT HAS TAKEN PLACE. THE CITY COUNCIL VOTE A FEW YEARS AGO THAT WAS A POLITICAL VOTE, NOT ONE BASED UPON FAIRNESS.

-HARBOR USERS THAT CREATE WAKES IN THE HARBOR, ESPECIALLY RENTAL VESSELS, DAMAGE PRIVATE PROPERTY AND DOCKS. MORE PATROL AND VIOLATIONS WRITTEN ARE NEEDED, ESPECIALLY EAST OF THE FERRY TO ALL OUTBOUND AREAS PRIOR TO THE JETTY. RENTAL WAVERUNNERS SHOULD BE DIRECTED TO USE THE MAIN CHANNEL FOR OUTBOUND AND INBOUND TRAVEL, WHEREBY REDUCING EXCESSIVE WAKES ON PRIVATE DOCKS. IMPROVEMENT OVER THE WAKE PROBLEM IS NEEDED DURING THE TWO PARADES, 4TH OF JULY AND CHRISTMAS AS TO WAKE MANAGEMENT AND SUMMER MONTHS.

-RELOCATIOTN OF THE WHITE SEA BASS PEN. THIS WAS SUPPOSED TO BE TEMPORARY BUT HAS "SQUATTED" PERMANENTLY IN THE PRESENT LOCATION IN THE "A" MOORING FIELD.

-RELIEF IS NEEDED FOR THE DREDGING FOR BAYFRONT HOMEOWNERS THAT PERIODICALLY NEED TO HAVE DREDGING OF SAND TO SUPPORT STRUCTURAL BULKHEADS FRONTING THE HARBOR AND TO ALSO LOWER THE SAND LEVEL FOR VESSELS IN THE DOCKS TO KEEP THEM ABOVE THE RISING BOTTOM. THE NOBLE PRIVATE DREDGERS COMPLAIN ABOUT THE PROCESS CONSTANTLY AND THE COST TO THE BAYFRONT HOMEOWNER IS EXCESSIVE DO TO A BURDENSOME PERMIT PROCESS. THERE HAS TO BE A PARTNERSHIP OR MAYBE THE DREDGING IS SOMETHING THAT THE CITY SHOULD UNDERTAKE FOR THE HOMEOWNERS.

-AS TO DOCK REPAIR AND REPLACEMENT, THE SYSTEM IS A HUGE BURDEN BOTH IN COST AND SCHEDULING. MY RECENT REPLACEMENT TOOK 3.5 YEARS TO PROCURE. BETTER ASSISTANCE IS NEEDED FOR PRIVATE PROPERTY OWNERS TO IMPROVE THEIR DOCKS AND WATERFRONTS

-VACANT MOORINGS ALLOW FOR MORE VISITORS ACCESS TO MOORINGS. THERE SHOULD BE A LOWER FLAT RENTAL RATE FOR PERMITEES THAT HAVE LONG TERM VACANCY DUE TO VESSELS OUT TOURING OUR COAST OR OTHER DESTINATION. A SYSTEM OF CHECKING IN AND OUT WOULD BE ENVISIONED.

Comments on May 6, 2019, Title 17 Review

These comments on the Harbor Commission's [review by committee](#) are submitted by: Jim Mosher
jimmosher@yahoo.com , 2210 Private Road, Newport Beach 92660 (949-548-6229)

The presentation of the results of the April 8 public meeting in the form of a [transcript listing public comments and committee responses](#) provides an excellent record of the public portion of the process, which is very clear even to those who were not able to be present. The disclosure of the committee's subsequent private review of the comments is less satisfactory, with the logic and discussion that led to their recommendations rarely being obvious.

Regarding the specific topics listed in the transcript and their subsequent handling in the [proposed revisions](#):

Applicant definition

This definition has gone from bad to worse.

At the April 8 public meeting, the committee questioned the purpose of the final phrase "as defined further herein," which in the original definition appeared to apply to the word immediately preceding it ("person"): a word that is, indeed, further defined in Sec. 17.01.030.M.4 (very broadly, including "any legally recognized entity").

"as defined further herein" might, arguably, but a bit less plausibly, have also been intended to apply to the words "business" and "vessel," since the code offers separate definitions of those.

With the committee's original insertion of "applying for any permit in or on Newport Harbor" it now appears to apply to the term "Newport Harbor"

Whatever the intent, the purpose of the definition is unclear, since the persons who can qualify as applicants are presumably intended to vary with the kind of item being applied for.

I suspect (though I have not exhaustively checked) that the term is used only in connection with the issuance of permits, so I would suggest this simplified version:

"3. Applicant. The term "applicant" shall mean a person applying for a permit under this title."

or better:

"3. "Applicant" means a person applying for a permit under this title."

with an understanding that each subsequent section of Title 17 defining a permit will specify who is eligible to apply for it.

If that is not acceptable, I would suggest deleting the phrase "as defined further herein," although that still leaves a grammatically tortured sentence of uncertain intent: for example, is it trying to say an "owner" is an "applicant" for purposes of Title 17 even if they *aren't* the person applying for the permit? If that *is* the intent, it needs to be explained in understandable language, not in a convoluted sentence whose meaning would have to be interpreted by a court.

Fairway definition

The attempt to apply the definition of “Fairway” to mooring areas has introduced what looks like an unintended grammatical inconsistency between plural (“slips”) and singular (“mooring”).

More importantly, I am unable to picture how the definition is intended to be applied to mooring areas, including those with single-point buoys. An illustration showing the area designated as the fairway would be helpful.

At least equally importantly, the term “Fairway” does not seem to be used in Title 17. So what is the purpose of the definition?

Graywater definition

It looks like the committee has added the word “interior” (highlighted in yellow) to Sec. 17.01.030.G.2.

Grammatically, I believe the insertion should read “... any portion of the **interior of a** vessel, ...”

Whatever its definition, at present the term “graywater” does not appear to be used anywhere in Title 17. Since the definition is presumably being added with an intent to impose some kind of regulation on it, the appropriateness of the definition is difficult to assess without knowing what that regulation might be.

Houseboat Definition

The “Subcommittee Review” column says *“this is a definition only. No other reference in the code.”*

The latter conclusion is incorrect. Houseboats and activity on houseboats is prohibited in NMBC Sec. 17.60.050 (Houseboats).

So the definition matters.

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I do not understand why the comment was rejected. Is the marina at Marina Park a marina?

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The term does not seem to be used in Title 17. What is the purpose of the definition?

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I continue to believe the final sentence doesn’t belong in the definition. It describes a regulation stated elsewhere in the code.

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The revised definition does not fit the grammatical pattern of the other definitions, and it now defines a sub-permit as a sub-permit. This needs work.

Vessel Length/Width definition

Definitions of two distinct terms have been confusingly combined in a single listing. Since “Length” and “Width” have no obvious connection, they should appear as separate listings. Even then, they need work grammatically.

In addition, on page 12 of [“FINALTitle17Version4second.pdf”](#), the definition of “Vessel Owner” has become item 1 in a new subsection “S”. It should be Item 3 of subsection “R. Definitions: V.” followed by a subsection “S. Definitions: W.”

Section 17.20.10.A

Similarly, on page 18, Chapter 17.20 begins with a Section 17.20.010 (Vessel Launching and Hauling) mislabeled (in red) “Section 17.20.020.”

In subsection B.3, what is “*Only human powered vessels or watercraft*” intended to mean?

“*every description of watercraft*” is already included in the Title 17 definition of “*vessel*”. Does human-powered modify only the first term? Or both? Does this now prohibit the hand-launching of a small boat, such as a Sabot, if it is subsequently operating by anything other than human power (rowing)?

Section 17.20.20.B.2

The phrase adding human-powered vessels to the others permitted in the Grand Canal could be tacked on more gracefully.

Note: the words “*having charge or possession of any vessel shall*” are missing from the sentence that ends at the bottom of page 19 and begins again at the top of page 20.

Section 17.25.10.C.f

The notation that this is under review seems to have been omitted.

Section 17.25.20 Sea Lions

The notes indicated someone was awaiting input from the Mooring Association. It is not obvious if that input was received or what it was.

General Comment

Regarding the revision process as a whole, I remain concerned about Title 17 being revised in two pieces, when a broader reorganization would seem beneficial. For example, Title 17 has a Chapter 17.60 titled “Harbor Permits and Leases,” yet permits are covered in many other chapters, including 17.10 (Marine Activities Permit), 17.50 (Harbor Development Permits) and 17.55 (Dredging Permits). Meanwhile, the permit needed to moor does not seem to be mentioned in Chapter 17.25 (Berthing, Mooring and Storage), but a live-aboard needs a permit that is explained only in the Chapter 17.40 (Live-Aboards). And the permit needed for a commercial pier seems to be in a different place from the one needed for a non-commercial pier (and not mentioned there). This does not seem logical or easy to navigate. But the problem could only be corrected by a complete re-organization of the title.

From: tomiovenitti@gmail.com
To: [Title 17 Review](#)
Cc: [Borsting, Kurt](#)
Subject: RE: Opinion title 17
Date: Tuesday, April 30, 2019 1:58:55 PM

Correction: Last sentence is Title 17 not Title 1

From: tomiovenitti@gmail.com <tomiovenitti@gmail.com>
Sent: Tuesday, April 30, 2019 1:57 PM
To: title17review@newportbeachca.gov
Cc: kborsting@newportbeachca.gov; tomiovenitti@gmail.com
Subject: Opinion title 17

Title 17 suggestions for consideration:

From:

Tom Iovenitti
1425 W Bay Ave
Newport Beach, CA 92661
949-887-0128

17.25.10 (C1- a through f)

Add/Modify/Include:

(g) For purpose of access by mooring permit holders, use of the public pier and overnight stay beyond the posted colors as designated above section (g) (to be added) in 17.25.10 (C1 a through f) of 72 hour regulation, (# TBD) long term dock permits per public pier, are available for purchase through the City Harbor Department (Cost TBD) in the amount of \$ XXXX issued for 12 months on the anniversary date and renewal of mooring permits, for ONE (1) access vessel, motorized or not, no greater than 9.5 ft in length, in serviceable condition, registered with the DMV including current annual license tags and numbers affixed to the vessel, with proper insurance on file with the NBHD, including affixed to the vessel the issued permit in a designated area (TBD) on the vessel, to be used in conjunction with other water related uses in Newport Harbor for access from a public

pier to the associated mooring. Those vessels not in compliance shall be subject to 17.25.10 (C1 a through f) as outlined in Title 1

Comments on May 6, 2019, Title 17 Review

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jimmosher@yahoo.com , 2210 Private Road, Newport Beach 92660 (949-548-6229)

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May 14, 2019

Ms. Carol Jacobs
Assistant City Manager
City of Newport Beach
100 Civic Center Drive
Bay 1B-D
Newport Beach, CA 92660

Re: Municipal Code Title 17 Update(s)

Ms. Jacobs,

I attended the ad hoc committee meeting last night regarding pending revisions to Title 17 of the municipal code ("Code"). Prior to attending the meeting, which I only recently became aware of through word of mouth, my knowledge of the Title 17 Code revisions effort was that the Harbor Commission was to focus the Code update to clear redundancies and to direct enforcement authority of the Code from the Harbor Resources Department to the newly formed Harbor Department and the Harbormaster. To my surprise I now understand that some of the revisions being discussed include the granting of additional overnight use to all of the mooring permittees (from 3 to 12 nights) and the additional residential entitlement to commercial marinas for live aboard use. As there seems to be a substantial increase of the Committees scope and the impact of its decisions, I have some follow-up requests. They are:

Notices and the Brown Act: Can you please send me the notice(s) of the meeting ("Meeting Notice(s)") which were provided to those impacted by Title 17? Can you identify all the manners in which Notice(s) were provided? Could you send me the list of those provided Meeting Notice(s)? By example I recently received a notice for the "Snowy Plover" Community Meeting [below], which is scheduled a week in advance on the same day, same time and same location. FYI, this meeting notice was mailed on the 11th of May, or 9 days prior to this meeting. Were similar Notices mailed for the previous two Title 17 meetings? In this regard please send me all of the communication, as a matter of public record on any and all meetings internal or with the general public regarding Title 17.

Commercial Marina Leases/Contracts: Based on last nights meeting, there appears to be some ambiguity amongst the Commissioners and City staff present regarding existing leases or contracts with commercial marinas as if relates to the permissibility of live aboards within commercial marinas. Has the City Attorney reviewed these leases and prepared a legal opinion on the matter of live aboards in commercial areas as provided by the existing leases or contracts? If so can you provide me with a copy of that opinion?

Residential Permit Expansion EIR/CEQA: It appears that the City is attempting to increase overnight use of moorings by mooring owners from 3 to 12 nights; this is a 300% increase in potential use. Furthermore it appears that the Committee intends to formalize and memorialize the right within Title 17 of residential live aboards in commercial marinas. It further appears that the Committee intends to out a cap on live aboards within commercial marinas of 7% of the total

square footage of the marina. When pressed to give an estimate of how many slips that additional entitlement might apply, no one on the Committee could provide me with even a rough estimate. It appears to be currently unknown how many commercial slips might be permitted/entitled by the expansion of residential live boards into commercial marinas. Consequently it is then currently unknown what impacts this change in the Code might have to parking, traffic, water quality and surrounding commercial uses.

Has the City Attorney reviewed the matter and determined whether these changes might trigger the preparation of an Environmental Impact Report ("EIR") to review the impacts of traffic (parking and ingress and egress) noise (generators) and water quality impacts. Further has the City determined that a failure to prepare the necessary studies to make these changes to Title 17 may be a violation of the California Environmental Quality Act (CEQA)?

California Coast Act/California Coastal Commission: Has the City contacted the California Coastal Commission for review, input and approval of the changes to the municipal Code being discussed by the Committee? Has the Coastal Commission been notified that that Committee is attempting to change the Code such that it is granting additional overnight usage of moorings by mooring permittees from 3 to 12 nights, a 300% increase? Has the Coastal Commission been notified that the City intends to grant an unknown residential live aboard entitlement within commercial marina's within Newport Harbor? Has the Coastal Commission been notified that no specific studies have been completed, if this is a fact, which address the impacts of the changes to the Code on the residents, traffic, parking, access and water quality?

Conflicts of Interest: At the meeting last night Commissioner Blank confirmed that he owns a mooring and in fact is a mooring permittee. Some of the changes Title 17 being discussed, changes which Commissioner Blank has had significant input and will vote on as a Commissioner (specifically the 300% increase in overnight usage by mooring permits) will have a substantial net economic benefit to those who own moorings in the harbor. Has the City Attorney reviewed these facts and determined that no conflict as it relates to Commissioner Blank's ownership of a mooring and his substantial role in pushing forward this 300% increase? Has the City Attorney reviewed whether Commissioner Blank should recuse himself from the vote and resign from this ad hoc committee?

Existing Illegal Live Aboard Moorings: A question was raised as to the removal of "Wild Waves" from its Mooring in the F field. There was a discussion as to whether this matter had been fully adjudicated by either the Superior Court. The Commissioners clearly believed the permittee still had the case under appeal and that the City had been estopped from taking any further eviction action against the permittee. You indicated this issue "*has been*" fully adjudicated and that the Wild Wave permittee had exhausted all appeal and has no further legal recourse to prevent the City from evicting the permittee from the Harbor. When did this occur, on what date? You indicated this matter was under review by the City and the Harbormaster. Does the City or Harbor Department lack the means or the political will to enforce the illegal occupancy Wild Wave? I would like a full update on the Wild Wave situation.

On a personal note, I simply do not believe that the Harbor Commission should be adding additional entitled use(s) to the mooring and commercial marinas if the Harbor Department lacks

the knowledge, skill and personal to manage the existing entitlements provided in Title 17. The continued existence of Wild Waves showcases the Departments paralysis as it relates to evicting the permitted (and other illegal live aboards, without permit). The continued occupancy of Wild Waves in Newport Harbor clearly shows that the Harbor Department has a long way to go before it can take on additional responsibilities, which would surely result if the Committee's recommendations as to the Code were allowed to stand.

I would sincerely appreciate responses to these very important questions in a timely and thorough manner. I can be reached at tlebeau@accretiverealty.com or (949) 633-5154.

Thank you,

Thomas LeBeau
Newport Harbor Resident
1324 E. Balboa Blvd
Balboa, CA 92661

cc Daine Dixon (ddixon@newportbeachca.gov)
Aaron Harp (aharp@newportbeachca.gov)
Paul Blank (pblank@newportbeachca.gov)



Western Snowy Plover Community Meeting



Join us for a presentation of the revised
Western Snowy Plover Management Plan
for East Balboa Peninsula Beaches

MONDAY, MAY 20, 2019

6 P.M. TO 7 P.M.

**MARINA PARK—EVENT ROOM (SECOND FLOOR)
1600 W. BALBOA BOULEVARD
NEWPORT BEACH, CA 92663**

City of Newport Beach
Community Development Department
Planning Division
100 Civic Center Drive
Newport Beach, CA 92660
949-644-3200

For more information, please visit
<http://www.newportbeachca.gov/snowyplover>
or contact Gregg Ramirez, Principal Planner
gramirez@newportbeachca.gov
949-644-3219

From: Tom LeBeau
To: [Jacobs, Carol](#)
Cc: [Harp, Aaron](#); [Blank, Paul](#); [Dixon, Diane](#)
Subject: Re: Title 17 Municipal Code Revisions
Date: Tuesday, May 14, 2019 1:27:53 PM

Thank you Ms Jacobs.

Sent from my iPhone

On May 14, 2019, at 1:22 PM, Jacobs, Carol <cjacobs@newportbeachca.gov> wrote:

Mr. LeBeau, thank you for your email. I have received your request and will provide a response as soon as possible.

<!--[if !vml]--><!--[endif]-->**Carol Jacobs | Assistant City Manager | City of Newport Beach**

100 Civic Center Drive | Newport Beach, CA | 92660

cjacobs@newportbeachca.gov | Phone: (949) 644-3313 | Fax: (949) 644-3020

From: Tom LeBeau <tlebeau@accretiverealty.com>

Sent: Tuesday, May 14, 2019 1:06 PM

To: Jacobs, Carol <cjacobs@newportbeachca.gov>

Cc: Harp, Aaron <aharp@newportbeachca.gov>; Blank, Paul

<pblank@newportbeachca.gov>; Dixon, Diane <ddixon@newportbeachca.gov>

Subject: Title 17 Municipal Code Revisions

Ms Jacobs,

Please see the attached letter.

Thank you.

Tom LeBeau



CITY OF NEWPORT BEACH

100 Civic Center Drive
Newport Beach, California 92660
949 644-3001 | 949 644-3020 FAX
newportbeachca.gov

DELIVERED VIA EMAIL

May 21, 2019

Mr. Thomas LeBeau
1324 E. Balboa Boulevard
Balboa, CA 92661

Dear Mr. LeBeau,

Thank you for your letter dated May 14, 2019, requesting information on a number of issues regarding the harbor and the update to Title 17 of the Municipal Code. I think it is important that I share with you that there has been no decision on any change to Title 17. These are concept meetings to gather input and all community input is welcome. I will be sharing your letter and my response with the Harbor Commission and it will become part of the public record. Your opinions on this topic are very valuable and I appreciate the time and effort you have taken to share your thoughts on this very important subject. I have responded in the same manner in which you have outlined in your letter to ensure I respond to each of your concerns.

At the February 13, 2018 City Council meeting, the City Council received a report from the Harbor Commission regarding their 2018 goals and objectives. Object 4.1 States: "Review and update City Municipal Codes, Title 17, Harbor Policies 1-5 and Marine Activities Permits". The staff report can be found here: <http://ecms.newportbeachca.gov/Web/DocView.aspx?id=1263357&page=1&searchid=50ce432d-2041-4f7f-ba6f-0a5dea719bec&cr=1>. The minutes of the meeting can be found here: <http://ecms.newportbeachca.gov/Web/0/doc/1273994/Page1.aspx>. The City Council specifically asked the Harbor Commission to review Title 17 in its entirety.

Notices and the Brown Act.

The City communicates in a variety of ways, trying to reach our residents. As explained in greater detail below, a subcommittee comprised of less than a majority of the Harbor Commission, is receiving public input on Title 17 revisions. These stakeholder meetings for the review of Title 17 are not Brown Act meetings and do not fall under the same requirements as the Brown Act. However, I want to reiterate that any and all revisions to Title 17 will be vetted at public meetings before the Harbor Commission and City Council.

We encourage residents interested in a subject area to subscribe to our e-notifications. You can subscribe here: <https://www.newportbeachca.gov/government/open-transparent/sign->

[up-for-enotification](#). You may choose the Harbor Commission and you will be notified of all information regarding the Harbor Commission. Per your request, Attachment 1 is a list of all of our public outreach efforts for these meetings.

Commercial Marina/Leases and Contracts.

At the meeting, the subcommittee asked the staff to investigate further what information is contained in the City's commercial leases and permits. I have verified the following information. The City has nine commercial marina leases, and 52 commercial marina permits, for a total of 61 properties subject to the commercial marina program. There are six other commercial tidelands leases that existed prior to the commercial marina program going into effect, and they don't have the same form lease or terms and conditions – Balboa Bay Club, American Legion, etc. All leases require the tenant to comply with the municipal code, but is otherwise silent on any specific provisions related to live-aboards.

The City Attorney is required by our City Charter (Section 421) to sign all leases and contracts. His signature indicates the contract and lease is acceptable from a legal standpoint to the City. There is no specific legal opinion on this matter.

Residential Permit Expansion EIR/CEQA

I think it is important that I explain the Title 17 review process and hopefully this will help answer your questions regarding EIR's and CEQA.

The Harbor Commission subcommittee with the approval of the Harbor Commission and the City Council embarked on a process to update Title 17. The process has been established in the following manner:

1. The subcommittee reviews the code and based on their knowledge of the harbor community propose changes.
2. The subcommittee hosts community meetings at Marina Park to gather community input.
3. In order to effectively manage the process and to try and not make a meeting go on for hours, the subcommittee separated the review into three sections: On April 8 and May 6 the community reviewed the following sections: 17.01, 17.05, 17.20, 17.25, 17.30, and 17.35. The meeting on April 8 was to review the suggestions by the subcommittee and gather community input. The meeting on May 6 was to return to the community and review those items that the subcommittee and community had suggested and discuss those changes.
4. The second round of review began on May 13 and continues June 24 following the same process as above. The sections to be reviewed are: 17.40, 17.45, 17.50, 17.55, 17.65, 17.70 and a new section on mooring extension requests. The third review will be section 17.10 and no dates have been scheduled for the public as of yet.

5. Once the community meetings are completed, the subcommittee will provide a list of recommendations to the full Harbor Commission. I would expect lots of great discussion and would hope that everyone who has an interest in this topic will let the Harbor Commission know their thoughts.
6. The Harbor Commission will make recommendations to the City Council. At a City Council meeting, the City Council will receive public comment and, based upon all of the input received, approve, deny or modify the recommendations of the Harbor Commission, which will be incorporated into the Municipal Code.

The City Attorney's office has been working with staff as we go through this process. Prior to any of this going to the Harbor Commission, the City Attorney's office will review for compliance with the California Environmental Quality Act.

As we noted in the meeting, staff and the subcommittee need additional information on the status of live-aboards in commercial marinas. I believe the purpose of the provision is that the current leases are silent as to live-aboards and the subcommittee was attempting to limit the amount that could be in a marina. As a follow up the City has nine commercial marina leases and 52 commercial marina permits. There are an additional six other commercial tidelands properties that existed prior to the commercial marina going into effect, and they have separate terms. All lessees and permittees are required to follow the Newport Beach Municipal Code. The leases and permits are silent on the issue of live-aboards and staff has not had a complaint about this in the past.

Nothing that the subcommittee has discussed has been approved; the meetings are only to gather input. They are strictly a working group to provide suggestions to the full Harbor Commission who will then provide recommendations to the City Council.

California Coastal Act/California Coastal Commission

The City has adopted its Local Coastal Program and the Coastal Commission would only need to review the revisions to Title 17 if the proposed changes are inconsistent with the City's Local Coastal Program. Prior to implementation of any changes, our Community Development Department will review the changes and determine if the changes are consistent with the City's Local Coastal Program and if the changes require review by the California Coastal Commission.

Conflicts of Interest

Commissioner Blank is a mooring permittee; however, your perceptions regarding his conflict of interest are not accurate. From a staff perspective, I have personally been involved in every discussion with the subcommittee on Title 17 revisions. Commissioner Blank has recused himself from those discussions every time the issue has come up. The document we reviewed at the May 13, 2019 community meeting was not created by the Title 17 subcommittee, but by another Harbor Commission subcommittee. This discussion did come up at a prior Harbor Commission meeting and Commissioner Blank did recuse himself from that discussion as well as the discussion on May 13, 2019.


Existing Illegal Live-Aboard Moorings

The Wild Wave was issued a mooring by the Orange County Sheriff's Department in March of 2015. The history of the City's interaction with the Wild Wave and the process for revocation was discussed at the Harbor Commission Meeting of September 12, 2018, the entire report can be found here:

<http://ecms.newportbeachca.gov/Web/Browse.aspx?startid=691513&cnb=BoardsCommissions&dbid=0>. The report is 287 pages long and the staff report starts on page 13. An abatement warrant was issued on the Wild Wave on May 15, 2019 and the Wild Wave was moved off of mooring F-14 on May 16, 2019 to a City owned mooring in the A mooring field. As you are aware, over this last weekend, staff is making arrangements to have the vessel moved again so as not to disturb residents. That is anticipated to occur this week, weather permitting.

I appreciate your comments and concerns regarding the ability of the Harbor Department, and your concerns that we may have a long way to go until the Department can take on additional responsibilities. All new programs take time to develop and we continue to strive to provide the highest level of customer service to the residents of Newport Beach.

Sincerely,



Carol Jacobs
Assistant City Manager

Attachment 1: Documentation of Public Outreach Notifications

cc: City Council
Harbor Commission
Grace Leung, City Manager
Aaron Harp, City Attorney
Kurt Borsting, Harbormaster

Physical Advertising

- A-Frame Signs at the following Public Docks: 19th Street, 15th Street, Washington Street. Fernando Street, Coral Ave

City Webpage

- Promoted on the City's web homepage under News and Events
- Each event is on City Calendar
- Each Event had a City News Story; Story was also e-blasted to all users who signed up for General New, PIO News Releases, Harbor Commission updates
- Promoted on the Harbor Department homepage (featured 3 times under News & 4 times under Events)
- Title 17 has its own subpage under Harbor Commission, which can be accessed with a User Friendly URL: newportbeachca.gov/title17

Social Media:

6 Twitter Posts (Normal Post + Reminder the day before)





CityofNewportBeach @newportbeachgov · May 7

The Harbor Commission Ad-Hoc Committee is getting ready to review the second half of the Harbor Code! Join them at Marina Park on Monday, May 13 at 6 p.m. to provide comment & input on part two of the Harbor Code. [#harbor](#) [#community](#) [#newportbeach](#) [#newportharbor](#) [#civicengagement](#)



CONTINUED COMMUNITY INPUT NEEDED ON

Potential Harbor Code Revisions

NEWPORTBEACHCA.GOV/TITLE17



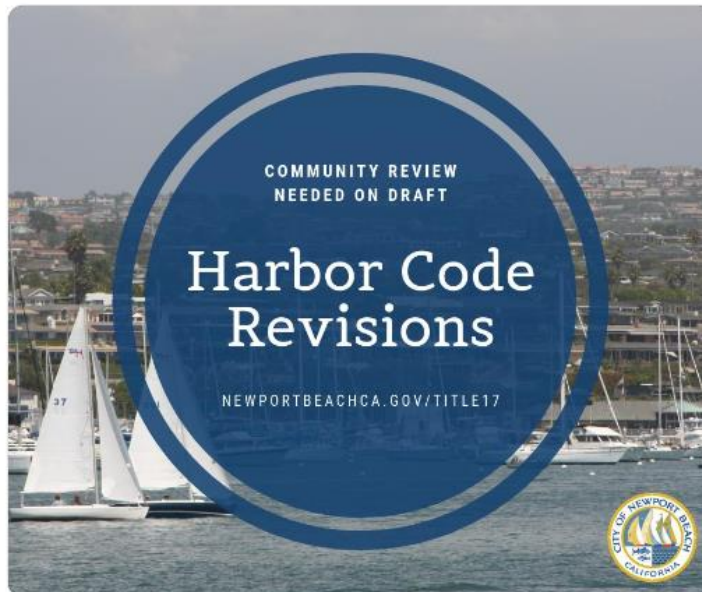
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CityofNewportBeach @newportbeachgov · May 5

Friendly Reminder! Tomorrow, May 6 at 6 p.m., the Harbor Commission Ad-Hoc Committee will be going over the first part of Title 17 draft revisions at Marina Park. For more information, check out bit.ly/2IXDbLv



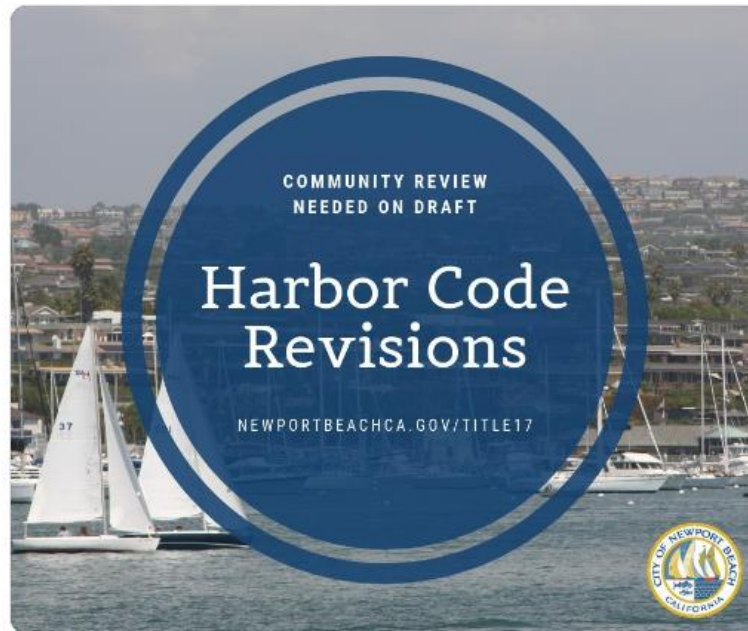
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CityofNewportBeach @newportbeachgov · Apr 28

📢 Attention Harbor Users & Stakeholders! We want your continued input on the draft revisions to the Harbor Code. Join us for our second meeting on Monday, May 6 (next week) at 6 p.m. over at Marina Park (1600 W. Balboa Blvd.). For more info, check out bit.ly/2IXDbLv



💬 3 ❤️ 2



CityofNewportBeach @newportbeachgov · Apr 7

📢 Reminder! We are having our first Harbor Code revisions meeting tomorrow, April 8, at 6 p.m. over at Marina Park (1600 W. Balboa Blvd.). 🚤🚤🚤🚤 See you there!

Learn more at bit.ly/2OEY36



💬 1 ❤️ 1

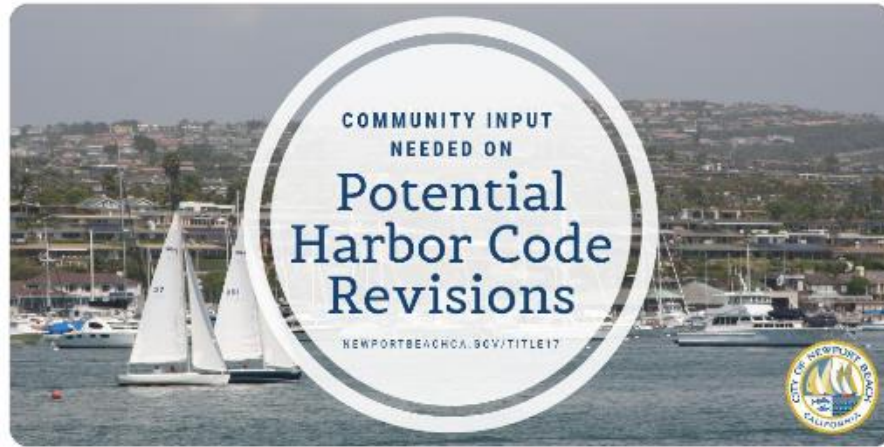


CityofNewportBeach @newportbeachgov · Apr 1

📢 Attention Harbor Users & Stakeholders. We want your input on potential Harbor Code revisions. Join us for our first meeting on Monday, April 8 (next week) at 6 p.m. over at Marina Park (1600 W. Balboa Blvd.).



Learn more at bit.ly/2OErY36



2 Instagram Posts



CONTINUED COMMUNITY INPUT NEEDED ON
**Potential Harbor
Code Revisions**
NEWPORTBEACHCA.GOV/TITLE17



cityofnewportbeach • Follow
Marina Park

cityofnewportbeach The Harbor Commission Ad-Hoc Committee is getting ready to review the second half of the Harbor Code! Join them at Marina Park on Monday, May 13 at 6 p.m. to provide comment and input on part two of the Harbor Code and review two newly proposed sections. #harbor #community #newportbeach #newportharbor #civicengagement #harborcode



30 likes

6 DAYS AGO

Log in to like or comment.



cityofnewportbeach • Follow
Newport Beach, California

cityofnewportbeach 📍 Attention Harbor Users & Stakeholders. We want your input on potential revisions to the Harbor Code. Join us for our first meeting on Monday, April 8 (next week) at 6 p.m. over at Marina Park (1600 W. Balboa Blvd.).

📍📅🕒📌

#harbor #newportharbor #newportbeach
#communityinput #localgov
#communitymeeting #sailing #boating #sup
#swimming #marina #marinapark

40 likes

APRIL 1

Log in to like or comment.

...

COMMUNITY INPUT NEEDED ON

Potential Harbor Code Revisions

NEWPORTBEACHCA.GOV/TITLE17

6 Facebook Posts (Normal Post + Reminder the day before)

City of Newport Beach - City Hall
May 12 at 6:34 PM · 🌐

Friendly Reminder! Tomorrow, May 13 at 6 p.m., the Harbor Commission Ad-Hoc Committee will gather the community's input on the second part of Title 17 review at Marina Park. For more information, check out <http://bit.ly/2DV5elH>

📍📅🕒📌

CONTINUED COMMUNITY INPUT NEEDED ON
Potential Harbor Code Revisions
NEWPORTBEACHCA.GOV/TITLE17

5

1 Share



City of Newport Beach - City Hall

May 7 at 7:19 PM · 🌐

The Harbor Commission Ad-Hoc Committee is getting ready to review the second half of the Harbor Code! Join them at Marina Park on Monday, May 13 at 6 p.m. to provide comment and input on part two of the Harbor Code and review two newly proposed sections. For more information, visit <http://bit.ly/2Lv1bIH>



CONTINUED COMMUNITY INPUT NEEDED ON

Potential Harbor Code Revisions

NEWPORTBEACHCA.GOV/TITLE17

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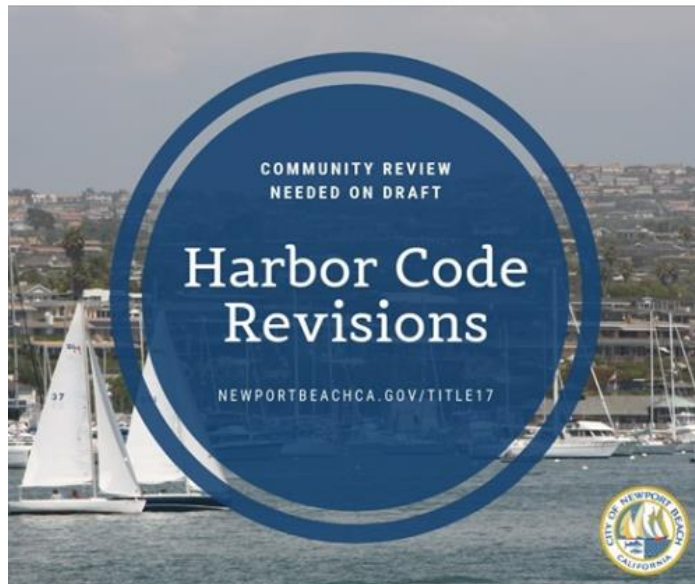
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City of Newport Beach - City Hall

May 5 at 6:03 PM · 🌐

Friendly Reminder! Tomorrow, May 6 at 6 p.m., the Harbor Commission Ad-Hoc Committee will be going over the first part of Title 17 draft revisions at Marina Park. For more information, check out <http://bit.ly/2IMDfhY>



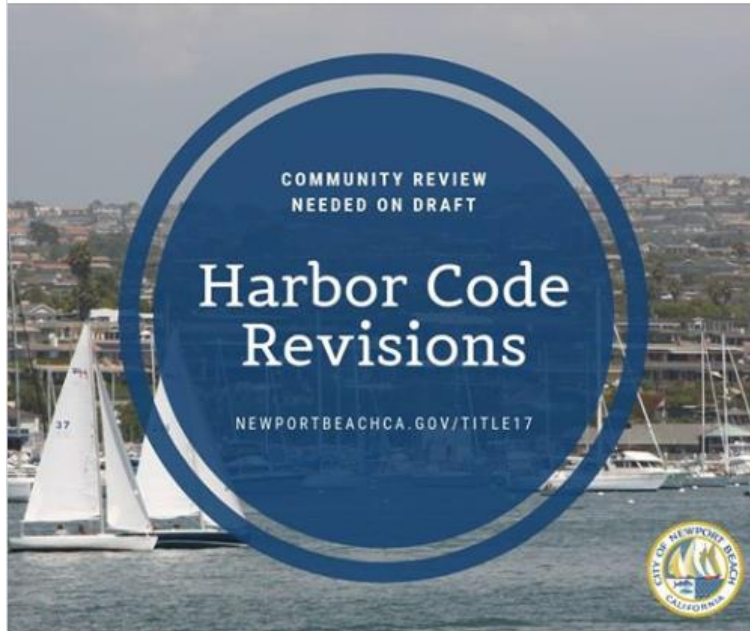
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City of Newport Beach - City Hall

April 28 at 6:03 PM · 🌐

🚩 Attention Harbor Users & Stakeholders! We want your continued input on the draft revisions to the Harbor Code. Join us for our second meeting on Monday, May 6 (next week) at 6 p.m. over at Marina Park (1600 W. Balboa Blvd.). For more information, check out <http://bit.ly/2IMDfhY>



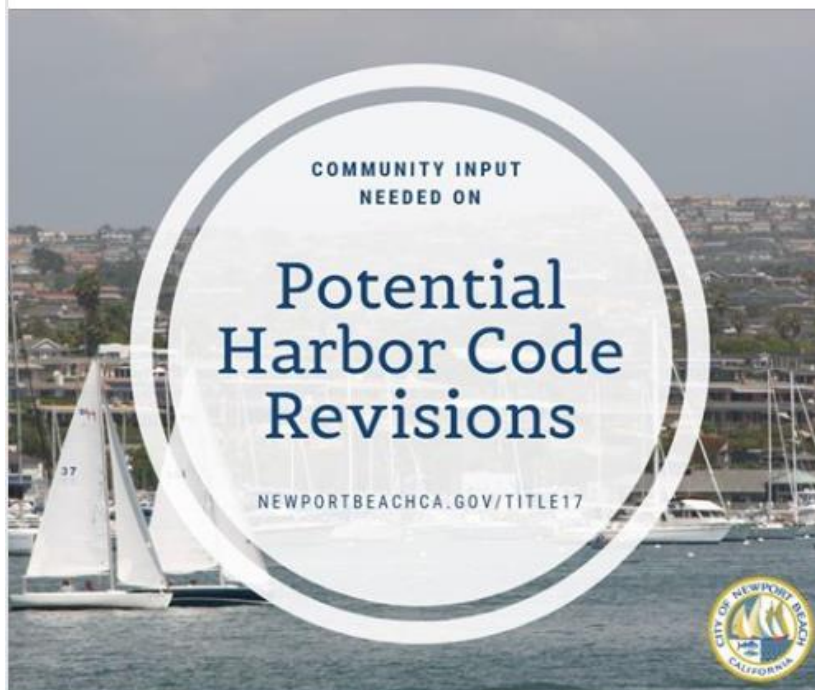
1 Share




City of Newport Beach - City Hall

April 7 · 🌐

🚩 Reminder! Our first Harbor Code revision meeting is tomorrow at 6 p.m. over at Marina Park (1600 W. Balboa Blvd.). 🚤🚤🚤 See you there! Learn more at <http://bit.ly/2OErY36>



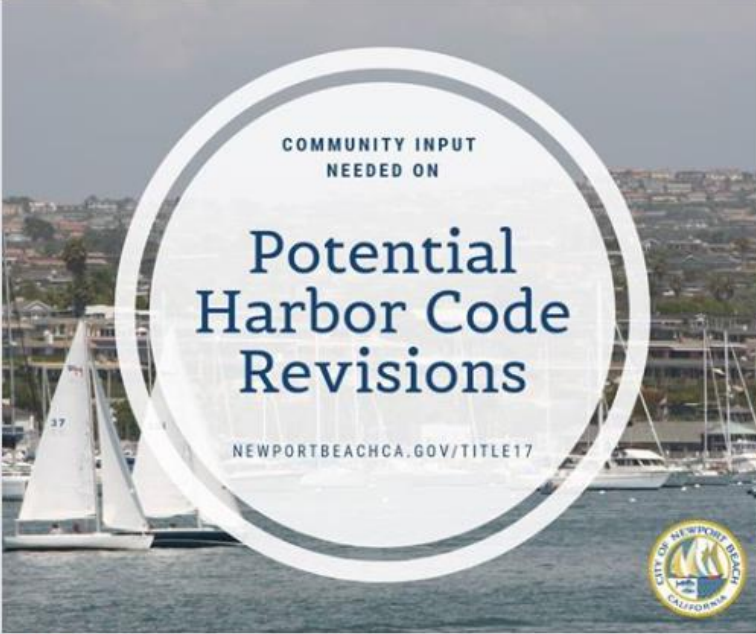


City of Newport Beach - City Hall
April 1 · 🌐

🔔 Attention Harbor Users & Stakeholders. We want your input on potential revisions to the Harbor Code. Join us for our first meeting on Monday, April 8 (next week) at 6 p.m. over at Marina Park (1600 W. Balboa Blvd.).

🚤 🚣 🛥 🛶 🛳 🛴

Learn more at <http://bit.ly/2OErY36>



👍 😊 6

1 Comment 2 Shares

LinkedIn Post



City of Newport Beach
1,814 followers
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Attention Harbor Users & Stakeholders. We want your input on potential revisions to the Harbor Code. Join us for our first meeting on Monday, April ...see more



👍 4

NextDoor Post



New event: Title 17 Harbor Code Review

Public Information Officer/Management Analyst Mary Locey · 3 Apr

APR
8

Title 17 Harbor Code Review
Mon, Apr 8, 6:00 PM

1

3 Apr · Subscribers of City of Newport Beach in Events

Title 17 Harbor Code Review



Title 17 Harbor Code Review

Mon, Apr 8, 6:00 PM - 7:30 PM

Marina Park Community Center/ Sailing Center/ Harbormaster

Going? ▾

...

1 Going

Event details

The Harbor Commission Ad-Hoc Committee seeks public input on revisions to the City's Municipal Code, Title 17 Harbor Code. The Committee is holding a series of meetings to thoroughly review Title 17. During the April 8 and May 6 meetings, the following sections will be reviewed:

- 17.01 Definitions
- 17.05 General Provisions
- 17.20 Vessel Launching and Operations
- 17.25 Berthing, Mooring and Storage
- 17.30 Harbor Use Regulations
- 17.35 Harbor Development Regulations

A working draft of potential revisions to these sections of Title 17 is available for viewing in red-line format. Please note: These are preliminary revisions and do not represent recommendations of the Harbor Commission. Your feedback, comments, and suggestions are invited and encouraged.

Learn more at newportbeachca.gov/title17.

City News

Community Input Needed for Potential Harbor Code Revisions

The Harbor Commission (Commission) has initiated a process for reviewing Title 17, the Harbor Code section of the Newport Beach Municipal Code. The Commission recently formed an Ad-Hoc Committee to conduct a thorough [review of Title 17](#) and to identify potential modifications. Gathering community input is an essential part of this review process.

To help facilitate public input, the Ad-Hoc Committee has divided Title 17 into three sections to allow an in-depth and thoughtful examination of the entire code. A series of meetings has been scheduled to review each section. The full meeting schedule is available [here](#).

The Ad-Hoc Committee will examine each section twice. The first meeting is intended to garner feedback and solicit comments from community members. The second meeting will allow for a review of the draft revisions prior to presentation to the full Commission. The first meeting will be held on Monday, April 8, at 6 p.m., at Marina Park. Marina Park is located at 1600 W. Balboa Blvd.

Once the Ad-Hoc Committee has completed its work, the Harbor Commission will then review and consider the draft revisions. Should the Commission approve of any or all of the proposed revisions, the recommended changes will be forwarded to the City Council for its review and consideration.

[Return to full list >>](#)

City News

Community Invited to the Second Review of Title 17

The Harbor Commission (Commission) is continuing the process for reviewing Title 17, the Harbor Code section of the Newport Beach Municipal Code. The Commission recently formed an Ad-Hoc Committee to conduct a thorough [review of Title 17](#) and to identify potential modifications. Gathering community input is an essential part of this review process.

To help facilitate public input, the Ad-Hoc Committee has divided Title 17 into three sections to allow an in-depth and thoughtful examination of the entire code. A series of meetings has been scheduled to review each section. The full meeting schedule is available [here](#).

The Ad-Hoc Committee will examine each section twice. Please join us for our second meeting regarding sections 17.01, 17.05, 17.20, 17.25, 17.30 and 17.35, allowing for a review of the draft revisions prior to presentation to the full Commission. The meeting will be held on Monday, May 6, at 6 p.m., at Marina Park, located at 1600 W. Balboa Blvd.

- [Second working draft of sections 17.01, 17.05, 17.20, 17.25, 17.30 and 17.35.](#)
- [Public Comments from April 8](#)

Once the Ad-Hoc Committee has completed its work, the Harbor Commission will then review and consider the draft revisions. Should the Commission approve of any or all of the proposed revisions, the recommended changes will be forwarded to the City Council for its review and consideration.

[Return to full list >>](#)

City News

Community Input Invited on Harbor Code

Thank you to the community members who joined us in reviewing the first portion of Title 17. The Harbor Commission's Ad-Hoc Committee is eager to continue obtaining the community's input on the second portion of Title 17.

The first meeting reviewed sections 17.40, 17.45, 17.50, 17.55, 17.60, 17.65, 17.70. On Monday, May 13 at 6 p.m., newly proposed sections 17.01.030 and 17.60.040 will be reviewed at Marina Park, 1600 W. Balboa Blvd.

The Harbor Commission (Commission) continues reviewing Title 17, the Harbor Code section of the Newport Beach Municipal Code. The Commission formed an Ad-Hoc Committee to conduct a thorough [review of Title 17](#) and to identify potential modifications. Gathering community input is an essential part of this review process.

To help facilitate public input, the Ad-Hoc Committee has divided Title 17 into three sections to allow an in-depth and thoughtful examination of the entire code. A series of meetings has been scheduled to review each section. The full meeting schedule is available [here](#).

The Ad-Hoc Committee will examine each section twice. The first meeting garnered feedback and solicited comments from community members. The second meeting will allow for a review of the draft revisions prior to presentation to the full Commission.

Once the Ad-Hoc Committee has completed its work, the Harbor Commission will then review and consider the draft revisions. Should the Commission approve of any or all of the proposed revisions, the recommended changes will be forwarded to the City Council for its review and consideration.

[Return to full list >>](#)



NEWMAYER & DILLION LLP
ATTORNEYS AT LAW

CHARLES S. KROLIKOWSKI
Charles.Krolikowski@ndlf.com

File No.:
1951.008

June 6, 2019

VIA E-MAIL & CERTIFIED MAIL

Attn: City Clerk & Harbor Commission
City of Newport Beach
100 Civic Center Drive
Bay 1B-D
Newport Beach, CA 92660
Title17review@newportbeachca.gov

City Manager's Office
City of Newport Beach
100 Civic Center Drive
2nd Floor, Bay E
Newport Beach, CA 92660
gleung@newportbeachca.gov
cjacobs@newportbeachca.gov

Re: Proposed Revisions to Title 17 of the Municipal Code

Dear Clerk and Commissioners:

This office represents Thomas LeBeau, an interested property and business owner directly impacted by the City of Newport Beach's ("City") proposed revisions to Title 17 ("Proposed Revisions") of the Newport Beach Municipal Code ("NBMC"). The City must revisit the Proposed Revisions in an open and public forum, with the opportunity for meaningful written comment and public participation in the deliberative process. Without doing so, the Proposed Revisions remain subject to future challenge.

In addition to detailing Mr. LeBeau's concerns, this letter also serves as Mr. LeBeau's request for all public records, including communications, related to the Proposed Revisions from January 1, 2017, to present. The scope of this request is further detailed below.

1. Background on the Proposed Revisions.

For context, it appears that the City of Newport Beach Harbor Commission ("Commission") is currently in the process of reviewing and revising Title 17 of the NBMC, also referred to as the Harbor Code. (See City, Harbor Comm'n, Title 17 Review ("Title 17 Review").)ⁱ As a general matter, the Commission exercises the authority to make such revisions pursuant to the City Council's delegation under Section 700 of the City Charter. (See Ord. No. 2013-14.) Like the City's Planning Commission, the Harbor Commission exercises limited authority over approvals within the City of Newport Harbor. (Ord. No. 2013-14.)

see also Full Agenda Packet, City Council Regular Meeting (Feb. 13, 2018).ⁱⁱ The task of reviewing Title 17 is also formally recognized in the Commission’s 2018 goals and objectives, which ask the Commission to “[r]eview and update City Municipal Codes, Title 17, Harbor Policies 1-5 and Marine Activities Permits[.]” (*Ibid.*)

Based on a review of the limited information available, the Proposed Revisions present what appear to be all-encompassing changes that will result in significant impacts to the environment and surrounding community. (See Title 17 Review, *supra* [discussing scope of changes, not impacts].)ⁱⁱⁱ Those changes include considerable substantive modifications to various permit, lease, appeal, and enforcement provisions in Sections 17.40 through 17.70.^{iv} (*Ibid.*) But, more importantly, the City broke down its review of the Proposed Revisions into three parts. (*Ibid.*) Per the City, it appears that each part will have its own set of meetings, with the first meeting soliciting comment and the second meeting incorporating the solicited comments into a working draft of Title 17. (*Ibid.*)

Here, the first part has already occurred and addressed proposed revisions to Sections 17.01, 17.05, 17.20, 17.25, 17.30, and 17.35. (See Title 17 Review, *supra*.) The “Ad-Hoc Committee” engaged a selection of the public to participate and provide comments at meetings held on April 8, 2019, and May 6, 2019. (*Ibid.*) The second part covers Sections 17.10, 17.40, 17.45, 17.50, 17.55, 17.60, 17.65, and 17.70. (*Ibid.*) This portion of the review covers marine activities permits, live-aboard, sanitation, harbor development permits, dredging permits, harbor permits, leases, appeals, and enforcement. (*Ibid.*) The Commission, via the Ad-Hoc Committee, already solicited a selection of the public’s comment on May 13, 2019. (*Ibid.*) The second meeting incorporating those comments into a final working draft is currently scheduled for June 24, 2019. (*Ibid.*) The dates for the third part of the Proposed Revisions are still to be determined, although it appears that the third part will address the new Sections 17.01.030 and 17.60.040. (*Ibid.*)

2. The Commission’s Analysis of the Proposed Revisions Should Include Environmental Impacts under the California Environmental Quality Act.

Because the Commission is essentially taking action and considering the Proposed Revisions without a concurrent analysis of the environmental impacts, the City also faces potential issues under the California Environmental Quality Act (“CEQA”).

As the Commission is aware, CEQA compliance must occur before the City approves a project because when a public agency gives a project “approval” it “commits to a definite course of action in regard to a project.” (CEQA Guidelines, 14 Cal. Code Regs., § 1532, subd. (a).) In *Save Tara v. City of West Hollywood* (2008) 45 Cal.4th 116, 130–132, for example, the Court struck down a project finding that the city violated CEQA because it had impermissibly committed itself before completing an adequate CEQA review. Similarly here, a court may express concern given the extensive revision work that the Commission has done without proper compliance.

Moreover, given the substantive nature of these changes to Title 17, particularly with respect to duration of live-aboard permits and enforcement, an Environmental Impact Report (“EIR”) will likely be required. Again, an EIR is at the heart of the environmental control process established by CEQA. A proper EIR provides the public and governmental decision-makers with detailed information on a project’s likely environmental effects, describes the ways of minimizing such effects, and considers potential alternatives to a project. (Pub. Resources Code, §§ 21002.1, 21061, 21100.) Any consideration of such extensive Proposed Revisions should consider this environmental analysis.

Ultimately, the City is responsible for the failure to prepare an adequate EIR.
(*Mission Oaks Ranch, Ltd. v. County of Santa Barbara* (1998) 65 Cal.App.4th 713, 723-724.)

3. The City’s Serial Meetings on the Proposed Revisions Violate the Brown Act.

The Ralph M. Brown Act (“Brown Act”) (Gov. Code, §§54950–54963) requires meetings of “legislative bodies” of public agencies to be open and public. (See Gov. Code, § 54953, subd. (a).) Subject to a limited number of exceptions, meetings regulated by the Brown Act must be conducted in public and afford the public the opportunity to speak on every item on the agenda, as well as any item within the subject matter jurisdiction of the legislative body. (See Gov. Code, §§54953, subd. (a), 54954.3, subd. (a).)

In enacting the Brown Act, the Legislature declared the existence of governing bodies like the City Council and the Commission to be contingent on its ability “to aid in the conduct of the people’s business.” (Gov. Code, § 54950.) For that reason, the Brown Act’s declared intent is to ensure that such legislative bodies deliberate openly. (*Ibid.*) Indeed, the Legislature understood that public agencies exist to conduct the people’s business. (*Ibid.*) In full, the Legislature found as follows:

In enacting this chapter, the Legislature finds and declares that the public commissions, boards and councils and the other **public agencies in this State exist to aid in the conduct of the people’s business. It is the intent of the law that their actions be taken openly and that their deliberations be conducted openly.**

The people of this State do not yield their sovereignty to the agencies which serve them. The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know. The people insist on remaining informed so that they may retain control over the instruments they have created.

(*Ibid.* [emphasis added].)

A. The Commission's Ad-Hoc Committee is a Legislative Body Subject to the Brown Act.

The Brown Act applies only to “legislative bodies,” which may include the Commission’s Ad-Hoc Committee. Generally, the City Council or other governing body, as well as other subsidiary decision-making bodies and advisory committees such as planning commissions, parks and recreation commissions, and even blue ribbon committees created by formal action of the legislative body, are all considered “legislative bodies” within the meaning of the Brown Act. (See Gov. Code, § 54952.) Occasionally, a legislative body may convene a temporary committee composed of less than a quorum or the minimum number of members that must be present to make the proceedings valid. Such “ad hoc” subcommittees are not “legislative bodies” subject to the Brown Act unless the ad hoc committee is (1) a standing committee of a legislative body, and (2) retains continuing subject matter jurisdiction *or* (3) a meeting schedule fixed by charter, ordinance, resolution, or formal action of a legislative body. (See Gov. Code, § 54952, subd. (b).) Government Code section 54952, subdivision (b) provides for the following, in full:

(b) A commission, committee, board, or other body of a local agency, whether permanent or temporary, decisionmaking or advisory, created by charter, ordinance, resolution, or formal action of a legislative body. However, advisory committees, composed solely of the members of the legislative body that are less than a quorum of the legislative body are not legislative bodies, except that standing committees of a legislative body, irrespective of their composition, which have a continuing subject matter jurisdiction, or a meeting schedule fixed by charter, ordinance, resolution, or formal action of a legislative body are legislative bodies for purposes of this chapter.

(Ibid.)

Here, the Ad-Hoc Committee need not be comprised of the majority of the Commission for the Brown Act to apply because “irrespective of [its] composition” it has “continuing subject matter jurisdiction” over the initial red lines and working drafts of the Proposed Revisions, as well as a “meeting schedule fixed by charter, ordinance, resolution, or formal action of a legislative body. . . .” (See Gov. Code, § 54952, subd. (b).) Specifically, as noted above, the Ad-Hoc Committee has broken down its Title 17 review into three parts. (See Title 17 Review, *supra*.) Each part contains its own set of meetings, with the first meeting soliciting comment and the second incorporating the solicited comments. (*Ibid.*) Here, the first part addressed proposed revisions to Sections 17.01, 17.05, 17.20, 17.25, 17.30, and 17.35 on April 8, 2019, and May 6, 2019, respectively. (*Ibid.*) The second part covering Sections 17.10, 17.40, 17.45, 17.50, 17.55, 17.60, 17.65, and 17.70 already had the first meeting on May 13, 2019, and the second meeting is currently scheduled for June 24, 2019. (*Ibid.*) The dates for the third part, a review of Sections 17.01.030 and 17.60.040, are still to be determined. (*Ibid.*)

Given that this amounts to a regular meeting schedule, the Brown Act applies irrespective of the Ad-Hoc Committee's composition. As such, the Ad-Hoc Committee is considered a legislative body for purposes of the Brown Act regardless of the fact that it is a "subcommittee comprised of less than a majority of the Harbor Commission[.]" (City's Letter, at p. 1.)

B. Serial Meetings Soliciting Public Comment on the Proposed Revisions Must Be Open and Public under the Brown Act.

The Brown Act broadly defines what "meetings" must be open and public. (Gov. Code, § 54952.2, subd. (a).)

(a) As used in this chapter, "meeting" means any congregation of a majority of the members of a legislative body at the same time and location, including teleconference location as permitted by Section 54953, to hear, discuss, deliberate, or take action on any item that is within the subject matter jurisdiction of the legislative body.

(*Ibid.*) Because allowing for serial meetings would render this requirement meaningless, the Brown Act prohibits using a "series of communications of any kind, directly or through intermediaries, to discuss, deliberate, or take action on any item of business that is within the subject matter jurisdiction of the legislative body." (Gov. Code, § 54952.2, subd. (b)(1).) The prohibition on serial meetings excepts communications with City staff "if that person does not communicate to members of the legislative body the comments or position of any other members or members of the legislative body." (Gov. Code, § 54952.2, subd. (b)(2).)

Here, the Ad-Hoc Committee engaged in serial meetings resulting in a violation or violations of the Brown Act. Effectively, the opinions of members of the Commission, several of whom make up the Ad-Hoc Committee, are being communicated to each other and to a selection of the public, both in the red lines, working drafts, and collected public comment incorporating revisions into Title 17. (See Gov. Code, § 54952, subd. (b); with City's Letter; Title 17 Revisions.) As distinguished from stakeholder meetings where public input is merely being passively received, here members of the Commission are acting and deliberating on a matter within the Commission's jurisdiction, the Proposed Revisions, without going through the proper public process. (City's Letter; Title 17 Revisions [listing redlines and working drafts, as well consolidated public comment from first part of revisions].)

Thus, the Ad-Hoc Committee's conduct amounts to serial meetings in violation of the Brown Act. Accordingly, the Commission should consider providing a properly open and public meeting that acknowledges the procedural due process rights of impacted business and property owners.

4. Commissioner Blank's Potential Conflict of Interest as a Mooring Permittee.

In addition to the issues raised above, problems are also present with respect to Commissioner Blank's conflict of interest. While the Commission asserts that Commissioner

Blank has “recused himself from those discussions every time the issue has come up” (see City’s Letter, at p. 3), this response is shortsighted.

The Political Reform Act of 1974 (Gov. Code, §§81000–91014) governs disclosure of campaign contributions, spending, lobbying, and ethical rules by which state and local government officials must abide. Passed by statewide initiative, the people found and declared that their public officials *must* act in an impartial manner free from bias caused by competing financial interests:

(b) Public officials, whether elected or appointed, should perform their duties in an impartial manner, free from bias caused by their own financial interests or the financial interests of persons who have supported them[.]

(Gov. Code, § 81001, subd. (b) [emphasis added].) The requirements of the Political Reform Act are to be “liberally construed to accomplish its purposes.” (Gov. Code, § 81003.) This purpose includes a mandate against financial bias infiltrating local government decision-making. (Gov. Code, § 87100.)

Specifically, Government Code section 87100 requires that no local government official “shall make, participate in making or in any way attempt to use his official position to influence a governmental decision in which he knows or has reason to know he has a financial interest.” (Gov. Code, § 87100.) An official has a financial interest in a decision when it is “reasonably foreseeable” that the decision will have a material financial effect on his investments, property or income. (Gov. Code, § 87103.) The conflict of interest laws operate without regard to actual corruption or interest; instead, the laws establish an objective and preventive standard that acts upon tendencies as well as prohibited results. (*Commission On Cal. State Gov. Org. & Econ. v. Fair Political Practices Com.* (1977) 75 Cal.App.3d 716, 723 [142 Cal.Rptr. 468, 472] [citing *United States v. Mississippi Valley Generating Co.* (1961) 364 U.S. 520, 549-551 [81 S.Ct. 294, 309, 5 L.Ed.2d 268]; *Stigall v. City of Taft* (1962) 58 Cal.2d 565, 569 [25 Cal.Rptr. 441, 375 P.2d 289]; *People v. Watson* (1971) 15 Cal.App.3d 28, 37-39 [92 Cal.Rptr. 860].)

A violation occurs not only when the official participates in the decision, but when he or she directly or indirectly influences it. (*Ibid.* [citing Gov. Code, § 87100; *Stigall v. City of Taft*, *supra*, 58 Cal.2d at p. 569].) The fact that a commission is advisory does not automatically exempt it from the statutory provisions described above. The statutory exemption is limited only to those boards and commissions that are *exclusively* advisory. (*Commission On Cal. State Gov. Org. & Econ. v. Fair Political Practices Com.*, *supra*, 75 Cal.App.3d at p. 724; see also Gov. Code, § 1090 [codifying similar requirements to avoid such conflicts in contracts].)

Of course, a public official may express opinions on subjects of community concern without tainting his or her vote on such matters. (*Clark v. City of Hermosa Beach* (1996) 48 Cal.App.4th 1152, 1172 [56 Cal.Rptr.2d 223], *as modified on denial of reh'g* (Sept. 11, 1996).) But, conflicts may arise for a variety of reasons, including where voting or acting on an item as would affect a member’s personal interests. (*Id.* at pp. 1172–1173.) For example, in *Clark*, the

Court found a councilmember interested and potentially biased in part because “the specific project before the Council, if approved, would have had a direct impact on the quality of his own residence.” (*Id.* at p. 1173; see also *Cohan v. City of Thousand Oaks* (1994) 30 Cal.App.4th 547, [35 Cal.Rptr.2d 782] [invalidating a city council decision to reverse a planning commission decision after the council appealed the planning commission's decision to itself]; *Nasha v. City of Los Angeles* (2004) 125 Cal.App.4th 470, [22 Cal.Rptr.3d 772] [holding the prehearing bias of one planning commission member was enough, by itself, to invalidate a planning commission decision that had overruled a city planning director's approval of a project]; *Woody's Group, Inc. v. City of Newport Beach* (2015) 233 Cal.App.4th 1012, 1016–1017 [183 Cal.Rptr.3d 318, 320–321] [concluding the trial court erred in not granting Woody's request for an administrative writ of mandate restoring the original planning commission's grant of its application].)

Similarly, here, Commissioner Blank faces a potential conflict as a mooring permittee because it creates a personal financial interest in the Proposed Revisions. This includes the fact that the Proposed Revisions may enact a 300% increase in overnight usage available to those with mooring permits, like Commissioner Blank. As a mooring permittee, Commissioner Blank stands to gain a substantial economic benefit by approving this particular increase in overnight usage. The “reasonably foreseeable” standard governing such financial conflicts of interest directly contemplates this type of issue. (See Gov. Code, §§ 87100, 87103.) To interpret it otherwise would run contrary to the statutory scheme, moving away from a preventive standard that acts upon tendencies toward a prophylactic one that focuses solely on prohibited results. (Cf. *Commission On Cal. State Gov. Org. & Econ. v. Fair Political Practices Com.*, supra, 75 Cal.App.3d at p. 723 [citing *United States v. Mississippi Valley Generating Co.* (1961) 364 U.S. 520, 549-551 [81 S.Ct. 294, 309, 5 L.Ed.2d 268]; *Stigall v. City of Taft* (1962) 58 Cal.2d 565, 569 [25 Cal.Rptr. 441, 375 P.2d 289]; *People v. Watson* (1971) 15 Cal.App.3d 28, 37-39 [92 Cal.Rptr. 860].)

Thus, the Commission should avoid this and other such conflicts at all stages of the public process.

5. Request for All Public Records Related to the Proposed Revisions from January 1, 2018, through the Date of Production.

As noted above, the Commission's serial meetings and other conduct give rise to Brown Act violations. Accordingly, we seek all public records, including information, documents, and communications, related to the Proposed Revisions from January 1, 2017, through the date of production. We hope that this stated purpose will aid the City in “identify[ing] records and information that are responsive to the request or to the purpose of the request, if stated.” (See Gov. Code, § 6253.1, subd. (a).)

Specifically, pursuant to the California Public Records Act (Government Code sections 6250, et seq.), we request that the City provide (1) all documents or communications related to the Proposed Revisions from January 1, 2017, through production; and (2) all other documents or communications referenced in evaluating this letter that have been construed as outside of the scope of category (1). The abovementioned writings are considered “public records” within the

meaning of the description in Government Code section 6252, subdivision (e). (Gov. Code, § 6252, subd. (e).)

We request that you provide the responsive information within ten (10) days of receipt of this letter, or earlier, if possible. Should you deny any part of this request, please provide a written response describing the legal authority or authorities on which you relied for your determination to deny the request. Please also describe where the requested records are located and provide suggestion for overcoming any practical basis for denying access to the records or information sought. If the records are located with another public agency, please forward a copy of this request to that department and advise of same.

Finally, please provide me with the anticipated cost of duplicating the requested records. We are prepared to pay up to \$100 of the applicable copying charges for the requested documents upon demand from the City. Should copying costs exceed \$100, please contact the undersigned for approval.

6. Conclusion.

In sum, the Commission has rushed this process without respect for the proper procedure. As a result, it should revisit the work done on the Proposed Revisions thus far. In addition to the concerns laid out above, the City should also continue to investigate what information is contained in the City's commercial leases and permits, potential issues related to inconsistency with the Local Coastal Program, and existing violations that remain unabated.

Nothing in this written comment should be construed as a waiver of any right or defense in favor of Mr. LeBeau.

Thank you in advance for your anticipated cooperation.

Very truly yours,



Charles S. Krolikowski

SLT:vrf

Cc: Client
Newport Beach City Council citycouncil@newportbeachca.gov
Aaron Harp, Esq.

1951.008 / 8225515.1

ⁱ (Copy on file, but also available at <https://www.newportbeachca.gov/government/departments/harbor/harbor-commission/title-17-update> (last accessed May 30, 2019 at 7:25 AM PST).)

ⁱⁱ (Copy on file, although the City confirmed that the correspondence became part of the public record.)

ⁱⁱⁱ (Copies on file, but the first and second working drafts of the Proposed Revisions to sections 17.01, 17.05, 17.20, 17.25, 17.30 and 17.35, are available at <https://www.newportbeachca.gov/home/showdocument?id=62891> and <https://www.newportbeachca.gov/home/showdocument?id=64086>.)

^{iv} (The first working draft of the second set of Proposed Revisions to sections 17.40, 17.45, 17.50, 17.55, 17.60, 17.65, and 17.70 is available at <https://www.newportbeachca.gov/home/showdocument?id=64160>.)

From: Wade Womack
To: [Title 17 Review](#)
Subject: dye tablet ordinance
Date: Saturday, May 18, 2019 7:48:10 AM

Hi,

Sorry I missed the last meeting when this was likely discussed. In case the committee is looking for good verbiage/language for the dye tablet aspect, I found this on the City of Avalon Website:

<http://www.cityofavalon.com/content/3182/3209/3230.aspx>

(h) In order to enforce the provisions of this section and to safeguard and protect City waters from contamination, the owner and/or other person in charge of any boat or vessel entering City waters shall, as a condition of entering and/or remaining the City waters, allow City personnel to board the vessel and place dye tablets into the vessel's marine sanitary device, and to perform a test or tests to ensure that the marine sanitary device is in such a condition as to prevent any contaminants from being discharged into City waters. It shall be unlawful to any person to deny City personnel access to a vessel for purposes of placing dye tablets in the marine sanitary device, to refuse or interfere with testing of the marine sanitary device by City personnel, to tamper with or remove while in City waters any dye tablet placed in a marine sanitary device by City personnel, or to place any substance in the marine sanitary device with the intent to interfere with the enforcement of this section. Violation of the provisions of this subsection shall be punishable as a misdemeanor. In addition to the penalties prescribed herein and in subsection (i), the Harbor Master shall have the authority to order any owner or person in charge of any boat or vessel upon which any act or omission specified herein has occurred, to immediately remove such vessel from City waters.

Perhaps it is worth borrowing some of their wording. Not a big deal, just thought the committee might find it useful if it's members had not already reviewed it.

Thank you for working to make the harbor a better place.

Sincerely,
Wade Womack
1865 Port Abbey Pl
Newport Beach, CA
949-292-1165

Biddle, Jennifer

From: P+B C. <patandbud@gmail.com>
Sent: Friday, July 26, 2019 12:15 PM
To: Title 17 Review
Subject: Vessel discharge

Follow Up Flag: Follow up
Flag Status: Flagged

Harbor Commissioners,

After attending a few of the meetings reviewing title 17 I'd like to thank you for all the discussions on so many of the issues. I appreciate your listening to all the thoughts many of us have and I understand you won't please everyone but, hopefully, will please most.

In regards to section 17.40.100, the discharge log, I'd just like to reiterate what was mentioned at a few of the meetings but seems unclear in the recent draft. It reads the live-aboard permittees can use the pump out facilities and keep a log, however, it then states we are required to contract with a commercial service for a twice a month service. It was discussed at a couple of the meetings that a few of us live-aboards that routinely and responsibly use the pump out dock to not only discharge waste but fill our water tanks and a quick washing of our vessels would not have this requirement with verification. We would continue to do this despite being required to pay a service simply because we need to fill with water and we want a clean boat. I hate spending money on something I do not need so I'm hoping the wording can be such that we have the choice. I have no problem with a verification that the live-aboards are doing the right thing, perhaps a call to the office while at the dock which could be matched to the log turned in at the renewal request. This was mentioned at at least two of the meetings and it appeared to be verbally accepted by the committee. I very much hope the wording to this section can be such that us responsible permittees will have the choice.

The other consideration with the required twice a month contracted pumpout is that each situation is different. There are single people with large holding tanks, families with small holding tanks, and people off their boats for days and even weeks at a time. I believe we all are doing the responsible thing and discharging properly as needed but then I want to believe that is the case with all the approximate 9,000 boats in the bay which, of course, could not possibly be verified.

We live-aboards have the most to gain with a clean bay and the most to lose (our home) if doing the wrong thing.

Thank you in advance for your consideration, Sincerely, Herman (Bud) Coomans, mooring H813

**NEWPORT BEACH HARBOR COMMISSION
PUBLIC MEETING
Review of Proposed Changes to Title 17 of the Harbor Code
Marina Park, 1600 W. Balboa Blvd., Newport Beach, CA 92663
Monday, May 6, 2019
6 PM**

Commissioner Kenney reported proposed changes to Sections 17.01, 17.05, 17.20, 17.25, 17.30, and 17.35 will be reviewed. Proposed changes to the second half of the Harbor Code will be reviewed the following Monday night. Comments submitted during and outside the meeting are available to the Harbor Commission Ad Hoc Subcommittee, who will consider each comment. The public is invited to comment on the proposed revisions during the Harbor Commission's review of the subcommittee's recommendations and the City Council's review of the Harbor Commission's recommendations.

Assistant City Manager Carol Jacobs advised that the Harbor Commission Ad Hoc Subcommittee met following the prior public meeting, and its determinations are provided as comments in the redline document.

PUBLIC COMMENT	RESPONSE	Subcommittee response
Applicant definition		
A trust, company, business is not a person.	I would support using the simplest definition, applicant means a person applying for a permit under this title. The definition of person includes trust, corporation. Staff will suggest the definition to the City Attorney for consideration.	Changed to simple definition. Waiting for CAO review.
Bulkhead definition		
If the bulkhead lies on private property, we're paying property taxes on that. If it was farther out, beyond the bulkhead line, it would all be on state lands. Correct? The best tool the City has come up with is when the dock tax came up, you have the satellite image of where the bulkhead line is and where the pierhead line is when they're the same. We found out where our property line is in relation to the Harbor. I don't know that this is the place to make that distinction. If a bulkhead lies inside, meaning on the private property side, of the bulkhead or coincides with it, then it is private property. My tendency is to think that should be explained here.	I'm going to advocate against that. The bulkhead is the bulkhead whether it lies on the property line, inside or outside. There are property definitions and implications thereof when the bulkhead lies in one of those three positions. This is not the place to define that.	No change recommended.
Fairway definition		

<p>I believe that should say the area designated by the City. Otherwise, it makes it all over the whole mooring field. In most places there's not room for passage between the different boats except the areas that are left open, which is a fairway. To put any mooring balls basically makes the whole mooring field a fairway. There are now established fairways where there are spaces left for pressing between the mooring fields.</p>	<p>Gaps in the mooring fields are different from what we're trying to define here. We're trying to define a fairway within a mooring area.</p>	<p>No additional changes recommended. This will also be addressed with the proposed changes to the mooring extension discussion.</p>
<p>I have the same problem trying to visualize what it's trying to do, define, or illustrate. Whether a mooring field has a fairway in it, many or all of the spaces are fairways. The bigger question is, is the definition needed for anything. Is it used anywhere in the Harbor Code or is it referred to in other regulations that maybe say as defined in the Harbor Code? I could not find it in Title 17. Should it perhaps be there in Title 17? Why is it here if it's not referred to elsewhere in the Title? I would again suggest it could be illustrated. You might have a little diagram showing what you're trying to describe.</p>	<p>It's referred to in the design and building standards for structures on the Harbor, including moorings. We're also using fairways when we add the language dealing with extension of moorings. It's something to come. We could have a federal fairway and a city fairway within a mooring field. We could put in the U.S. Coast Guard definition of a fairway, and then we could put in mooring fairway, which would identify the open space between the lanes. Or a mooring field fairway. What if we said Fairway A as defined by the U.S. Coast Guard is X, and B, mooring field fairway, is Y. Since there is not yet a diagram anywhere else in Title 17 and I am clear on what a fairway is, I'm going to advocate that we don't put in a diagram at this time.</p>	<p>Recommended against a diagram in the Municipal Code.</p>
<p>Some of this stuff like this particular discussion, it's important that there's an establishment of stipulation. The City's acting in good faith to try to come up with definitions and write the agreement, and we as mooring holders go along with some of this stuff because you could litigate every paragraph in this. You've got to have a little trust in the boaters, and we've got to have a little trust in you.</p>		<p>General comment only.</p>
<p>One comment about a diagram. That may impede you from extending or changing the mooring (inaudible). If it's fixed in</p>	<p>If you put a diagram in, you can't dimension it because there's the potential that the distances will change.</p>	<p>Do not recommend a diagram.</p>

the diagram, you're locked in to those areas. The way it's worded is really good.		
A fairway is not a channel. These fairways are designed with people with common sense. Hundreds of rental boats a day have no training, no idea, so they don't know the difference between a fairway and going 90 degrees up the channel or down the channel through the moorings. We're boaters here. We could have a show of hands of how many people understand the concept of the fairways between the moorings, and I think you'll see we're doing okay on this one.		General comment.
The problem is the position of the boats change all the time by the wind and by the tide. Sometimes, like mooring field C, some of them are laying to the tide, some of the them are laying to the wind. Sometimes they're 6 feet apart. Other times, they're 35 feet apart. It changes constantly, all day long every day.		General comment.
Which is why this wording is different.	It gives us flexibility to accommodate those kind of changes. That's the point. Here's what I would recommend. We will take this set of comments; we'll have the subcommittee review them; we'll send them to the attorneys. The next round of comments is going to be at the Harbor Commission meeting. We'll define for you what we've changed from this meeting to the Harbor Commission. If you still have concerns with it, then I would suggest at that time we bring it up with the Harbor Commission and let them make the final call before it goes to Council.	No additional change recommended at this time.
Another alternative is just to define one—it's either federal or it's not federal. If it's federal parameters, then whatever else is in the Harbor that is not federal is considered fairway.	Are we going to have two definitions or are we going to leave it like it is? I vote for leaving it like it is. Let's have a show of hands. Who wants to leave it like it is? Who advocates for changing it? Just a few.	No change based on vote

	I think the majority rules on that one.	
Federal Channel definition		
That's an example of if you start designating the type of channel. The first question is where are the federal channels? I just finished my dock permit, and the Army Corps was all over it, lending itself to say, "It's in our jurisdiction too." It must be here, I guess, for a reason, but it seemed just like (inaudible) the type of channel. No boater is going to know which is a federal channel and which is not a federal.	The federal channels are marked on the nav charts. They are what they are. They were established by the Army Corps. That's why the definition is in here.	No recommended change.
Graywater definition		
I direct you to the Pacific Fisheries white sea bass pen. When they pump out their—I want to call it wastewater, which has waste from the fish growing up, it used to have antibiotics and other things. They pump it into the Harbor. Do you know if that's still done? Is that called graywater? They may have changed.	I believe they have an obligation to dispose of that elsewhere. I can't tell you with 100 percent certainty. My recollection is that they have an obligation, just as the charter fleet does, to empty the pen. Any residue, dead fish, etc., have to be disposed of properly, not dumped in the Harbor. First of all, it's against the law, for those of you that are fishermen, to dump your bait tank in the Harbor as you're coming in. Those have to be disposed of before you enter the Harbor. I recently attended a presentation made by that group. My memory is that they described vacuuming those contents. I'd be happy to confirm if that's their practice. That's a good point. I would consider that graywater or at least I'd deal with it in another manner somewhere else in here. There is a section that deals with bait receivers. The same is true with the bait receiver. All that residue needs to be properly pumped out and disposed of correctly. It's not supposed to be dumped in the Bay. We have that clause in another area than the Title? I'm almost certain we do. We're going to get to it when we get to the bait receiver.	No additional changes to definition.
Houseboat definition		No recommended changes

<p>I saw something that was a pontoon boat with a spa on it and a big screen TV. What would you call that?</p>		
<p>The way this reads, somebody could purchase a Lake Powell style houseboat and live on it and that would be legal. According to this, why would it not be legal? That type of boat has an engine. It's capable of going around the Harbor. I don't think that's a good enough definition. Live-aboards are legal if they meet all the requirements. A houseboat as I described—I think you've got to define it right here. I'm talking about a legal live-aboard with a houseboat, a Lake Powell style houseboat, which I thought we wanted to try to not allow. I think you're opening the door to allow it with this definition. A live-aboard with a catamaran or a Sidewinder are getting bigger and bigger. If it's got a galley and a head and it's got a permit to live aboard, how could you distinguish between the type of hull? A sloop could be a place to live. It's got a bunk. It's got a galley. It's got a head. Everyone thinks of a houseboat as being a pontoon boat with everything short of a fireplace on it. There are houseboats that never move, like they have in Seattle and Sausalito. Then there are houseboats like they have on Lake Powell that move quite a bit. I guess those are going to be legal per this definition. Maybe that's okay. I'm not saying it isn't. I'm just pointing that out.</p>	<p>No. Because that's a definition. As Mr. Mosher correctly pointed out, in Section 17.60.050, houseboats, all houseboat activity is prohibited in the Harbor. This is just a definition. In another section of the Code, houseboats are not allowed in the Harbor. That's why the definition is there, so we can exclude them from the Harbor later on. A legal live-aboard would have a permit. We struggled with this. How would you change it?</p>	<p>No recommended changes.</p>
<p>The problem is those houseboats are not ocean-going vessels. Anything that's not an ocean-going vessel would be a houseboat. If it can operate, it can get to the demarcation line and back. That's not the point I was making, that all the boats have to be ocean-going. There are ocean-going houseboats that travel regularly on the ocean, that are ocean-going vessels. All of the</p>	<p>There's a way to deal with that, and that has to do with operable. Maybe we change the word operable to make sure that any vessel that is defined as operable must be ocean-going. I strongly disagree. Harbor 20s are by definition by the manufacturer non-ocean-going. If all of a sudden you throw a requirement in here that says in order to have a mooring permit, you have to be ocean-going,</p>	<p>No recommended changes</p>

lake houseboats are not ocean-going vessels. They're (inaudible) water vessels. They would not survive on the ocean for even moderate weather.	Harbor 20s will no longer be allowed to moor on a mooring.	
Maybe you can put in restricting the ones that are designed for lake usage.	I think we're treading on very thin ice here. We've come up with a definition that allows the most activity and opportunity for those who want to boat on Newport Harbor to do so. Any further definition will cause us to be looked at with great scrutiny by organizations that are encouraging us to provide public access. Low-cost public access to the water. We went around and around on this, trying to come up with a solution. We currently don't have any. If somebody were to come in with a houseboat, Mr. Borsting would maybe rent them a mooring for a day, but they certainly wouldn't be here permanently.	No recommended changes
Is there something that states a boat after a certain size needs to be ocean-going in the Code at all?	Nope. You could have a 65-foot Baycruiser.	No recommended changes
Maybe since there's already a restriction on the number of live-aboards that are allowed in the Harbor—maybe that's enough of a restriction as it is.		General comment
It would not restrict them because they would have so many days a month that they could stay on the boat even though it's a houseboat.	I'm very comfortable with this definition. If someone has a better idea, come up with some language.	No recommended changes
It has to be ocean-going. It can't be in the Harbor if it's not ocean-going. There are ocean-going houseboats. If people look at this and say it's okay to have a houseboat on the Harbor, houseboats will be showing up on the moorings for sure because a majority of the boats for now do not leave the moorings at all.	You'd get rid of a lot of boats out here. Do you want to specifically state that a houseboat needs to be ocean-going? We don't have that condition on any other boat that enjoys a mooring, live-aboard or not. If we restricted it or made it more restrictive, we will come under scrutiny we do not want.	No recommended changes
Is this added?	No. This has been here for decades. We just couldn't figure out how to manipulate it to provide the protections that we're looking for.	No recommended changes

You haven't had any houseboats yet, so I guess it's working.	Good point. It's been working. If it's not broken, don't fix it.	No recommended changes
Do we expect an onslaught of houseboats?	It only takes one, and then others could follow. All we're trying to do is be careful that the definition is correct.	General comment.
	<p>The differentiating word here is one that is not principally used for transportation. If we're talking about a lake houseboat, those are transportation vessels. They live aboard. You could have a place of habitation and a use for transportation. That, to me, would qualify a lake houseboat as opposed to a Seattle-style houseboat that doesn't move, that stays permanently in one place. Correct.</p> <p>We've talked about that particular definition. If we're not changing it, we're still leaving the door open for what we've just described.</p> <p>Right. We can't legislate aesthetics. Just because you don't want it here, just because you don't think it's attractive, doesn't mean it can't be here. This is a public amenity. It belongs to the people of the State of California. We cannot exclude a section of them because their boats are ugly.</p> <p>Does it help if you put that one word, ocean-going, in? Not used for ocean-going transportation.</p> <p>Then we're going to be subject to scrutiny on all the other boats that are not ocean-going that enjoy moorings.</p>	General comment.
(crosstalk) just going to make more ocean-going houseboats, and then we'll have the whole Harbor filled up with those. The idea is really the moorings are designed for live-aboards. That's a benefit for people that do have a permit. The thing is it's really recreational boating. Some people can't afford a house on the Bay with a dock. People from inland can have a mooring just as much as somebody that lives here and has a financially high-end.		General comment

You've got a big mix of people. You don't want everybody to have a live-aboard here. The way you've got it set is fine. It's worked well.		
The real intent is to keep the Seattle-style houseboats out, right? That addresses that specifically.	Right, stuff that doesn't move. Stuff that cannot be used for recreation. The Seattle and Sausalito-style houseboats have fixed connections to the bulkhead. That's the difference. The lake-style boats do not. We certainly can control through not only the Harbor Code but also through our Building Code the permanent, attached-type structures. We really don't have to worry about those. I recommend we keep the language as is.	General comment,
Pierhead Line definition		
It's consistent with a declaration I had to sign to get my dock permit, that the vessel will not overhang beyond the beam of the boat.		General comment
Seaworthy definition		
Good luck with that.		General comment
That's kind of a weird (crosstalk). I would say made with competent material.		General comment
I would delete "and generally free from dry rot." That was put in there when most boats were made of wood.	There are still boats that have wood decking that can be subject to dry rot and, therefore, a hazard for fire/life safety personnel that are coming on board.	No recommended change.
There are a number of wooden boats in the Harbor still.	Again, there are a lot of fiberglass hulls that have a wood deck or a wood superstructure. I'd like to leave that dry rot in there just because I've witnessed it. I would concur.	General comment
Vessel Length/Width definition		
Those are really the only two dimensions that are ever used, as far as I know. Width is the beam. That's standard.		General comment
I thought we had a pretty extensive discussion about LOD,	We're not defining it because that's not what we're going to use. It is the	No recommended change

length on deck. That's usually what's on the registration of your—it's not length overall; it's length on deck. Are you saying that there's no length on deck ... What's the max slip that we have here in Marina Park? If you've got a 40-foot sailboat with a bowsprit, you're usually let in at 40 feet, and that's okay, but the bowsprit is longer than that. That's still understood?	dimension most frequently used in documented length or registered length. Forty feet. The documented registered length we felt was the most objective. It's not arguable. For purposes of mooring permits, that's what should be used.	
There's no significance in the bowsprit on the mooring (crosstalk).		General comment
Basically, the documented registered length is normally the length on deck. It just doesn't say LOD.	Correct.	General comment
Section 17.05.065(E)		
This seems like something that would be decided by the City Council, not by anybody else. Did the City Council instruct you to do whatever they wish?	It would ultimately be decided by the City Council, absolutely. However, sometimes the City Council—why you have a Harbor Commission and why you have a Planning Commission is because they're the subject matter experts on those subjects, and they would provide a recommendation to the City Council from their perspective, whether that be Harbor or Planning. Hopefully they will take our recommendations into consideration and adopt them. If they're going to give us the credibility, then hopefully they'll stand behind us.	General comment
It says to advise them on what you're referred.		General comment
Section 17.20.020(A)		
There's a provision in the California Constitution that goes something like nobody owning, possessing or controlling access to any of the navigable waters of the State shall not impede access thereto. That'll be most liberally interpreted in favor of allowing access. I know the City was sued many years ago on that. There	These are the designated launching sites, if you will. Almost all of them are street ends. Obviously not every street end is designated as a launching site. This was adopted in 1971. We certainly want to take a fresh look at what this is.	For this conversation, the group agreed to let the language stand as is for now and ask the City Council if this is something they would like reviewed separately as this is a topic of its own.

are all sorts of people on all the islands around here and the Peninsula who have dinghies and kayaks in their garages, and kids have to launch them. To sometimes have to go to a designated launching place that might be blocks and blocks away is a real problem for people who have historically ... I've got a couple of inflatables in the garage my grandkids use and a couple of kayaks.		
Number 6 is the Fernando Street dock? Look at Number 20. That's the area, right? In that area where Number 20 is, there are people on our mooring field who access their boats, who do not want to take up public space on the docks. They bring their paddleboards on the roof of their vehicles. Wherever they can find parking in that neighborhood, they're not going to carry that paddleboard blocks away. They go to the nearest place where there's water, they jump on that paddleboard, they paddle to their boat, and they use their boat. Consider those people as well in the decision-making.	No. Number 6 is 18th Street. Twenty is Coronado Street. Fernando is 27. We have not analyzed each and every one of these launching sites. I'm sure that somebody did at some point in time. That's the real purpose why we're here. Should it be every street end? Should we designate street ends and certain beaches? If so, should we go through an extensive analysis to determine if these are still the proper locations? I don't have the answers.	
I notice that my street, Ruby, is one of the launching ramps, so we're not breaking the law. I feel sympathy for people at some of the other streets who are blocked off and have to go blocks out of their way. There is overuse perhaps concentrated at the legal spots.	I have no way to confirm this, but I believe this was done in relation to shore moorings. Where there were some shore moorings, that street end was not designated as a launching site.	
Can you more clearly define where is 25? Is that E? The launching areas are keyed with the red circle? That's the street end that I live on. 17.20.020 says where permitted. There are two shore moorings, and there is a street sign or City sign that says no launching of any boats from this site. That's not permitted. It's a conflict because people all the time want to ... What's a vessel? Anything that floats? That's a paddleboard, a kayak. One kid on	E Street. Yes, the red circles. That's why we're here. We didn't go check every one of these. I can't tell what's at every street end.	

the corner has his own Ski Doo. He hauls it down the sidewalk, pulls it over the seawall, and launches it, whatever the sign says. What I'm getting at is it looks like there needs to be a review of which is going to govern.		
The general public has no idea about this. People come down all the time, and they just walk out to the end of the street (crosstalk). Most of the signs don't say you can't launch. They're just blank.		
Could you perhaps exempt hand-carried vessels?		
The signs at the end of those streets say hand-carried vessels only.		
Maybe it's because of the two shore moorings there. They don't want to have a conflict of damaging the boats on the shore moorings.	<p>I'm certain that the signage and the location of the shore moorings have changed over time. Whomever within the City didn't know there were designated sites or didn't look at the designated sites and didn't realize they were creating conflict. I have a suggestion. Can we get the Harbor Department to do a survey and determine the concurrence between signage and this authorized map? I certainly wouldn't advocate for taking any of these away.</p> <p>This was done in '71 for whatever reason at that time. There are certainly a lot more spots that aren't showing here that are easily accessible like most of them are. I think there are more that should be added or there should be something considered more of a universal without any red dot seen at the end of a street. There should be availability unless there's something with that street end that makes it dangerous or non-navigable for launching a vessel. This map could be obsolete.</p> <p>I would recommend that this is a subject that needs study on its own outside of Title 17. This involves a lot of residents and a lot of folks. It's not just the people who are trying to get to their boats. It involves the</p>	

	<p>residents. I would recommend we leave the language as it is because right now it says if it's authorized, you can do it, but the Harbor Commission at some point direct staff to do an overall brand new analysis, actually go out and get some hard data about this, so that we can make an informed decision about where things should be.</p> <p>I would like to suggest that we do a three-part overlay, existing, include the moorings, include the signage. I know there are street ends where it's sometimes dangerous to launch. I'm sure one of the reasons that some of them are not designated or that there is signage prohibiting is it may be somewhat of a dangerous situation. I like Carol's idea. I'm going to suggest we leave this alone, but we advise the Council that with respect to this provision we'll do a separate analysis and come back to them at a later date.</p> <p>The general tone of this group is we're looking for ways to make more spots available, not reduce the number of spots.</p>	
<p>On the 19th Street pier, according to this, you can't launch a vessel. 19th Street, there's a dock, there's a parking area, and you can't launch there? A vessel on a cart would not be permitted?</p>	<p>At 18th Street you can. You have to go through the bollards and over the sand at 18th Street.</p> <p>No, you can. You can go down on the float and throw your paddleboard in the water from the float or carry your (inaudible) down and throw it off the float.</p> <p>Manual push. It can't be mechanically aided.</p>	
<p>Can you launch at Marina Park? If I had a boat on a trailer and I'm coming from Riverside? Since we have parking and elbow room and space, why aren't we making this the center of access? If we could recommend overriding that, it just makes sense. This is a better center to launch than having people go through the neighborhoods and find their way to park and lug their boats down to the street ends if you were visiting. I'm surprised it isn't. Any vessel. You have a davit here; you have a crane. You have the facility, parking. You have temporary</p>	<p>No.</p> <p>I think that's a Public Works and public safety matter because the lifeguard boats use here and we have safety personnel here. I remember the discussion from when Marina Park was in design.</p> <p>You're suggesting a trailer boat?</p> <p>You don't have parking for trailers.</p> <p>Public use of that crane is a liability for the City that it doesn't want to take on. If you cartopped your kayak here, I don't see a reason why you shouldn't be able to throw it in the water off the float.</p>	

access. You can pull up alongside and get your boat in the water much more easily than around the neighborhoods.		
This came up last time. The parking of the cars with the trailers was a big concern.	One of our goals is to try to find a second launch ramp. We've scoured the Harbor trying to find a location. It's difficult because it's not just a place to drop a boat. It'd be great if we could have a crane.	
When that was thought of, there was no Uber. You could pull up a trailer here. You have a time-limited space and you could off-load your boat, and then you can take it to another location and Uber back here. I'm not suggesting that we park here. I'm suggesting that we launch here because this is a marina park, and it does promote access.	One of the issues we face in Newport Beach is parking. You'd have to have a special area to be able to park a trailer. I don't believe you can park a car and trailer on the street in the metered parking.	
I'm speaking as a resident and not in my official capacity. Just looking at this map, it seems like they're all concentrated in one area on the Peninsula and Balboa. I don't know if it's possible to put some on Lido or on the PCH side of the Bay, but that might help alleviate some traffic issues during summer. I don't know if it's possible.		
How does Lido get away with having one?	Their street ends are all owned by the community association. Those are private property.	
The same thing on the mainland and on the islands.		
Section 17.20.040		
Is there another place in the Code about trespassing or is this the only place? Do you have a slide of where the pierhead line, the bulkhead line is on any given dock? Bulkhead line is my northern property line. It cuts right through one of the floats of my dock. Everything on the private property side is essentially an area that's private property. When somebody comes around and	It's certainly in the Penal Code. It's the GIS map. There's a way to configure the GIS with those filters. What's your specific concern over trespass between the project and pierhead? We're not going to write liability into the Code for one homeowner or even a small group of homeowners. This is a broad definition that applies universally through the Harbor.	No recommended changes

<p>wants to fish or have fun, I'm not chasing them away. It is a liability that I'm assuming is covered by my homeowners policy if somebody trips and falls, they trip over the groin, which is on my property. It's differentiated from state lands. Where does the trespassing occur? I'm not suggesting it would be on the state land side. It would appear to me that the trespassing is on the private property side. Where does the liability come and go? Is it going to be in the Code? Harbor-wide is what I'm talking about, about trespassing. Who would be the City individual I'd go to, to give my comments? There are no trespassing signs all over, but they're disregarded like the launching signs. I just wondered for the purposes of this discussion and Title 17 if we're going to talk at all about the definition of trespassing on land or just vessels. My dock is half on state lands. Where would I find the trespassing statement here?</p>	<p>This definition applies only to the state lands. It does not apply to private property. I'm sure there is another portion of the Municipal Code that would deal with trespassing on private property, but it wouldn't be in Title 17.</p> <p>You can certainly go to the Police Department. It's also part of the California Penal Code because that's where trespass is truly defined. The City of Newport Beach Police Department is responsible for enforcing that section of the California Penal Code that deals with trespass. We are way outside the scope of this meeting. It would be my advice to mark the property line clearly and post a no trespass. Posting that sign limits your liability. Nope, we're dealing with the Harbor and state tidelands.</p> <p>This deals with anything over the state tidelands. If the pier or dock is on the state tidelands, it's covered here.</p> <p>Anything that's on state lands. The half that's on state lands is covered right here. The half that's on private property is covered somewhere else.</p>	
<p>Section 17.25.010(C)</p>		
<p>I get what you're saying about 15th Street, but what about 19th Street? We have a different problem at 19th Street. Is there going to be any recommendations about that because it's a problem now? It's completely inaccessible. Are those 3-hour zones still going to be at risk of impound until this gets sorted out? That's an expensive way to experiment. What about tomorrow? People are worried now. They don't know what to do. For places where there are a lot of boaters that have been using that dock for years or decades over that. There are some pretty simple solutions we could do to make everybody get along and be happy. That's change those 3-hour zones to 12-hour zones for people who have stickers for boats connected to a</p>	<p>The approach we're taking is to see if it works at the 15th Street trial. If we have success ...</p> <p>The problem I have observed is that the tidal conditions at 19th Street are one of the contributors to the problem there. We've marked a lot of area for 72 hours that are subject to tidal conditions.</p> <p>It becomes inaccessible, exactly. We're going to handle that at a different time. That needs to be dealt with as well.</p> <p>We've been educating folks about the time limits and doing enforcement. We did some enforcement in that area that led to some impounds.</p> <p>That needs to be researched. I don't disagree with you. The current configuration of the hours on that dock needs to be revisited. I'm just</p>	<p>Harbor Department to review separately. Added 24 hour time limit to 15th St. dock at Harbor Commission meeting of 5/9/19.</p>

mooring. There are people that need to tie up there still.	not bringing that tomorrow to the meeting.	
The simplest thing to do is follow the rules, then you don't have a problem, which has never been done in the past.		General comment
The issue is not only the time but also the length of the vessel. There is a lot of space for the 9-foot vessel. I'm speaking as a live-aboard. Most of the live-aboards I know need larger boats than 9 feet. We all stack up at the 3-hour, and many of us have to go to work or doctors' appointments. Because of the 9-foot limit, it's a big issue for us. I'd like to propose that—it's a beautiful dock out here—it can be used for 20 minutes without any harm to the public as a 20-minute short stay, and you can convert the 20-minute stay that's only 15 minutes or the 3 or 12 hour. That will complete maybe the problem.		Harbor Department to review.
The outside dock with the 20-minute, the dock is almost free all the time just for a couple of boats. If you've got a 40-foot boat, it takes up most of that dock. In the summer time, people are using that dock to come and go, just to take people on and off. All of us need that slip. Marina Park is rarely separate (inaudible). It's only about 10 or 12 years ago maybe that they actually expanded the 15th Street three (inaudible). It used to be just the front dock and a little bit on the side.	For the purposes of the Code, we're going to leave it as it is. I understand you're a live-aboard. There's a dilemma here. On the one hand, we want to accommodate as many people as we can. That's the purpose for the 9-foot limit. Live-aboards have the ability to tie two dinghies to their boat as opposed to one. Use the 9-foot dinghy when you're going to be for any length of time. The public docks also need to be available not just to the mooring permittees but also to the general public. We have to balance the needs of both.	Harbor Department to review.
Just an observation. When you guys mark 15th Street, there are a couple of large inflatables there. Two days later, they're at Fernando Street taking space there. They're going to move around as long as you have motors. The 24-hour thing you have here, I come down here for three days. If I have to move it for 24 hours, where do I put it? Mine's a rowboat. I don't have a motor		Harbor Department to review.

like those guys that can go to the (inaudible) or the other dock. It limits my ability to get to my mooring.		
Section 17.25.020(I)(4)		
Just got the survey today. I have some preliminary results. Sixty-six votes cast; 55 were in favor of the Harbor Department doing something active, so 55 to 11. Personally, I'd like to hear more about what are we talking about billing. If the Harbor workers are just scaring the sea lions off with a hose or something, is that a non-billable event? Are they installing devices? What are we talking about, what kind of deterrents?	The discussion at our last meeting was installing the seal stop. I don't know that we would install. I thought that was what we discussed, putting the seal stop device on the boat temporarily. We're not going to make any permanent modifications to a boat. There are a couple of things. First of all, we cannot charge you for anything unless we have a fee for it. I don't think we have a fee for this. Right now, we don't have a fee for it. We'll probably have to have one. We can only charge you what we estimate it to cost, the cost of service. We cannot make money off you. We do a fee for service survey, and that's how we come up with our fees. As we move forward with this and if we want to establish a fee for this, we would take recommendations from the Harbor Department and the Harbor Commission that says if we have a sea lion problem, these are the steps we take. Calling you is free. Squirting them down is free if we happen to be out there. If we have to put buckets or netting or something like that on your boat, that is the cost, and it's \$100 or \$125.50. You'll know what that fee will be in advance of this going out and being implemented by anyone.	No additional changes recommended.
Just speaking for myself, the Harbor workers are on the Harbor all the time. They're seeing what's going on. If they have devices onboard to place on the vessel after the sea lions were scared away, that'd be great. I can't imagine too many people being against that. Installing seal stops at a giant expense ...	Don't mistake what I said. Whatever we would do would be on a temporary basis. We're not going to start drilling holes on your boat.	General comment
Are we talking about the first day we see the seals on there or within that seven-day period that we	The intent for this is when the clock runs out and you haven't responded, the City can take action.	General comment

have to take action? Am I going to get a call on Tuesday morning and I come down at 5:00 Tuesday evening after work, and you guys have taken action, and I get a bill?	The good news is when we start that multi-day clock, most people are very responsive. They're out there right away to address it. This rule is going to address the exception. If you're out of town, you don't have to wait the seven days. If you're on a phone call, you can just take care of that work right up front.	
Section 17.30.30(E)		
The term is non-domesticated sea life.	I would include the white sea bass pen to make sure they have the same obligation to dispose. They could think they don't have the obligation because they're not specifically called out. I agree. It should be any facility for fostering the growth of live animals under the surface of the water.	Added language to the definition of Life Bait to include other sea life.
It might be included because it calls it out that they have an obligation to maintain it.		General comment
Section 17.30.010		
The landing of aircraft, is that meant on the waters of the Harbor? If they're landing on a vessel, it doesn't affect it?	Yes. Are we going to allow somebody to land their helicopter on the helipad of their large yacht? It's over the Harbor, so it would be the subject of this Code. You are not allowed to land your helicopter on your helipad on your large yacht while your large yacht is on Newport Harbor. You've got to go out half a mile. That's not true. It says you could with a permit. If you get a special events permit, you can do it. There's no guarantee you're going to get the permit.	General comment
The verbiage about not creating a public hazard to life or property is pretty good, or nuisance or public hazard. Maybe that could go into that hand-launching thing. That would cover a lot of the issue.		General comment

Commissioner Kenney advised that the next opportunity for public comment on the proposed changes could be the June Harbor Commission meeting, depending on the attorney's review of the proposed changes. A public meeting for review of proposed revisions to the second half of Title 17, starting with Section 17.40, is scheduled for Monday, May 13, at 6 p.m.

In response to a question from the public, Assistant City Manager Jacobs indicated the proposed revisions for the May 13 meeting will be posted online on May 7.

NEWPORT BEACH HARBOR COMMISSION
PUBLIC MEETING
Review of Proposed Changes to Title 17 of the Harbor Code
Marina Park, 1600 W. Balboa Blvd., Newport Beach, CA 92663
Monday, May 13, 2019
7:30 PM

Commissioner Kenney reported the review will focus on proposed changes to Sections 17.40, 17.45, 17.50, 17.55, 17.60, 17.65, and 17.70 of the Municipal Code. Comments submitted via email will be considered and do not need to be repeated orally. Grammatical and typographical errors do not need to be noted as they will be corrected. If all the proposed changes have not been reviewed in the allotted time, staff will probably schedule another public meeting. The Harbor Commission Ad Hoc Subcommittee will consider each and every comment; however, the subcommittee may not incorporate each and every comment into the final recommendations to the Harbor Commission. The subcommittee's recommendations will be submitted to the Harbor Commission for review, comment, and hopefully approval. The Harbor Commission's recommendation regarding changes to Title 17 will be presented to the City Council. The public may testify at the Harbor Commission meeting and/or the City Council meeting.

PUBLIC COMMENT	RESPONSE	SUBCOMMITTEE RECOMMENDATION
Section 17.40.20		
That provision today is ambiguous. I've spoken to several commercial owners. They've been asking the question, "Can we have live-aboards in our marinas?" This change, which I strongly disagree with, is now allowing us to have live-aboards in the commercial marinas. That's essentially what you're asking to do here. There should not be live-aboards. They don't address this issue. What you're doing by default here is addressing that.	Do you think there should be live-aboards? If I'm incorrect, Assistant City Manager Jacobs will probably know. Commercial marinas are subject to a lease with the City of Newport Beach. The leases are the governing documents that deal with marinas. I believe they do, but I can't tell you with 100% certainty. I don't believe they do. The one that I read was silent, but I've only read one.	Commercial marinas are silent on the issues of live-aboards. A survey was completed and each operator deals with this differently as they are not specifically prohibited. Newport Harbor Marina has 3 and is considering adding 3 more. This is the most of the marinas surveyed. The subcommittee recommends limiting the live-aboards in commercial marinas to 7% of total number of slips except if they are adjacent to bayward residential properties.
	The Municipal Code only allows for 7% of the moorings in the Harbor to be occupied by live-aboards. There's a finite number of live-aboard permits that are available. The intent of the ad hoc committee is that the commercial marinas would be governed by that same 7% limit. The commercial marinas have other obligations like providing heads and showers, etc. I'm going to make two quick comments. The 7% number applies to offshore moorings only, not the entire population. That's the case today, and we're not proposing any changes	See comment above

	<p>there. With respect to the commercial marina operators, I feel it should be their discretion. If they don't want live-aboards in their marines, that's fine. There's no obligation to have them. Under the language as it was yesterday, they're potentially prohibited. I would like to see them have the option to use their property at the highest and best use they think possible up to the same limit we impose upon the moorings. There is a distinction between a live-aboard at a marina that has parking and sanitation and things that aren't available on the moorings. If there was an unlimited amount that a marina could turn to a higher and better use for all live-aboards, then that obviously would be a complete pendulum swing to the opposite direction we've been seeking. Right now, there is the rule of 7%, which has been designed for moorings. Whether we come up with a limit or leave it to the discretion of the marinas, that's certainly subject for conversation here today. I'd be open to hearing about leaving it in the marinas' hands versus in the City's hands about something like that..</p> <p>If you read Section 17.40.20, it only deals with marinas that are bayward of residentially zoned properties. There are only a couple of instances in the Harbor where that exists. One of them is Bayshores. It's not every marina; only those that—two marinas in front of Bayshores. There's the old Swales and then the Bellport. There may be a third. There is.</p>	
<p>I think there's one over by the Balboa Yacht Club that has facilities and is adjacent to Little Balboa Island. The channel is only about 150 yards wide. You're now going to have live-aboards directly adjacent.</p>	<p>Northbound of BCYC also. We believe they have the right today. What we would propose would be to put the same kind of limit as is placed on the offshore moorings. My thought is not to give them carte blanche, an unlimited</p>	<p>See comments above</p>

<p>Now, you're going to have live-aboards in that marina adjacent to the homeowners that live there. I've just got to go on the record as saying that you're giving them permission now.</p>	<p>number of live-aboards at a commercial marina. This carve-out does sort of leave that door open. I'm not necessarily saying as written here unless there are other caveats to what we will or won't allow a commercial marina to do or to operate or things in their lease documents that would prohibit certain ways they can operate. Unless that is addressed, a straight carve-out like this might open the door to many more live-aboards at a commercial marina than we'd want as an unintended consequence.</p> <p>If we put a limit on the commercial marinas the same as we do on the offshores, then we're at least limiting it to 7%. Without that, there's nothing. Right now, the way the ordinance reads, there isn't anything limiting them. I can't answer that. I'm not sure. What you're saying is the one you read does not have a prohibition. If it's silent, then it's unlimited.</p>	
<p>If I recall correctly, the mark-up in red limits it to 7% on the moorings and in the marinas.</p>	<p>We're going to get to that. It may, and you may be correct, but I can't tell you either way. I remember we addressed it, but we're not there yet.</p>	<p>See comments above</p>
<p>I'm a little confused. Ms. Jacobs just said that commercial marinas are governed by independent documents and not governed by Title 17. Essentially, by adding this language to this document, you are condoning the expansion of live-aboards in commercial marinas. Is that correct? Otherwise, if we're silent on it, it goes to the document on the individual marina or that owner can make an application to the Harbor Commission independent of this document. I'm just thinking about the infrastructure that we have in the Harbor with respect to the Harbormaster and our relationship with the Sheriff's Department. You're talking about putting live-</p>	<p>Title 17 does in many instances govern the marinas. Title 17 at this point may or may not govern whether or not they can have live-aboards. As this gentleman just stated, I think we added a provision. I can't remember all 86 pages of these documents. I believe we added a provision limiting the live-aboards in commercial marinas in the same manner that we limited them on offshore moorings. We're not there yet, so let's keep this as an open issue.</p> <p>No, the City does not have a fire boat.</p> <p>First of all, it's my understanding that the commercial marinas have the right to have live-</p>	<p>See comments above. Title 17 as proposed would now limit the number of live-aboards in marinas to 7% of the slips on site with the condition that residential properties are not bayward of the marina.</p>

<p>aboard potentially or condoning live-aboard in marinas where they may or may not be allowed. Do we have a fire boat that has the type of hoses required to put out a fire that might spread very rapidly in a commercial marina? Something like 5,000 gallons per minute, not 250 gallons per minute that the Sheriff has? Does the City have a fire boat?</p> <p>What you're saying is you're going to allow potentially live-aboard live there who might have a barbecue or he might do something that any resident might do and ruin their home. You're going to put that in a commercial, dense field. There could be a fire. It could happen. We have boat fires all the time all over the state. We have no facility here in Newport to address that. By adding this, you're increasing potential damage to real property and to residents by adding persons in these commercial areas where they may or may not currently be allowed. All I'm saying is if you're going to do this, the City has an affirmative obligation to provide for the protection that all residents in this City are afforded by the Fire Department. You can't just approve this without doing that.</p> <p>The difference with this document is the City is now condoning through adding that language to this document live-aboard. Why is the City stepping into this when (crosstalk)?</p>	<p>aboard today. Second, every boater who has a boat in the marina has the right to use their barbecue or do anything else. It's just that they don't have a right to sleep on the boat 24/7. Third, the Sheriff today is responsible for fire. The City has been trying to get the Sheriff to upgrade the equipment. If we get the right kind of support, maybe we can get our City Council to spring for the dollars we need to get the proper equipment in the Harbor. Nobody's going to argue good or bad whether or not we have the right equipment. Certainly an upgrade would be positive. Let's get to the rest of the document, and see if there is a limitation already. It's our understanding that live-aboard are currently allowed in the commercial marinas. We all might decide, if we get the right citizen support, to ban live-aboard completely in marinas. We're not here to make every decision this evening. We're here to take input.</p>	
<p>In counterpoint to this gentleman. I think most marina operators, especially large marina operators, would tell you that having a small percentage of live-aboard enhances the safety of the overall marina. It's great to have eyes and ears out there all the time. We may see that start happening with regards to theft and vandalism and stuff. They're on it. I think a small percentage of live-aboard is a positive thing. We don't really have any large marinas here, so it's a little different. When you're talking about marinas with 25 slip fingers,</p>		<p>See comments above</p>

they go out a long way. When there's nobody around, that's a bad thing. When people are around and boats break loose or fires happen, it's the live-aboards that usually are on it first calling the authorities. My second point is a little bleak. The State of California has a lot of rules and regs regarding affordable housing. I don't know them, but I know the City of Newport Beach will be required to provide X amount of affordable housing incrementally going forward. The live-aboard thing might be a good work-around for the City. This might qualify. I think it will actually. It might be in the overall best interest of the City in different respects to allow some live-aboards. Not a ton but some live-aboards in marinas.		
In response to your concerns about fire, those are real concerns. Every dock that's built in this City is inspected by the Building Department and has to meet certain requirements. We just finished a remodel at Newport Harbor Yacht Club. There's a 5 or 6-inch water main running to the far end of the dock and going off in a T to both directions. There's a 1.5-inch fire hose every 75 feet that has to be able to reach every boat and have ample water supply.	I believe it's in Harbor development permits. I believe you'll see there are some very, very stringent provisions with respect to landward facilities, showers, heads, fire protection, etc. That's in the design standards for new slips. Not every slip has been brought up to current Code. For those of you who don't know, the City Council just approved a complete rebuilding of the Swales anchorage. We put some requirements on there with respect to fire and life safety.	The Building Department is responsible for building codes in marinas to ensure life and safety of those in the marina.
The land-based Fire Department responds to all marina fires and also to mooring fires.	That's correct. How do they respond to mooring fires? The Sheriff can pick them up and take them out there.	The Newport Beach Fire Department responds to all fires on the land and waters of Newport Harbor with the assistance of the Sheriff.
They run the truck down to the Sheriff's Department, jump on the boat, and go all the way to the other end of the Harbor to get it.		No comment
If the trucks pull up and the big tugboat's not here in Newport Harbor, they have several fire trucks out there pumping water.		No comment

Has the percentage of live-aboards always been 7%? I thought it was 10%.	To our knowledge, it's been 7% for a long, long time. We could probably look into the Code that's online, and it'll tell you when each provision is updated.	To our knowledge 7% is correct
Last week, we were talking about houseboats. We were talking about not likely that a barge-type houseboat would come into Newport Harbor. When this provision is in there, I can see a marina having a barge-type houseboat. I think we used the term Seattle-type houseboat. I agree eyes and ears make it more safe, but I think we could max out real quickly. I'm a little confused where we were with the houseboat definition and then this restriction. I'm trying to get my arms around what's the right thing to do. Say nothing, self-regulate, make it in the lease rather than publish it in the fine print here? It's very vague which is the right way to go.	We realize that the definition itself is a slippery slope. We certainly will make sure that the types of facilities that you see in Sausalito or in Seattle are not allowed. Those are the ones that have fixed landward connections, sewer, water, electrical, etc. The prohibition of houseboats is those that are non-operable, functioning vessels. That would be put in the category of a Seattle-style houseboat as a non-operable vessel. Those are not permitted in the Harbor. That's the current language.	There are no changes to the definitions of houseboats in Newport Harbor
There's a section in the Code right now that says specifically no houseboats period. It's no problem. It's already addressed.	That's correct. We addressed it in the definitions when we were trying to define what is a houseboat. That's where the slippery slope gets in.	No changes to the definition of houseboat.
Section 17.40.050.A		
In my view, the elimination of "serve as the principal residence" vastly expands the availability, a population of potential lessees or people applying for a live-aboard permit. Are we saying that we're allowing that or that it's redundant? It opens up a whole other can of worms. Today we have very limited resources in the Harbormaster's office. I would contend that today we're not even coming close to enforcing our existing guidelines under these documents under lots of provisions. I for one happen to live adjacent to the F field where Wild Wave is. The gentleman continues to stay on that boat more than three nights a month. I have it on video. There's a gentleman on	If we go back to the definition of live-aboard, it requires that they use it as their principal residence. It's redundant. We're talking about opportunities for the Harbormaster to deny permits. Whether it's the principal residence or not, if in the opinion of the Harbormaster the sanitation system is not sufficient, the permit's going to get denied. It's redundant. Taking it out also gives the Harbormaster a little bit broader powers. The enforcement, in my own opinion, has been expanded greatly from the days of the Sheriff's Department managing the moorings. Second, in my	Recommend to leave as is. No changes to serving as a principal residence or number of nights allowed to stay on a vessel on a mooring.

<p>F19 who lives there fulltime, at least seven months out of the year and has not been addressed ever. I've made numerous reports to the Harbormaster about it, the previous Harbormaster as well as this one. For permitted vessels, F22 Sure Lily [phonetic] has been there now for seven months and has never had a single pump-out. There are two people living on that boat every day except for when they're on vacation. Giving more discretion to the Harbormaster in my view is a detriment to the citizens of Newport Beach and the residents that live adjacent to the Harbor. The budget is \$1.1 million. We're holding to that budget. The problem is this Commission is decoupling the enforcement issue from these provisions all throughout, including on the provision that you already made a change to or a potential change to, moving from three to 12 nights. We have no enforcement ability. In my view it's irresponsible of this Commission to make a recommendation that we know we're not going to be able to enforce. Once you start having 12 nights—at least now they know who's on the moorings for three nights. If you put it at 12, who knows whether you're 17, 30, whatever. You're opening Pandora's Box.</p>	<p>own opinion—I'm not speaking for the Harbor Commission or my colleagues—we have plenty of regulations already. I agree with you that what we need is more enforcement. In order to get more enforcement, we need to impose upon the City Council to expand the budget of the Harbor Department so that we can put more people in the field to deal with the issues that you're dealing with. I personally would concur with you. This is not the forum for that discussion. The forum is the City Council. If you can't enforce the 12 nights, you certainly can't enforce the three so that doesn't make any sense. That's not the purpose for this discussion this evening. That needs to go to the City Council. Do we want to live that provision in or do we want to strike it?</p>	
<p>Strike it—I'm sorry, leave it in. Once those appeals are exhausted, which they have been in this particular case that we're referencing, the City has taken no action to remove that boat. Can it enforce its own laws?</p>	<p>There is, in my opinion, a section in this Code that makes no sense. It's the section that provided for an appeal of the Harbor Commission's decision to revoke their permit to an administrative law judge, which makes no sense whatsoever. Certainly we intend to change that so that next time any appeal goes to the City Council. In the case of Wild Wave, we have been estopped by the judge. This is in litigation, and there's nothing the City can do at this point. There is litigation in process. Wild Wave is claiming that the</p>	<p>This case is still in the courts. We are following the directions of the judge in the case.</p>

	administrative law judge made the wrong decision. Until there's resolution of the case, if the City tried to boot Wild Wave, we'd get sued big time or the judge might throw a temporary restraining order against us. I don't like it either, but that's the way it is.	
That litigation is ongoing? I was under the impression that that appeal had been completely litigated. There's an appeal of the decision of the lower authority here had been litigated. Maybe the Harbormaster can speak to that. It goes back to my issue about Code enforcement being decoupled from these proceedings.	That's correct. My understanding is it's still in court. Not the topic for this evening. I would like an answer, yes or no, if you guys know what the status is. No, the litigation is completed. We are working to take the appropriate action, but I cannot say anymore than that.	Litigation is on-going.
It's a good comment on enforcement. I lived in a commercial slip for a few years when I moved back to Newport. Now, I'm a permitted live-aboard on the mooring. That's been during the time that the City took over from the Harbor Patrol. Let me tell you, the enforcement exists now. It didn't before. It's a pleasure to live out there. There's a lot of people that aren't here anymore. The live-aboards that are left and permitted and doing the right thing are grateful. Thank you very much.		No comment
I want to comment on the gentleman's comments on F field. I am a live-aboard on the F field. I believe you're referring to my boat. It's F22. Just for the record, we do keep a log of pumping out. When the time runs out, we go outside and pump three miles out. We really try to keep to the law and keep the Harbor clean because we reside in the Harbor.		No comment
I've been out of town for the last few days, but there has been a discussion in the prior meetings of changing the number of days a permittee can overnight on his mooring. What was the genesis of that? I have one other question.	That was the subject of the last two meetings. We're past that. If you'd like to make further comment on that, when this committee makes their recommendations to the Harbor Commission, you're more than welcome to come to that	There are no recommended changes to the number of nights a mooring permittee may stay on their vessel.

Do any of the Harbor Commissioners that are on this ad hoc committee actually own their own mooring? Were you involved in that decision or that discussion to add the number of days from three to 12? Having that expansion from three to 12 days is (inaudible) to your permit.	meeting and make any comments about any of those changes then. This evening we need to move on to Section 17.40. If it pertains to this, we'll answer. If it's not, we'll move on. I do. I participated in all the discussions and did participate in the formulation of the recommendations.	
Section 17.40.060		
(inaudible) for striking the primary residence. You're striking the same provisions.	Again, we think it's redundant. If you read the definition of live-aboard, it requires that they use it as a principal residence.	Recommend leaving language in regrading principal residence.
Section 17.40.070		
Jumping ahead a little bit, on page 8 there's a similar provision, part 2 about dye tablets, to apply to every vessel in the Harbor. Is this intended to be something (inaudible) from now? No. That's in part 2 of this, which is about the dye tablets. It seems to be identical to the later provision. All vessels are subject to that inspection. I don't see where part 2 adds anything.	Yes. It's unique and specific to live-aboards. The broader provision that you get to in page 8 does apply, but there are vessels that don't have marine sanitation devices. As long as they are not live-aboards, the provision is exclusive. If they have marine sanitation devices. There are boats that are not live-aboards and that do not have such devices. Like a Harbor 20. I think we're being specific about the permit for a live-aboard. Because it's their living space, we have the ability to enter your living space and put in a dye table to make sure that your sanitation device is working properly and according to your permit. The other section that you're referring to on page 8 is just a more general comment about sanitation as a whole because it's under the chapter called sanitation. We're trying to tie this, in this section on page 3, specifically to the live-aboard permits as a condition of your permit.	Recommend dye tabs may be dropped in a vessels holding tank at any time regardless of whether or not you are a live aboard.
There are two words in here that bother me. It says board the vessel any time. Any time? 24/7? If	If there's reason to believe that there is illegal dumping, absolutely.	Recommended anytime 24/7

somebody knocks on the door in the middle of the night? It has to do with suspicion of illegal ...	There's a burden there that there has to be suspicion. Where we're headed with this is we believe—we're all boaters. I have no problem with the Harbormaster coming to my boat at any time and dropping a dye tab. We think every boat that enters the Harbor should be under that same obligation. That's the way we feel. That's the way I feel.	
Why isn't everybody subject to that, even if they're here for two nights?	That's where we're headed. They will be.	It is recommended that everyone be subject to the dye tab rules.
We're talking about dye tablets. Why wouldn't we require anyone who has a live-aboard permit to have a dye tablet in their head at all times? If they're here and tied up, why wouldn't we just make that a provision? Instead of us just suspecting that they're leaking blackwater into the Bay, if you're a live-aboard permittee, why wouldn't you be subject to having one all the time? Why wouldn't we make that regulation?		Recommend dye tabs can be dropped at any time.
How would it get there?		Harbor Department staff would place the dye tablet in the tank
I don't know. We're just talking here. I'm just thinking to myself. I don't know how long a dye tablet lasts. You're supposed to pump it out how often?	Until the tank is evacuated.	Proposed pump out regulations are at a minimum of twice a month.
When it's full.		Yes.
How often is that when you're living aboard?		Depends.
Once a week.		No comment
How much is a dye tablet?		City will provide tablets for testing purposes
How much is it for the Harbormaster to put it in there?		It is included in the cost of the Department.
It's something you request of the mooring permittee to do.		It is proposed that the Harbor Department may check at any time.
How are you going to tell if the dye tablet's in there?		Staff will drop the tablet in the tank and look in the water for the results.

If you don't trust them to not flush, are you going to trust them to put the tablet in?		This will be done by harbor staff.
That's not going to happen.		No comment
Section 17.40.110		
This is obviously now expressly giving them rights to do that.	Which we believe they had already, but now we're limiting it.	Added language to limit commercial marinas to 7% of total number of slips
Don't they already have other separate agreements?	Carol noted and supplied to us an example. There is a lease. Every commercial marina operator has a lease with the City because their property is over tidelands. That lease covers all sorts of conditions and responsibilities. The one lease that I read made no mention of live-aboards or an allowance or limit on such things. Our attempt here is to put an absolute limit on it should a commercial marina operator wish to include live-aboards in his marina. I believe today it was wide open. You could fill your whole marina with live-aboards.	Added language to limit commercial marinas to 7% of total number of slips
How is that percentage calculated? Say I have commercial slips with five slips and I want somebody to live there. Does that count as 20% occupancy? How does that work? Do you need to have a certain amount of slips to be able to do that?	It's done on lineal feet of slip. You take the total lineal feet of those five slips, take 7% of that. If a boat can fit within that 7%, then it works.	By the number of slips available.
I appreciate you guys trying to limit this to 7%, but my point remains that I think you're actually opening it up from zero to seven. I get that. The only reason I bring it up is that I know from speaking with the previous Harbormaster that there were inquiries from commercial marinas about this exact case. It was unclear, so he was unable to provide adequate response. They were saying, "We would like to have live-aboards, but are we allowed to?" He didn't have an adequate response. Now, we're saying, "Now, you can. You can have 7%."	What we're trying to suggest—we will investigate more—is if a lease is silent on the subject of live-aboards, they could have 100%. Their whole marina could be live-aboards because the City is not restricting their use. Our purpose here was to restrict the use. I'm sure there's not a marina with 100% live-aboards, but we're trying to put some number. I'd like to recommend our Commissioners ask our Harbormaster to do an audit of what number exists today of live-aboards in commercial marinas	Currently leases are silent of if live-aboards are allowed. Therefore, they are allowed without restriction. The proposed language would restrict live-aboards to 7% of the total number of slips. The Harbormaster did conduct a survey and the number of live-aboards is very small in each marina. Recommend that the marinas continue to manage their live-aboard clients and the City conduct audits per the lease

	<p>so we have some context as to what this number actually is or isn't. We're just guessing. Just to have an idea because we know how the Bay operates today with whatever number that is. In the context of 7%, it might be the right percentage, it might be the wrong percentage, but let's get a little information before we go further on this topic.</p> <p>We should also ask the lease administrator what the lease administrator's interpretation of the absence of language in this regard means.</p> <p>I'd like to throw out a third concept. Does it make sense to require a live-aboard in a commercial marina to also obtain a live-aboard permit?</p> <p>Yes.</p> <p>That's in there.</p> <p>I don't believe it's in there.</p> <p>Yeah, we put it in there.</p> <p>Then we already have too many live-aboards. No, we don't.</p> <p>Never mind.</p> <p>Under 17.40.40, application for live-aboard permit, Section E, the second paragraph now says applications will be accepted only from persons holding a valid mooring permit pursuant to Chapter ... or a valid rental agreement from a commercial marina.</p> <p>A live-aboard in a commercial marina would be under the same obligation to pump out and do all those other things.</p>	agreement to ensure compliance.
<p>A question for Kurt. I know the Long Beach marina has lot of experience with this. I'm just curious what is the percentage at, say, Alamitos Bay Marina that they allow.</p> <p>I was just curious what that number was. They must have a ton of experience with that exact topic.</p>	<p>It's 10%. There's a minimize size requirement that the vessel has to be at least 25 feet. The number is also restricted in that there's what I'll describe as a peppering quality to it where different basins of the marina can't exceed that 10%. You can't over-concentrate them. Those are the principals that are applied.</p>	No comment.
<p>Last year, I was looking for a slip. Not (crosstalk) allow live-aboards</p>	<p>I'm going to pose a question. Does it make sense to entertain</p>	See comments above regarding proposed limits on commercial marinas.

<p>(crosstalk) I could not find a place to put my boat (inaudible).</p>	<p>a change to prohibit live-aboards in commercial marinas? I don't want to place that restriction on the property owners, the marina operators. I would prefer to give them the latitude to do what they think is best for the marina. I am opposed to it. If you guys overrule me, that's fine. I think I'm being cautious to granting that much control over the marina operator without falling into what we'd consider the guideline for the City because it could become a situation that we don't desire with a whole lot of extra marine live-aboards. My thought is not to completely prohibit it but have it under some—I don't know what the right number is or what the threshold should be, but I'm still open to that conversation. Could we ask the Harbormaster to report on the number of live-aboards that actually exist today in commercial marinas and the total as a percentage of the total slips. We'll leave this as an open subject.</p>	
<p>Section 17.40.070</p>		
<p>The issue with the pump-outs is—I do know on F19 that boat has never left the marina. It's a single guy. No, Aurora. The issue is we don't have any enforcement over pump-out. We don't require a log. I understand, but it's on the honor system. I would propose that we require pump-outs for live-aboards from an authorized pump-out service or somebody sign-off on their log at the dock and move to a structure where we're ensuring that the pump-outs are happening rather than dumps. I know the dumps are happening. Illegal live-aboard. It gets into the whole thing. If we're incapable of managing the obligations that we have affirmatively now, why would we be condoning an additional 7% in our commercial marinas, which is just</p>	<p>We do require a log. Every live-aboard has to keep a log. I'm going to defer to my colleagues. Is that something that either of you or both of you would want to consider? What I know to be true is there is more enforcement today than there was a year ago. I would like to see continued additional enforcement. I would not like to write additional legislation that won't be enforced or won't be enforced anytime soon. I'd like to see the ramp-up efforts for enforcement of our existing Code continue. Is Aurora that you mentioned a legal or illegal live-aboard? We're talking about things we want to do to tighten up the live-aboards that are legal. It's an enforcement question about</p>	<p>Added language regarding dye tablets and requiring live-aboards to use a commercial pumpout service with services provided available to the City.</p>

that much more work for our understaffed Harbor Department to manage?	those that are illegal. We're only as good as our enforcement is capable in that situation. We've already addressed that. We're going to respectfully disagree. We believe that they already have the right and they probably have the right to rent out 100% of their slips to live-aboards. We think we're tightening it up by going to 7%. We all agree that we would love to see more enforcement. It's up to each and everyone of you who believes in more enforcement to go to your City Council person and get them to allocate more funds to the Harbor Department so that we can put more people on the water. That's no longer a topic of discussion for purposes of Title 17.	
The situation is that enforcement is way more than it's every been before. Previously there were many live-aboard permits available. Now, there's a waiting list, and all the permits are gone. Obviously, the enforcement has increased already.		No comment.
On the sanitation, we're legal live-aboards, and we regularly pump out. We do so at the same time as we fill our water tanks and wash the boat. It would be an unnecessary cost for us to have to hire a service. Maybe there's a way where we could just call the office and say we're at the pump-out. No one has to come out. We'll never know whether you're going to check our logs. Something like that. I'm against it because we would have to go to the pump-out dock to fill our water anyway. It would really be a waste of money for us to get a service.		Added provision to require commercial pumpouts and provide proof of service upon request.
Section 17.45		
Does this relate only to commercial? When I read A under 14.45.010, if I were to read that for a private property dock, it would be very strange. It's not strange for a	No, sir. That provision is in the Building Department Codes also. I built a home on the Bay, and I could not get a permit for my dock until all of my rough	No changes recommended

commercial dock. This lends itself only to a commercial development. What if the dock's already existing and you're going to replace the dock?	plumbing was installed and permitted. You already have plumbing.	
It's really dealing with the back-flow device.		No changes recommended
<p>If it is the back flow ...</p> <p>Do you read this as no problem for a private dock replacement, repair, or new?</p> <p>Do you have to have sanitation facilities?</p> <p>It makes it clearer.</p>	<p>It's not the back-flow device. It's actually the plumbing itself. It's whole plumbing.</p> <p>No. If you have a home and it has a bathroom, then you meet this provision. This deals with new construction. Back in the '80s and '90s, there were people buying properties and didn't put homes on them because they wanted the docks. It's not that way so much anymore, but there was a period when it was like that. The late '80s.</p> <p>Or you can get a dock permit; that's correct.</p> <p>Would it make the crowd feel better if we inserted the word "upland" before "dwelling unit" in that section of Code so as to imply the house, which must have rough plumbing at least before you can get a dock permit?</p> <p>The permit would run with the dwelling unit, but we could certainly put that word in there. I'm just suggesting. I'm not recommending.</p> <p>Put that word in there if you would please, Carol.</p>	No changes recommended
Section 17.45.030		
<p>The only time I've ever been boarded is by the Coast Guard. I was outbound, and they wanted to check the vessel for safety. Would they have this ability as the Harbormaster?</p> <p>Should they have the requirement to check it?</p> <p>But they could?</p> <p>Last Thursday, there was a grueling meeting here with the Water Board. I don't know who they hail to the most. I think the State. It seems we have one layer of laws. There's</p>	<p>Yes.</p> <p>You better talk to the Coast Guard about that. We have no control whatsoever over the United States Coast Guard, and we have no control whatsoever over the County Sheriff's Department.</p> <p>I'm certain the Coast Guard absolutely has the right. They're chartered with protecting federal waters. The channels of Newport Harbor are federal waterways.</p>	Added language to allow Harbor Department staff to board a vessel with a marine sanitation device at any time and to drop a dye tablet into the tank. A leaking tank may result in the immediate removal from the harbor.

<p>another layer of laws. The Harbormaster can board, but certainly the Coast Guard can board. There's something very complicated about this.</p>	<p>You have elected officials that you can address these issues to and with. We debated this. I feel very strongly that any vessel that comes into this Harbor should be by entering the Harbor permitting a jurisdiction, whether it be the City, the County, the State, or the Federal Government, to make sure that, especially with respect to marine sanitation devices, that those devices are operable and all through-holes are shut, and there is no discharge. That's a violation of federal law, and it's a violation of City Code. That's the way I feel about it. That's why we put it in here. What he said.</p>	
<p>The Coast Guard has absolute authority to board at any time. They have the option to extend that to local law enforcement. Local law enforcement can board, which is the Sheriff's Department. If the Harbor Department becomes a law enforcement agency, they will automatically be authorized by the Coast Guard under the Coast Guard's authority.</p>	<p>Irrespective of authorization by the Coast Guard, this change to the Code gives them the authorization at any time. That's exactly what we're trying to accomplish. When we implemented the temporary anchorage in the west turning basin, we actually wanted the Harbor Patrol—when a boat dropped anchor out there, we wanted them to approach the vessel and drop a dye tablet and provide them with a welcome memo that said watch noise and lights because you're close to the west end of Lido Isle. There were those, including some electeds, who pushed back on that because they didn't want an officer with a badge and a gun coming on their boat. Now, we have just regular people out there in our Harbormaster boats, but we still want that right.</p>	<p>See comment above regarding proposed changes.</p>
<p>As far as the Harbormaster being able to board your boat at any time, I'm all for that, but there's nowhere that states somebody has to be present on your boat while they board. Can they board when you're not on your boat? I personally would like to see it stated.</p>	<p>That's a good question. We didn't think about that. I would submit there are certain situations. If you're not on your boat and it's discharging, there should be somebody with authority to go on your boat and try to take care of an emergency situation. Other than that, it's</p>	<p>See comments above regarding proposed changes.</p>

	<p>not stated. We're leaving it open.</p> <p>What if we said, "except in the case of emergencies, subject at any time to boarding provided there's an occupant on the vessel"? I don't care who's on there. If somebody's on there, you have the right to board. We'll play with that language and bring it back to you next time.</p>	
<p>In regards to boarding, are you guys boarding in pairs or as a single entity? The Coast Guard and Sheriff's Department have two people specifically for that. The reason I bring it up is as live-aboards, if you're a married couple (inaudible) I have my wife in my boat, I don't mind you guys boarding. Obviously, you take care of business. If there's two individuals, there's not a singular person of the opposite sex boarding my boat while my wife is on board. Is there a stipulation where you can bring two personnel to a boarding so there are some checks and balances in that regard?</p>	<p>I don't believe that's something that should be—we can take this Code to 500 pages if we want. That would be an operations issue. Kurt, how would you handle that?</p> <p>For our team's safety, we would look to go with two personnel.</p>	<p>As a matter of practice, two staff members would be present.</p>
Section 17.50		
<p>Getting a dock permit has got to be the worst experience of my whole life. Three and a half years. Since we're on the subject, I've got a bulkhead that if I don't get it dredged and put sand in it, it's going to fall apart. I can't afford to do it on my own. We have to have a block party. The 3 1/2 years to get a City preliminary. Coastal Commission, it got rejected four times. To get Army Corps of Engineers, and then get the Water Board, which was 85 pages for the application, and then go back to the City and it got rejected. I made eight trips to the City.</p> <p>How to make this process more efficient without getting too elaborate tonight with all the people here.</p> <p>It's the purpose of 17.50.010 as we get into this. What I'm saying is it's not only restrictive, but (inaudible).</p>	<p>If you have specific recommendations, we'd love to hear to them.</p> <p>The City of Newport Beach has not control over the Coastal Commission, as you saw the other night, the Water Board, the Army Corps of Engineers. We're talking about federal, state, county, and local bureaucracy. That's not the purpose for this discussion. I had to get a permit for a dock.</p> <p>That's not a topic for this meeting. If you want to make specific changes to the Code, we're more than happy to take those into consideration. We can't change community development. That's a separate division. We certainly can't change the Army Corps or the Regional Water Quality Control</p>	<p>No changes, the City does not have authority over other governmental agencies that have responsibility in the Harbor.</p>

<p>If this was just in charge of community development, we wanted to encourage repair and maintenance and upkeep, there would be a way to fast track this. I don't know how to get around all the verbiage other than what I just said. There has to be an easier way. If I call up one of the marine contractors and I need a bulkhead repair, if I'm lucky, he can do a certain percentage under repair, but he can't fix my whole bulkhead. I'm trying to put this in relation to the Code. Is there a way to modify this Code that facilitates a better way to repair and maintain baseline property? If I submit that to you, you'll take it under consideration?</p>	<p>Board or the Coastal Commission. There could be. We're just not smart enough to figure it out, so we're going to have to rely on you. Absolutely.</p>	
Section 17.50.030.B.2		
	<p>Insert "where applicable" because I don't think it is in every case. We don't want to make it mandatory.</p>	Added language "as Required"
<p>In that section, is there Water Board? You think you're coming to the finish line, and someone says (crosstalk). Don't put it in?</p>	<p>The Water Board's not in here. We'd be happy to put it in if you'd like.</p>	No recommended change to add the Water Board.
Section 17.50.050		
<p>What I'm referring to is eelgrass. My understanding was that the eelgrass survey requirement has gone away. Can we remove all the references to eelgrass and Caulerpa? In this section, it's requiring you to have—applications shall include eelgrass survey.</p>	<p>The City takes care of it for you now. You as an individual permittee seeker do not have to have your own eelgrass survey. You can rely on the City's eelgrass data. No. You can't because you're still subject to RGP-54, which is the City's permit to circumvent the requirements of the individual dock owners. The real issue is not surveying for, it is replacing. Prior to RGP-54, if you wanted to dredge under your dock and you had eelgrass, you had to replace and cultivate that eelgrass at a rate of 1.38:1 somewhere else in the Harbor. RGP-54 allows us to manage eelgrass globally in the Harbor. So long as the total amount of</p>	No changes proposed

	eelgrass in the Harbor isn't being reduced over time, individual dock owners can dredge without that replacement requirement. The City now performs the survey for you as part of a Harbor-wide survey.	
Section 17.60.030.C.6		
	We need to look at this, Carol. It may be in the wrong place. There are certain portions of the Harbor where the waterways are privately owned. The don't come under the same jurisdiction. There is also one area in the Harbor, Promontory Bay, and this relates also to tidelands assessments. When Promontory Bay was created, each lot was granted a perpetual easement for repair and slip purposes before the property was dedicated to the City as tidelands. The City took the waterway and made it public, but they took it subject to the easements. That made those docks tantamount to private property. There are certain conditions and restrictions that don't apply in those cases.	Added the provision; " The provisions of this Section shall not apply to piers, dock and other structures located in the Promontory Bay and the waters over privately owned land."
Section 17.60.040.B.2.c		
	In this case, adding "except in the event of an emergency" would not apply. This is just a requirement for a permit. Leave it as is. For the permittee that is not a live-aboard, if there is something serious going on, by virtue of the fact that your boat is not occupied, you cede permission to the Harbormaster to board if he feels there is an issue.	Added language as a condition of being a permittee the vessel can be boarded at any time regarding the sanitation device.
Will that mean someone who boards a boat is restricted to only looking at the sanitation system or does that give them the ability to call out other things that they may find are an issue or outside what the permit allows.	There are other provisions in the Code that allow the Harbor Department to inspect and note violations. First of all, I don't believe we need permission to board to drop a dye tablet if you're a live-aboard. Second, there are other	Only for the sanitation device.

<p>When they're granted permission without an emergency but specifically for the sanitation system, are they allowed to make violations on other things as well? I find it a little bit disconcerting that men will be boarding the boat when I'm there alone.</p> <p>I don't expect to have difficulty. I'm just trying to understand the boundaries (inaudible).</p> <p>With the live-aboard, it's like (inaudible).</p>	<p>requirements in the Code that you must meet. Whether they board solely to drop a dye tablet or to check other violations is irrelevant. If you are in conformance with all the requirements of the live-aboard permit, you won't have any difficulty.</p> <p>If one of our Harbor employees comes aboard, they have the right to look at all the provisions of your permit, whether it's an unkempt boat or improperly stored materials on deck or an inoperable or faulty holding tank, or anything else. That's exactly what we're trying to deal with right now.</p> <p>But limited specifically to the provisions of the permit. They're not looking for other areas of compliance with any other law, any other component of using your boat. The only things they're authorized to do are look at the specifics of compliance with your marine permit.</p> <p>They are not sworn officers, and they're not looking for anything other than what you're supposed to be doing anyway.</p>	
<p>In the case of issuing permits, we provide the option of inspecting vessels. Should it not be compulsory that the Harbormaster or his designee inspect the vessel before issuing a live-aboard permit? We had a situation like that.</p> <p>No, it's not. I don't believe it's written into this document.</p>	<p>It is a requirement.</p> <p>We would respectfully disagree. If you can find where it's not, let us know. We made that a requirement.</p>	<p>Prior to issuing a mooring permit, the City has the right to inspect the vessel that will be moored.</p>
<p>In regards to the Harbor Department boarding your vessel like a live-aboard, will the Harbor send you notice saying, "We boarded your vessel to drop a dye tablet in your vessel"?</p> <p>This section is to mooring permittees, correct? Not live-aboard permittees (crosstalk).</p> <p>That's what I'm saying. If they do go out to your boat and drop a dye tablet and you're not there, say you don't go to your boat for two or three weeks, they'll let you know?</p>	<p>If you're not a live-aboard, then the Harbormaster is not going to board your boat to drop a dye tablet or do anything unless there's an emergency. If they can see a discharge, they may try to help you out and stop the discharge.</p> <p>This says anybody that's issued a mooring permit is agreeing to this. These are conditions to your permit. If you're a mooring permittee, you're going to agree</p>	<p>Harbor Dept. will not board a vessel without the permittee present unless there is an emergency and the owner cannot be reached.</p>

	<p>to allow the City to drop a dye tablet anytime.</p> <p>The Harbor Department is not going to go on an unattended vessel to drop a dye tablet unless there's an emergency. Then, the intent to go onboard would be not to drop just the dye tablet, but to try to fix the problem. That's the key.</p> <p>Most likely we would we would immediately try to contact you. One of the things we're requiring is a way to get a hold of each and every mooring permittee so we can get a hold of you in an emergency.</p>	
<p>Is there a limited amount of permits or moorings that we're going to have or are the mooring fields going to continue to grow?</p> <p>This field down here has certainly got more than it needs.</p> <p>In some places, it's almost not navigable if you're in a big boat. It didn't used to be that way; that's why I asked.</p>	<p>The mooring fields are not going to grow. There is a limited amount of moorings.</p> <p>When the Marina Park transient moorings were first established, they were established all along this southern border of the mooring field. To appease some residents who were at the end, they moved them to the east end.</p> <p>There are also occasions when a temporary permit is granted for dredging equipment, and it's usually placed at the east end.</p> <p>We did add the seven sandline moorings for guest boaters shortly after Marina Park was completed. Those are all right out here.</p>	<p>The Harbor Commission is recommending new extension rules to the City Council approved at the HC meeting of June 12th.</p>
<p>The mooring permit is defined as a license to set a mooring. Always we've paid permit fees. In this chapter, it's saying we're paying mooring rent fees. We are not renting moorings because we own the moorings. We're paying a fee for the permit to put the mooring on the bottom.</p> <p>It's further down in the same chapter, under 40. It also talks about sub-permittees.</p> <p>There is no mooring permit fee any longer?</p> <p>It's a license to put the mooring there. We're renting the water. We're permittees. The City is renting moorings to people and</p>	<p>Can you show us where?</p> <p>I think what you're referring to is subparagraph h. I believe the City Council has established a rent not for the mooring but for the water area that you're using. It's the tidelands assessment.</p> <p>The mooring permit fee would only be the transfer fee in the event of a purchase and sale.</p> <p>The permit is how we keep track of the fact that you have your own mooring ball on tidelands water space.</p> <p>That's the way it's always been.</p> <p>That's required by the State Lands Commission.</p>	

calling them sub-permittees. They should be a tenant because they have nothing to do with the mooring. The permit fee went away, and it's been changed to (crosstalk).	We're going to let legal make that determination. If you'd like to propose alternate language, we'll give it to legal. I'm not smart enough to figure that out. I just know that the State Lands Commission requires a fair rent for piers and slips and for the use of the waters. I'm not qualified to answer that.	
There was this language about fair market value. What's that based on again? Are they comparing our moorings to our slips or our moorings to moorings in Morro Bay and San Diego and whatnot? Seems like ours is about 300% or 400% higher.	The City hires a third-party appraiser who's an expert at mooring fields up and down the state. They do a survey and come back with a recommendation about what the fair market value is. That's how the Council can determine what a fair market rent is. Allegedly it's all over. That appraisal, I believe, is online if you want it. We looked at it and made recommendations. Our recommendations weren't followed totally by the Council.	
What was passed was a formula that laid out exactly what they could do and how much they could be increased and exactly how it was done going forward from that date. It's an established formula. It's not really (crosstalk).		
Section 17.60.040.C		
In my case, the mooring in front of my house was extended, and a much larger vessel was placed on the mooring that was there. It's a substantially larger vessel. There was no appeals process or no voice of the residents that are directly adjacent. In my case, 100 feet from the end of my dock. The vessel size went up way larger than the previous vessel. There's no provision in this for any hearing or public forum? I would have to guess. It probably went from a 45-foot boat to a 60-foot boat.	This limits the extension to 5 feet maximum, I believe. It contains a bunch of other provisions. As one party to this, I would not be opposed to a right to appeal a decision to extend. Before an extension is granted, the City would have to notice those within 300 feet just like they would for a building permit. If somebody objects, then that decision if granted would be appealable to the Harbor Commission. What size vessel was in front of your house that went up so dramatically? Not sure how that could happen.	The new proposed mooring regulations for extensions would require all extensions over 5 feet in length to go to the Harbor Commission for review. These are all publicly noticed meetings.

<p>We did not extend the mooring. All we did is add more weight. We upgraded the chain. The mooring was barely 65, and was not extended.</p>		
<p>When we have (inaudible), there are fenders all across the side of the boat, on the Bay-facing side of the residences, that protect that boat when it does hit the other boat. It's too big of a vessel for that situation.</p>	<p>That was the case apparently where there was an absolute right for a 60 or 65-foot boat. We can't correct all the prior ills in the Harbor. What we've tried to do here, if you read this, is have objective criteria for disapproving. If you encroach into a fairway and we define a fairway not as the fairway in the main Harbor but fairways within the mooring fields, If in the discretion of the Harbormaster it's unsafe to expand that mooring, then the Harbormaster can certainly turn down the request.</p> <p>Whatever happened there, it already was a 60-footer. It did go from 45 to 60. The idea here is to not allow a marketable increase. By only 5 feet we think that's relatively capping. We're trying to "order of magnitude" this so that you don't wake up and some huge boat's in front of your house the next day. That's not this at all. Whether it involves public comment or has some input from those local residents, I'm open to that concept, but we also want to try to make it as strategic—following the guidelines. If they were followed correctly, those things won't happen. You won't be surprised that next day.</p> <p>There is the ability in here to request a larger extension, but that would be a decision for the Harbor Commission. In that case you would receive notice that there's a public hearing, and you would have every right to testify.</p>	<p>See proposed mooring extension policy. All requests over 5 feet would have to have Harbor Commission approval.</p>
<p>There are several moorings that are 25-30 feet mixed with 55 and 45-foot moorings. A 55-foot extension on a 25-foot mooring when the boat</p>	<p>We would respectfully disagree with you. Staff has done an analysis off all moorings and how they're situated throughout</p>	<p>The new proposed mooring extension standards identify the maximum lengths of vessels</p>

<p>behind it is on a 55-foot mooring and the boat in front of it's on a 55-foot mooring. If it's between the two, it's reasonable that it should also qualify for 55 feet if there's room. The same with 30-foot boats.</p> <p>Setting the maximum length in a row of moorings would probably be a good way to recover that.</p>	<p>the Harbor. We believe what's being proposed is fair. If there's an individual case where you have a 50-foot mooring, a 50-foot mooring, and a 25-foot mooring and the owner of the 25-foot mooring wants to go to 35 feet, there's a procedure in here to allow him to do that. He would have to apply for an extension. That extension would be subject to review and approval by the Harbor Commission.</p> <p>There are also other requirements in here. If you ask for an extension and that extension is granted, you have to put that length of boat on there within a reasonable amount of time, and you have to keep it there for a period of time.</p>	<p>per row within each mooring field.</p>
<p>I'm a little confused on the 5-foot cap. He gave us an example, and you said it's only 5 feet. Then, you said they can go for 10 feet if it (inaudible).</p>	<p>You can apply for up to a 5-foot extension through the Harbormaster. If your request meets all the criteria in here, then the Harbormaster can grant that. If you choose to apply for an extension larger than that, then your request would have to go to the Harbor Commission for approval. That means public hearings and testimony from the private sector. It is possible but a bit more difficult.</p>	<p>The new proposed policy sets maximum lengths. If the vessel is at its maximum, it cannot be extended. If for some other safety or navigation hazard issue, the Harbormaster can deny the request/</p>
<p>Am I hearing this right that Section (b), the mooring permit as amended shall not be sold or otherwise transferred for a period of 12 months. Is that saying if we do get granted our 5 feet and we've extended our 5 feet, we can't sell that mooring within 12 months?</p>	<p>Correct. I believe what the provision says is if you do so within 12 months, then you lose that 5-foot extension. It goes back to the original length.</p>	<p>Correct.</p>
<p>Section 17.60.040.C.2.b</p>		
<p>As many people that buy moorings buy a mooring in anticipation of buying a boat. That happens all the time.</p>	<p>There are provisions that allow you a certain period of time, especially when you're buying a mooring and you want to put a new boat on there but you don't have the new boat. You certainly have to bring the new boat within a period of time. If someone wants to buy a</p>	<p>No comment.</p>

	mooring, they need to read the Code and be sure they can comply with the Code before they start purchasing the mooring.	
Your comment was for a situation where you're transferring a boat and a mooring at the same time? That wasn't clear.	It says if a transferee intends to purchase an assigned vessel and doesn't have title to the vessel owned by the mooring permittee and transferor at the time of transfer, within a certain period of time, they have to bring in registration documentation, etc. They have to have the vessel inspected.	The City does not allow a boat not registered to the mooring permittee on a mooring. If there is a transfer, the City will allow time to transfer ownership of the vessel.
What if you're transferring a mooring with no boat? (crosstalk) boat on the mooring. We're not required to keep a boat on our mooring now? That would go on to the transferee also?	You have the right to transfer your mooring without a boat. Again, it's going to be the transferee's responsibility to meet all these requirements. It's a 60-day period. The transferee has 60 days to provide us with the information. No.	This is correct.
It seems like we should have language in there that says something to the effect that before a vessel goes on a mooring where you had a transfer, that vessel has to be inspected before it goes on the mooring.	A transfer can happen without a vessel. When the vessel is going to be assigned, it has to be inspected. If the vessel did not meet the City's standards, what would we do to the transfer? Not assign it to the mooring. The permittee still has the permit, but he can't put that boat on it. He has the mooring, but it's an empty mooring. That raises a question I can't answer. If you purchase a mooring, do you have to put a vessel on that mooring within a certain period of time? What if you're not purchasing the assigned vessel?	The City will inquire about the boat to be moored on the vessel. If a boat is to be purchased, the City will provide the permittee time to do so. If the boat is transferring ownership, the boat will be inspected by Harbor staff prior to approval of the transfer.
If I sold you my mooring and you didn't have a boat and there's no boat on my mooring, you wanted it for, say, two years down the line, the City doesn't require you to have a boat on the mooring. You can have a transfer to the new transferee, correct? That wouldn't stop my transfer?	I'm not sure. Before the new permittee can put a boat on it, they're going to have to go to the Harbormaster and have an inspection. Harbor Services workers see what is supposed to be an unoccupied mooring with a boat on it, they're going to note that.	We would not stop a transfer if no boat is on the mooring. The City would have the right to rent the mooring.

	It's not going to stop the transfer. It's only intended to protect what boat eventually gets assigned.	
Some people buy moorings way in advance of their boat. There's one by me that he bought the mooring seven or eight years ago because he's building a boat that will fit the mooring. He's had a 25-foot boat on it for the last ten years.		No comment
On 2.a., why is that 60-day thing in there? If the guy buying the mooring doesn't have a boat yet, this implies he has to give you the name of the vessel within 60 days, but yet he's not required to have a vessel out there. It seems like the language is fuzzy. I think the idea was if you do buy a new vessel, you already have the mooring, you put the vessel out there, you've got 60 days to show you the documentation.	How about "prior to a boat occupying the mooring, the new permittee shall show us documentation, registration, and inspection"?	Added some additional clarifying language.
This gives the Harbormaster the right in every case for every transfer to see the vessel before it goes on the mooring. Is that correct?	Then, we can deny the vessel. That's the intent.	Yes, that is correct.
Section 17.60.040.F.2.a.		
There are two a's there. The second one is cool. The first one is kind of weird.	We need to wordsmith this.	Fixed numbering
Section 17.60.040.G.2.a		
	I think we should change "may provide written notice" to "shall provide written notice." I'm going to argue against that. My boat is currently in the yard. It was only intended to be in the yard for one week. It has now been there 45 days. I would not like to be under obligation to notify the City that my mooring was unexpectedly vacant for 45 days. It would be nice, but it's an administrative nightmare. I'll retract my suggestion.	No change
Section 17.60.040.H.7		

Hundreds of boats go south every year.		No additional changes
What about the rights of the residents that are adjacent to some of these moorings?	The moorings are going to be occupied one way or the other. The only question is can they stay here longer than 15 days. Homeowners have rights obviously if there are violation of noise or light or whatever. If there's a complaint, the Harbormaster doesn't renew the next time around. Or we pull it in advance. We have that ability.	This section is for visiting mariners. If they are causing a problem we simply revoke the sub-permit.
Will these people staying 15 days or longer be required to meet that same criteria as a live-aboard? The condition of the vessel and the insurance and all that stuff. People in the C section were complaining about some boats that were there over the past winter season. They were basically derelict boats with derelict people on the boats. Yes.	Absolutely, certainly with respect to the dye tablet. Before they can get a sub-permit, they have to show registration and proof of insurance. He raises a good issue. If someone's going to stay in the Harbor for 15 days, should that vessel be subject to prior inspection? I would say yes. As a sub-permittee? I suggest we put in an inspection requirement if you're here longer than 15 days. I'm comfortable with that. I'm good with it. Is there really a requirement to do that? Do all the sub-permittees come here first and then go to their mooring or go to the mooring first and then come here to check in and register?	Yes, visitors are subject to the same rules as mooring permittees.
Yeah. They have to come to the dock anyway.		No comment.
That was not what I (crosstalk) in speaking with the previous Harbormaster. There are many situations where the boats went straight to the mooring and only the paperwork got processed in the office. (crosstalk) every boat that goes on a mooring.	That's still the case. How would they know where to go? Do they phone or email ahead and get assigned? We'll see the customer and the paperwork, but there's not a requirement or practice to bring the boat to the dock at this point. Should we add that?	This is an operational issue, staff will sort out.
Yes.	Our staff goes out there every single day and looks at every single boat. To perform the equivalent of a live-aboard inspection would	No comment.

	necessitate them to come to the dock. I think that's overkill.	
Especially if the docks are pretty full.	Why can't you perform the same level of inspection on the mooring? I suppose we could. It just hasn't been our practice.	This is an operational issue, staff will resolve.
Part of that live-aboard inspection is you have to prove that vessel can be moved. That's why you have to bring it to the dock.		Yes.
On Number 7, the verbiage is the Harbormaster can grant a 15-day plus extension, more than 15 days. Does that have a cap or is it open-ended? They could be here for a year or two years?	We think the intention was to leave it open-ended, but it's at the discretion of the Harbormaster. He's dealing with these people because they have to come in and renew every 15 days. It's not like they go unattended. Yeah. We could put a cap on there.	Discretion of the harbormaster and the individual situation. Harbormaster has authority to revoke at any time.
I don't think so because some people have to go back home.		No comment.
It's expensive. It's like Catalina. It's not like someone's going to keep plunking it down to buy a mooring.	It could be a vessel that's broken down and waiting for a part to be ordered. It would have to stay a period of time. Seven has to do with the sub-permittee's ability to stay aboard the vessel, not about whether or not we extend beyond 15 days. It also says pending vessel inspection.	No comment.
If they're a long-distance cruiser, they have nowhere else to stay. They might be 1,000 miles from home.	I would suggest subject to an inspection, a sub-permittee may be allowed to stay aboard the vessel for a period not to exceed 15 days. If you want to stay on your boat for 15 days, we're going to inspect it just like a live-aboard.	No comment
Who starts the 15-day count?	When they get here. The first day you pay for your sub-permit. Do we want to put a cap on this? I'm good with the discretion of the Harbormaster. I'm good with the Harbormaster's discretion.	The Harbor Department staff.

It's reasonable to let them stay if they're a good tenant. If they're not a good tenant, they should go.		
Section 17.60.040.H.9		
Is that saying I can loan my mooring to another vessel free of charge? Is there now a fee? That is?	It is not free of charge. Free of charge has been removed. Yes, sir. That goes through the City. Basically, you can't rent your mooring to a third party nor can you rent it or offer it for free.	That language has been proposed to be removed. If a mooring is vacant, the City retains the right to rent the mooring and is subject to the sub-permittee fees, rules and regulations.
Let's say I have a friend that has their boat coming. They have to go through you at the City for my mooring?	Correct. You can give them the right to use your mooring, but they're going to be treated like a sub-permittee. They're going to be inspected and pay the fee.	This would be considered a sub-permit with the City.
There used to be a 30-day free period that you could do three times a year. Is that no longer?	We found that was being abused.	This language is proposed to be removed.
I loaned one of my moorings to a friend earlier this year. He was only given 30 days. Now he can have more than 30 days? He was a live-aboard. When the 30-day time came, the Harbormaster guys came out and said he was done. He wanted to stay another month, but he wasn't paying me. I see you have the 30 days crossed out.	He can have as long as he wants, but he has to pay for it. Is he going to live aboard it or have the boat sit there?	He can stay based on the terms outlined by the sub-permittee permit.
You're saying now it's not available at all.		Correct.
If he wanted to stay another 30 days and he paid you where he didn't have to pay before because it was on loan, he could do that? Would they be charging him the same rate?	There is a 30-day limit in the Code today. There is also the right for you to loan your mooring for free. We're proposing to take out the 30-day limit. If you let someone use your mooring, they become a sub-permittee, and they have to file with the Harbormaster. They have to pay a fee for the use of that mooring. They don't get it for free. If these Code changes are adopted, you could loan your mooring for 60 or 90 days where today it's only 30. They would be charged the same rate as a sub-permittee.	This is proposed to be changed. Permittee's can no longer loan their moorings.

What's the top rate? Would this (inaudible) lower the value of all the moorings? Maybe I own a mooring because I have some friends with boats, but I want to come visit, and I no longer want to (inaudible). I feel like it lowers the value of all moorings.	It's \$1.25 a foot a night unless you have a catamaran. Then it's \$1.50 a foot a night. I don't believe that's the case, but we can agree to disagree on that.	Correct.
What's being proposed is consistent with what they do in the city of Avalon. If you're not on your mooring, they rent it, and they get the fee.		No comment
Is there a (inaudible) for dock owners? You guys are enforcing that too?	There are prohibitions against renting your residential pier to someone. If you're going to rent your residential pier to someone, you become a marina operator, and you pay a different rate for your permit. All of the homes within planned developments, Promontory Bay, Linda Island, Dover Shores, have restrictions through the homeowners association that you can't rent your dock. I'm not saying it doesn't happen.	Dock owners cannot rent their docks either.
If we went cruising for six months, we can't rent our mooring at all?	Correct. You can't rent it. A residential homeowner who wanted to rent their dock could do so, but they would have to apply to the City to become a commercial marina. There are other requirements in the Code that deal with commercial marinas. Their tidelands assessment would be significantly higher. It's not that much different than a mooring sub-permittee. They're going to pay a lot more than the mooring permittee does.	No comment.
Section 17.60.040 K.1.b.		
There's no provision that I've seen that deals with commercial activity occurring on a vessel. It is happening in this Harbor. There's fabrication, machining, welding, (inaudible), dumping. It's all happening on the F mooring field. There's slag being dumped in	That's all happening outside the Harbor. Didn't you hear the testimony? There are provisions in the Code. It's not allowed.	Harbor Department staff will address as part of code enforcement.

the Bay. There are all kinds of issues.		
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Assistant City Manager Jacobs explained that the subcommittee will review all comments. Staff will prepare a document detailing the subcommittee's actions on the comments and suggestions. A second public meeting will be scheduled to review the comments and new proposed changes.

In response to a member of the public's comment about meeting notices, attendees discussed options for and the realities of providing notice to the public.

The next public meeting is June 24 at 6:00 p.m. at Marina Park.

**NEWPORT BEACH HARBOR COMMISSION
PUBLIC MEETING
Review of Proposed Changes to Title 17 of the Harbor Code
Marina Park, 1600 W. Balboa Blvd., Newport Beach, CA 92663
Monday, June 24, 2019
6:00 PM**

Commissioner Kenney reported the review will cover proposed revisions to Sections 17.40, 17.45, 17.50, 17.55, 17.60, 17.65, and 17.70 of Title 17 of the Newport Beach Municipal Code. Written comments do not need to be reiterated during the meeting. Comments should not focus on formatting, grammatical, or typographical errors. The Harbor Commission subcommittee will consider but may not incorporate each public comment into its final recommendations to the Harbor Commission. The subcommittee's final recommendations may be presented to the Harbor Commission in July. The public may provide comments to the Harbor Commission and the City Council.

PUBLIC COMMENT	STAFF RESPONSE	SUBCOMMITTEE RESPONSE
Section 17.40.010		
<p>If you look at the beginning of Title 17 where it gives the table of contents, under that it gives a prior ordinance history because this is not the first comprehensive update of Title 17. There was a comprehensive update in 2008. The little references are the sections, ordinances, and things that have happened since 2008. If you look through the previous ordinance history, you'll find Ordinance 89-7 was adopted in 1989, which is where this entire chapter, 17.40, came from. As you can guess from the purpose paragraph that was just read, it identified a sanitation problem that had to do with offshore moorings. The entire concept of live-aboards and regulation was confined to offshore moorings as the purpose paragraph still says. Over the years since 1989, sections have been grafted onto this that have to do with live-aboards on piers, at marinas, and so forth. The whole thing does not quite fit. To the public reading this, it's very confusing to read the purpose has to do with offshore moorings and then in the next paragraph to hear references to the things that are not moorings. I don't know what the line for that is other than I think we're taking a detailed approach</p>	<p>What I hear Mr. Mosher saying is it's more of a definitional issue. We have a preamble of what we're dealing with in this document. It doesn't speak solely to offshore moorings. We do make references to marina. Onshore references are made. Without knowing the legalese of how this document evolved and just reading that, that makes sense to me. Perhaps the purpose needs to be expanded to include all live-aboards within the Harbor. I'm not sure if I'm missing something legally by making that statement, but I agree with Mr. Mosher.</p> <p>At some point we need to take a step up and not be so focused on the details within each and every section and take a comprehensive look at the entire Code and all the sections within and how they fit together. The bigger point I hear is there is redundancy and inconsistency. Somebody should take a look at that level and clean that up.</p> <p>I think our goal is to look at the bigger picture. What is a live-aboard? What is not a live-aboard? I concur with you that the opening paragraph speaks</p>	<p>The City Attorney's office will address these issues during their review.</p>

PUBLIC COMMENT	STAFF RESPONSE	SUBCOMMITTEE RESPONSE
<p>here without looking at the bigger picture and focusing on little parts that are highlighted here as kind of missing that big picture. It's not fitting together still.</p> <p>There is an additional definitional problem. At the Harbor Commission meeting, you were debating a definition in another section of the Harbor Code that defined live-aboard as anybody who stayed onboard for more than 72 hours. When reading this section, if you do live-aboard, you have to have a permit. To have a permit, you have to promise that you live on your boat for a majority of the year. There is a vast gray area between 72 hours and half a year that doesn't seem to be addressed anywhere, which is part of not looking at the big purpose but looking at details in one part and details in another.</p> <p>The original purpose paragraph that we're looking at here, you see it labeled A. Before the last comprehensive update, there were A, B, C, D, E defining what the purpose was. The problem identified was the sanitation problem. The reasoning was the people on offshore moorings had no place to dispose of their waste. Whereas, those who lived at other piers and marinas could use onshore facilities for their needs. Therefore, that's what this chapter is addressing, that big-purpose problem of people with nowhere to dispose of their waste. It kind of explains the big-purpose picture of what the chapter is trying to do before the other parts got drafted onto it.</p> <p>(Crosstalk) onshore restrooms.</p>	<p>to offshore moorings, and yet we've incorporated later on in here commercial marinas. From a bigger-picture standpoint, the question was raised of are commercial marinas regulated. We didn't think they were pursuant to Title 17. Theoretically, a marina could be 100-percent live-aboards. From a bigger-picture standpoint, we're trying to address the commercial marina issue. Maybe it shouldn't be in here. In my opinion, here's where we need legal to help us. Mr. Mosher, I don't disagree with you. I would like to see this whole thing scrapped and started over. My read at the top is it's not going to happen. What we're looking at are the substantive issues and how do we address them. From a legal perspective in the end, we're going to have to rely on legal counsel to tell us how to reduce to proper wording the concepts that I think we're all approving.</p> <p>And be sure nothing is overlooked in the process. That's the important part that we're here today to do.</p> <p>In that regard, I would respectfully disagree with you. Back in 1989, there wasn't a commercial marina in Newport Harbor that I'm aware and that had any disposal facilities. Certainly a vessel that would be in front of a private home, a private dock would not have any disposal facilities either.</p> <p>But they could go use the shower at the residence. In the case of a commercial marina, they could go up and use the shore-based facilities rather than the facilities on the vessel.</p> <p>If we replace the words "on offshore moorings" with "in</p>	

PUBLIC COMMENT	STAFF RESPONSE	SUBCOMMITTEE RESPONSE
	<p>Newport Harbor," it would make the purpose much grander and provide some level of consistency across.</p> <p>I would agree with that to the extent we don't have differentiation between any of the rules or guidelines that we're making for just what Mr. Mosher speaks of. There is a different set of circumstances of offshore mooring as there is to marina mooring. As long as that overriding decision changing it to everything doesn't diminish our need to differentiate, then I can accept that.</p> <p>I like that change.</p>	
Section 17.40.50		
<p>I'm looking at all these moorings straight on (inaudible). Is that the City-owned mooring that you can live aboard or is that considered you can use it for weekends or what? These right out here.</p> <p>Are these owned by a person or by the City? These moorings right here in this whatever.</p> <p>But no one owns a mooring that is a City-owned mooring, to do whatever you want to do?</p> <p>Is that to the high standard?</p>	<p>There are two different types of moorings directly out in front. There's the regular mooring field. In order to be on a mooring there, you must be a mooring permittee. If you're a mooring permittee and want to live aboard, then you would need a live-aboard permit. There are also sand line moorings that are closest to Marina Park and that are temporary and short-term. They're for traveling boaters or yachtsmen that want to come into the Harbor. Length of stay maximum, I believe, is 72 hours. It can be extended.</p> <p>The one line of moorings is owned by the City. All the rest are also owned by the City, if you will, but they're subject to annual permits.</p> <p>In answer to your question, the mooring permittee does have the right to sell that permit. He can sell his permit, his mooring if you will, under certain circumstances.</p> <p>It typically goes to market.</p>	<p>No comment.</p>

PUBLIC COMMENT	STAFF RESPONSE	SUBCOMMITTEE RESPONSE
The person that has the permit owns the tackle, the chain, the weight, the anchor, the float. The permittee has to keep that up. The service company has to come every two years to maintain all that so that it doesn't break. You are basically leasing that mud at the bottom of the bay, but you own the iron anchors and all that stuff.		No comment.
You own the expensive stuff.		No comment
Section 17.40.100		
<p>Why twice a month? If you live there by yourself, you don't need a service twice a month. Sometimes it is twice a month, but it depends on if there's five weeks in a month. On a regular basis, I go every three weeks. A lot of people do live alone out there.</p> <p>Maybe it could if there are two or more people, then it has to be twice a month. A single person can go three weeks or once a month or whatever. You have to take into consideration the size of the holding tank.</p> <p>\$30, \$35 depending on which company you use.</p>	<p>Change it to monthly?</p> <p>For my benefit, what is the cost of a pumpout?</p>	Added language to allow the Harbormaster to make alternative arrangements if necessary to ensure there is no dumping into the harbor.
<p>In the middle, it says the log shall be submitted to the Harbormaster. Each live-aboard permittee is required to contract with an authorized commercial pumpout service. I think the majority of people just take it over to the boathouse dock and pump it out. Isn't that adequate?</p> <p>It seems like if you take your boat to the pumpout station and do it yourself, you still have to have a contractor to sign it off?</p>	We're talking about live-aboards only now.	Added language to allow the Harbormaster to make alternative arrangements if necessary to ensure there is no dumping into the harbor.
Some people have much smaller boats. They're easy. We wash our boats on a regular basis. We have to fill up with water. Going to the	How many are live-aboards that are in the audience? Three. I'm curious because we're looking for your input as well. Is this	Added language to allow the Harbormaster to make alternative arrangements if

PUBLIC COMMENT	STAFF RESPONSE	SUBCOMMITTEE RESPONSE
pumpout dock is a regular thing for some of the live-aboards.	putting the onerous on you to have to do this?	necessary to ensure there is no dumping into the harbor.
Our holding tank is large. We go about every two to three weeks.	The idea of proposing something in this vein was that the current system is the honor system. If we can craft something with folks who are power users of the Harbor because they're residing on the water, if we could move to something that is beyond the honor system, it will support the overall goals. Are there other suggestions that could be different than this?	Added language to allow the Harbormaster to make alternative arrangements if necessary to ensure there is no dumping into the harbor.
This language does not serve that. You can make me do that. I have a service, so I can prove that I do. If somebody's not going to be doing it, there is going to be the honor system with people that don't use a pumpout service.		Added language to allow the Harbormaster to make alternative arrangements if necessary to ensure there is no dumping into the harbor.
How about the people that go to the pumpout log it with the Harbormaster through a phone call or VHF radio call?		Added language to allow the Harbormaster to make alternative arrangements if necessary to ensure there is no dumping into the harbor.
This is an honor system. There are some not honorable people up there. Even people that come in and rent moorings from the City. If you put a device on the discharge that you can check at any time, there's no need for that to ever be changed for somebody that's living aboard and saying they're not traveling around and living here and maybe doing (inaudible). There's no reason why we can't have some kind of application like that. That way, you at any time could check and see that thing's in place. It should be done with people that come in and rent moorings from the City because they are probably some of the worst abusers.		Added language to allow the Harbormaster to make alternative arrangements if necessary to ensure there is no dumping into the harbor.
The twister could have broken. The only problem is that people will go out fishing all the time, and they're outside the (inaudible).	We don't find that live-aboards are actually going out and fishing. I raised that issue because I thought that was the right solution. The mooring	Added language to allow the Harbormaster to make alternative arrangements if necessary to ensure there is no dumping into the harbor.

PUBLIC COMMENT	STAFF RESPONSE	SUBCOMMITTEE RESPONSE
	association was strongly opposed to it. I would still support that.	
I don't see how else, unless you make everybody have a mandatory service do it, which I don't think is fair.		Added language to allow the Harbormaster to make alternative arrangements if necessary to ensure there is no dumping into the harbor.
My suggestion, they at least log it with the Harbormaster. If they're going to pump out, they call him and say, "I'm at the pumpout" or make a VHF call.	<p>That would be admin intensive.</p> <p>Do you think that's something you could handle?</p> <p>For the live-aboard community, I think we could because there are 51 live-aboard permittees.</p> <p>Those are the only ones that this pertains to.</p> <p>If we made it an "or" clause, so they either agree to use a commercial service and make the records available to the City or they agree to call us at the time they're conducting their pumpout.</p> <p>On their way, so there can be a spot check.</p>	Added language to allow the Harbormaster to make alternative arrangements if necessary to ensure there is no dumping into the harbor.
There are only 51 people that are living aboard. Probably the majority of them do have a service. It's not going to be that ...		Added language to allow the Harbormaster to make alternative arrangements if necessary to ensure there is no dumping into the harbor.
I just see a simple solution. First of all, most people are really good. If they have a live-aboard permit, they're not out there to abuse it. The way we've been going with an honor system is fine. At Staples for about \$2, you can get a 3x5 spiral notebook. If you have a service come by, they can sign the service or they're going to leave you a receipt. If you take it to the dock yourself, you can use the notebook. At the end of the year, you've got to renew your permit. Show them that book. At that time, you can see if it looks weird. You have to call the Harbormaster every time you have to use it?	There's a requirement of the live-aboards to keep a log now. Again, it's still the honor system.	Added language to allow the Harbormaster to make alternative arrangements if necessary to ensure there is no dumping into the harbor.

PUBLIC COMMENT	STAFF RESPONSE	SUBCOMMITTEE RESPONSE
<p>I can make a log, but it doesn't necessarily mean we did it.</p>	<p>That doesn't accomplish the goal. Kurt has a good idea. We could put an either/or clause in. Either you contract with a service, and they make their records available, or you call the Harbormaster and say, "I'm on my way to the pumpout at 15th Street," and they create a log.</p> <p>I think that's reasonable.</p> <p>Do we still want the one time a month or two times?</p> <p>At that point, it doesn't become an issue, I don't think.</p> <p>Right now, I'd say a minimum of twice as the way we word it.</p>	<p>Added language to allow the Harbormaster to make alternative arrangements if necessary to ensure there is no dumping into the harbor.</p>
<p>If you had a visiting family of five or six on a small boat with a 12-gallon holding tank (crosstalk). If you've got boats like ours, a 50-foot, and a huge holding tank and two of us, we're out and about.</p>	<p>I would advocate for monthly. Monthly is sufficient. It's either radio in or show proof of use of this commercial service.</p>	<p>Added language to allow the Harbormaster to make alternative arrangements if necessary to ensure there is no dumping into the harbor.</p>
<p>Besides just you making out a book?</p>	<p>I'm with you, ma'am. I'm not a fan of the log. That's easy to do.</p> <p>I would agree to monthly on an either/or basis.</p> <p>Let's do that. We'll go monthly.</p>	<p>Added language to allow the Harbormaster to make alternative arrangements if necessary to ensure there is no dumping into the harbor.</p>
<p>As far as a log, how about a requirement of cell phone camera picture to go with the log because those are time-stamped for people who want to do their own pumpouts. That would be more proof for the logs.</p>		<p>Added language to allow the Harbormaster to make alternative arrangements if necessary to ensure there is no dumping into the harbor.</p>
<p>You could email a photo instead of a call.</p>	<p>I would personally support contact with the Harbormaster's office. The Harbormaster can certainly make sure it's happening, and then we know. We'll go monthly, and we'll put an either/or clause.</p>	<p>Added language to allow the Harbormaster to make alternative arrangements if necessary to ensure there is no dumping into the harbor.</p>

PUBLIC COMMENT	STAFF RESPONSE	SUBCOMMITTEE RESPONSE
Section 17.40.110		
Is the Harbor now at 7% capacity on the moorings? We're capped out right now?	Yes. We have a wait list currently.	No comment.
Section 17.45.30		
The boarding at any time, have you guys talked about in general how you plan to approach that? In other words, it's a little concerning thinking at midnight you can board. I know that's not going to happen. Has there been any discussion on the setup on that?	We have discussed it. We've debated it. There's a certain protocol that will need to be followed, but that's on the operational level. The Coast Guard has the right to board a vessel at any time. The Orange County Sheriff's Department has the right to board a vessel at any time. The purpose for boarding a vessel is to make sure that there's no discharge. Typically, if there is discharge and it's illegal, it's probably being done not in the middle of the day on a Sunday afternoon with paddleboarders and boaters going by. If you don't have a little teeth in the regulations, it's not going to do any good. We all want to clean our Harbor. We're all boaters. You're more than welcome to board my boat at any time, anywhere and drop a dye tablet. I would ask that every other boater in Newport Harbor respect the same.	No change to proposed language.
It wouldn't be routine? It would be if you suspect or see or report somebody or something like that? You're not just going to be going out boarding boats in the middle of the night?	As we've gone through this process, there are plenty of regulations already in the Code. We're not trying to add regulation. We're not trying to add burden. We're trying to address a few key problems. The real issue is enforcement. There has been no enforcement in this Harbor for many, many years. Now that the City has taken back the Harbor, we have the opportunity. Once the word gets out that some of these regulations are being enforced, those who are violators will realize that it's time to clean up their act. That's our hope. What	No change to proposed language.

PUBLIC COMMENT	STAFF RESPONSE	SUBCOMMITTEE RESPONSE
	<p>we really need obviously is more enforcement. We need our City Council to provide us with the tools we need to enforce the current regulations.</p>	
<p>When those party boats come into our Harbor, can we add a few of those dye things? I've heard that is one of the problems.</p>	<p>Any vessel that's operating for charter, a party boat if you will, must have a marine activities permit. The requirements on those vessels are much more stringent than on a privately owned vessel. To my knowledge, there aren't any commercial boats that would be a party boat and are coming into the Harbor and then leaving. They're all berthed here. As such, they're subject to having a marine activities permit. Quite frankly, we've met now with two of the major charter vessel operators. They're already adhering to all the provisions in our Code in terms of graywater and blackwater. We were actually pretty pleased with those meetings. We will be revising that section of the Code that deals with the marine activities permit as part of this process.</p> <p>Two points of clarification. There are charter boats that do come into the Harbor for short periods of time, especially around special events. They are not all berthed here. Second, the language that's being inserted in here related to the use of dye tabs and especially the boarding and the suspicion is being vetted through the City Attorney's Office. The City Attorney's Office has given great guidance on who can administer a dye tab, when, and under what procedure. It's not called out right here, but it is called out elsewhere in the Code. It has to be a Code Enforcement Officer, and it has to be with reasonable provocation.</p>	<p>No change to the proposed language.</p>

PUBLIC COMMENT	STAFF RESPONSE	SUBCOMMITTEE RESPONSE
Section 17.50.20		
In 17.50.20, the application for the Harbor development permits, it looks like a specification of what you have to supply. Is that being removed? Is that somewhere else?	It's all now referencing 17.05.115. Yes, it is.	No comment.
Section 17.50.120		
<p>In the last section, about maintenance permits, is there a definition somewhere of maintenance? It's an unusual new requirement. For somebody doing maintenance, do you require a permit?</p> <p>This seems to say you need a permit for any maintenance. Even a little touch-up paint would seem to be maintenance and now requires a permit.</p>	<p>Yes.</p> <p>I believe the Local Coastal Plan provides that the City can issue maintenance permits provided that the work doesn't exceed 20 percent of the overall value of the improvement.</p> <p>Whereas minor and cosmetic in nature, painting is okay.</p> <p>Anything under 20, the City is allowed to issue the permit.</p> <p>Mr. Mosher is correct. If you're going to pull up two boards, paint them, and put them back, you need a permit for that now. If you're going to replace the finial on your pile, you're going to need a permit to repair the finial.</p> <p>I would suggest we add the words "which would require a permit."</p>	This is defined in the definitions in section 17.01
My question is what is the threshold for requiring a permit. Is it the percentage of value you talked about or square footage?	<p>I can't answer that. I believe it would be dealt with in the same manner as land-based improvements, but I can't tell you ...</p> <p>We could consult with Public Works.</p> <p>Let's get somebody in Public Works to do that for us because they're the ones issuing the permit anyway.</p> <p>I could see striking that entire first sentence. It's superfluous.</p>	See Maintenance definition in Section 17.01

PUBLIC COMMENT	STAFF RESPONSE	SUBCOMMITTEE RESPONSE
	Let's get a ruling from Public Works.	
Is part of the issue standard maintenance versus a repair versus an improvement?	<p>Correct. I don't think we want to deal in Title 17 with a whole litany of repairs and maintenance items and specify which need a permit and which don't. If you want to repaint your gangway rails when you're doing the siding on your house, you don't need a permit for that. On the other hand, if you have to replace a float under your pier, maybe you do need a permit. That determination, I believe, is made in this particular case by Harbor Resources.</p> <p>Public Works.</p> <p>Harbor Resources under Public Works.</p>	See Maintenance definition in Section 17.01
If I wanted to repaint the rails on my dock, I don't need a permit. If I need to replace a few boards, I do.	To be honest, we don't know the extent of repair. If I needed to replace a plank or two on my dock, I wouldn't go ask for a permit. I would just get it done. On the other hand, if the floats underneath needed to be replaced, I would rely on my dock contractor to tell me whether they need a permit. We'll work on this. We'll get input from Public Works. By the time we come back to the Harbor Commission, we'll have resolution on this, or let's say guidance.	See Maintenance definition in Section 17.01
Section 17.60.40(B)(1)(c)		
	We talk about the multiple vessel mooring system program. It says the Harbormaster can approve that for the yacht clubs. In the definitions in the first half of this revision, we changed the definition of multiple vessel mooring system to include all the double points as well. It could be anywhere in the Harbor that you can approve it. I think this paragraph needs to be removed.	No change proposed.

PUBLIC COMMENT	STAFF RESPONSE	SUBCOMMITTEE RESPONSE
	<p>Instead of removing it, we could say the Harbormaster has the authority to do this for the yacht clubs and any individual permit holder anywhere in the Harbor. I'm going to advocate for removal.</p> <p>Because it's covered elsewhere?</p> <p>The definition is covered elsewhere. The language that gives you [the Harbormaster] the authority to issue the permit is nowhere but here, but it doesn't belong here specific to the yacht club. It either needs to be broadened and moved elsewhere or removed.</p> <p>Since the Harbormaster does have the right to either issue or deny, I would propose removing the language with respect to the yacht clubs and leaving it in offshore mooring fields.</p> <p>In (B), we give him the authority to issue and then in (1) we talk about some exceptions.</p>	
I think it's an exception.		No comment
It's to give the yacht clubs a little flexibility on how they pass out the moorings. If they don't have that exception, they'll have to every single time go get a whole permit.		The yacht clubs have a master agreement with the City on the number of moorings they manage.
That's the exception to the two mooring permit limit.	<p>It was really to allow the yacht clubs to do this pilot program. The pilot program has been a success, and so we've expanded the pilot program to be Harbor-wide. It's not unique to the yacht clubs.</p> <p>If you go to the previous page where we're talking about mooring permits, Paragraph B and then Item 1 below is exceptions. Exceptions deal strictly with Balboa Yacht Club and Newport Harbor Yacht Club.</p>	No proposed changes.

PUBLIC COMMENT	STAFF RESPONSE	SUBCOMMITTEE RESPONSE
	<p>Sub a, Sub b, and Sub c as such are only dealing with Balboa Yacht Club and Newport Harbor Yacht Club. From a drafting standpoint, this is correct. From an operational standpoint, you are correct. The Harbormaster should have the ability to approve the multiple vessel mooring system elsewhere in the Harbor. Then, the question becomes does that need to be added somewhere else.</p> <p>I believe so. That authority has never been granted anywhere in the Code other than right here. That in conjunction with the definitions as it used to read were consistent, but now the definition in 17.10 says you can have this anywhere you want. We need to pull this out and put it someplace else.</p> <p>I would leave the language that's currently in alone because it's under the exceptions that deal strictly with Balboa Yacht Club and Newport Harbor Yacht Club.</p> <p>They're no different than any other permitholder.</p> <p>We should add a provision that allows the Harbormaster to issue a permit for multiple vessel mooring systems elsewhere in the Harbor.</p> <p>That goes where? Back up to (A)? Why do we need to be so specific? I think it just comes out. If somebody comes to you and says, "I want to put a multiple vessel system on my mooring. I am the permitholder on G-22," you evaluate it, look at the engineering, and say yes or no, as opposed to "I want to put a Cal 40 on there." I think it just goes away.</p> <p>I'm going to change my opinion now that I've read through each</p>	

PUBLIC COMMENT	STAFF RESPONSE	SUBCOMMITTEE RESPONSE
	<p>of these. You could put a period after "mooring areas" and delete "at Newport Harbor Yacht Club and Balboa Yacht Club" and be okay.</p> <p>I'm good with that. Let's strike "of Newport Harbor Yacht Club and the Balboa Yacht Club." That gives our Harbormaster vast powers of approval.</p>	
Section 17.60.30		
<p>This is a chapter about permits and leases. The section just before this was entitled "Pier Permits for Noncommercial Piers." Taking the big picture, structural view of the Harbor Code, it seems a little strange that in this chapter you find something about noncommercial piers. If you want to find the rules for commercial, they're not in here. Presumably, they're in some totally different section of Title 17. I have a little trouble with this not being the comprehensive section about leasing Harbor water. It covers moorings, houseboats, noncommercial piers. Nothing in here about commercial piers, which I'm sure is in Title 17 somewhere.</p> <p>I think there is a section about commercial piers, but it's in a different chapter of Title 17.</p>	<p>Why wouldn't we just take that reference to noncommercial out?</p> <p>Right. Why isn't it just pier permits?</p> <p>Mr. Mosher, I don't think there is. If we look at the very beginning, 17.60.010, public trust lands, if we go down to the last sentence that's been added, it says "this chapter applies to permits or leases for public trust lands used for commercial purposes by an entity other than the City, pier permits for noncommercial piers, and mooring permits." I believe this is language that's been added by Legal and that we just got yesterday. The intent of this language is also to cover commercial piers.</p> <p>But they didn't.</p> <p>As we go through this word-for-word, Mr. Mosher makes a good point. If we're referring to noncommercial pier permits in 17.60.30, there should also be a provision for commercial permits elsewhere or the reference to noncommercial should be deleted and they all should be lumped together.</p>	<p>Added language confirming non-commercial piers.</p>
<p>One thing to be aware of is I believe there are people who pulled commercial permits but don't own the abutting land.</p>	<p>That is true.</p> <p>How that all factors in, I'm not sure, but that's true.</p>	<p>No comment</p>

PUBLIC COMMENT	STAFF RESPONSE	SUBCOMMITTEE RESPONSE
The person who would be issued the permit always has to own the abutting land.	Commercial permits in some cases—I wish I knew the answer to this—are subject to leases with the City.	
It sounds like you need a whole new section for commercial piers.	<p>I don't know whether this would be covered under the commercial lease. If so, I don't know that every commercial pier is subject to a lease with the City.</p> <p>That's the connection right there. If it is, then it's covered. If it's not and there are any loopholes in that, it would have to be covered here. We need to verify what is covered.</p> <p>We need clarification on that. I don't believe all commercial piers are subject to a lease, but they could be. Swales for example.</p> <p>That's County, not us.</p> <p>How about Cal Rec slips immediately north of the north side of Linda?</p> <p>That might be a private waterway or County.</p> <p>If it doesn't apply, then we leave that as a placeholder to be addressed.</p>	No comment, commercial piers have leases under the public trust lands, Section 17.60.60
<p>What's the significance of the date May 11, 2017? It comes up a couple of times.</p> <p>It's under the yacht club moorings only for those moorings assigned by the City within certain established mooring areas or locations prior to May 11, 2017.</p>	<p>I think that's when we established this department.</p> <p>Wasn't that July 1?</p> <p>Again, this came from Legal. We did not put this in there.</p> <p>My guess, there was an updated agreement with the yacht clubs that was dated May 11, 2017.</p>	This is the effective date of Ordinance 2017-7, which added language to the NBMC that revised section 17.60.030.
Some tidelands adjustment in '17 at the Coastal Commission?	<p>Not to my knowledge.</p> <p>There may have been a change in the rules associated with that. Prior to May 11, 2017, the yacht clubs might not have been</p>	See comment above

PUBLIC COMMENT	STAFF RESPONSE	SUBCOMMITTEE RESPONSE
	<p>allowed to acquire more moorings. At this point, if the yacht club in their wisdom wants to acquire additional moorings, they're allowed to. Prior to May 11, 2017, a mooring might have had to have been in the name of a person or a trust, not in the name of an organization. That May 11 ordinance probably allowed, in the case of yacht clubs only, an organization to hold a permit.</p>	
Section 17.60.40(F)		
<p>One of the things on a transfer, if you pick up a 40-foot mooring, you didn't want to get a boat before you have a mooring. I was under the idea right now that you don't need to have a boat to pick up the mooring. Isn't that the way it is now?</p> <p>Is this rewritten so you actually have to have a boat in waiting to go on the mooring?</p> <p>You can pick up a mooring before you have a boat. It might take you 30 days or a year and a half. In the meantime, the City could use the mooring. That's the way it is right now.</p>	<p>Yes.</p> <p>No, it's not. The only change we made deals with requests for extension. If you own a mooring and you want to extend it because you want to get a bigger boat, you have to get a bigger boat within a certain amount of time. Not a mooring per se. You can leave a mooring vacant.</p>	<p>The subcommittee did not change the regulations regarding a boat on a mooring, however did add a section on when and how a mooring extension would be approved.</p>
Section 17.60.40(H)(7)		
	<p>If you had someone pick up a mooring for 15 days, shouldn't they be subject to inspection?</p> <p>If there's suspicion of discharge, of course.</p> <p>You already have the right with suspicion.</p> <p>I don't see another reason.</p>	<p>The revisions as proposed would allow the City to drop a dye tablet in any vessel in the harbor with a sanitation device.</p>
<p>The Harbormaster may grant extensions for longer than 15 days. You have no inspections on these boats that come in. There have been many times in the past where the boats were rented for</p>	<p>The Harbormaster has the authority not to grant an extension.</p> <p>I'm with you. The issue is there are two different types of vessels</p>	<p>You cannot legally rent a mooring without first checking in with the Harbor Department and providing the necessary paperwork.</p>

PUBLIC COMMENT	STAFF RESPONSE	SUBCOMMITTEE RESPONSE
<p>months, never moved, didn't run, got pushed on the moorings.</p> <p>I understand that. When somebody comes and they want to rent a mooring, you don't see the boat. You don't see what it even is. I've seen boats on moorings in the past for extended periods of time that didn't run, got pushed onto the moorings. They're not going to a pumpout dock, and they're not having the service. There were several.</p> <p>That might be. I'm just saying what I've watched happen in the last few years. Boats were on moorings for a few years, and these people were living onboard.</p>	<p>that might come into the Harbor for an extended period. When I say extended period, I mean more than two weeks. One would be a cruiser that's maybe going up and down the coast. The other would be a vessel that came in and that needs service in one of the yards and may be here for a period of time. That's the argument that we heard the other night.</p> <p>I'm okay with "may," but I'm not okay with "shall."</p> <p>Here is where we get back to enforcement. They can't live aboard for more than 72 hours, or they need a live-aboard permit. We're covered there. I'm sure it happened in the past. I know it happened prior to the City of Newport Beach taking over. Please lobby your Council Members and get more funding for the Harbor Department so that we can up the enforcement. The ultimate beneficiaries, in my opinion, are you all that are doing it right.</p> <p>Your point is very well taken. It can happen the way you're describing it.</p> <p>Do we require the Harbormaster to inspect that boat before he gives them a 15-day temporary permit when something goes wrong?</p> <p>If I'm the Harbormaster and a guy says he's going to take his boat into a shipyard and he doesn't know when they can get him in, I'm going to call BS on that.</p> <p>Are you going to do it only after an inspection? How do you handle it operationally? The guy has to come to the office at some point and pay his bill.</p>	<p>If someone is there illegally, code enforcement staff will address.</p>

PUBLIC COMMENT	STAFF RESPONSE	SUBCOMMITTEE RESPONSE
	<p>I don't have enough experience with this particular circumstance. The one example I do have is with an unnamed vessel where getting it into the shipyard became a protracted, difficult circumstance. Even collecting rent from the person became difficult.</p> <p>Let me play devil's advocate. In that particular case, would a mandatory inspection upon issuance of the first sub-permit have improved or changed that situation at all?</p> <p>I don't think so.</p>	
<p>In Avalon, you can pull up to the red boat so they know your boat's running and they get a chance to check it out. I don't know how our system works. Do they check in with one of the patrol boats on the water or do they go straight to the mooring?</p> <p>You don't have the staffing to have them meet one of the patrol boats?</p>	<p>They go straight to the mooring. We may come at a later point.</p> <p>I assume you're in radio contact with them and tell them they're going to pick up the mooring.</p> <p>Not universally at this point.</p>	<p>This is an operational issue that will be addressed by the Harbor Department.</p>
<p>They (inaudible) too because a lot of times they don't have the proper lines. It's like shoelaces tied together. It's a little scary.</p>	<p>These are all operational suggestions. The professionals within the Harbor Department can make the assessment. Writing it into the Code is not the right approach.</p>	<p>Harbor staff will review operational issues to ensure safety.</p>
<p>I think it's (inaudible) Harbormaster grant extensions only for 15 days. That gives him flexibility to adapt.</p>		<p>As proposed the Harbormaster may extend past 15 days.</p>
<p>Does the Harbormaster have the discretion to deny a sub-permit? It's in the Code?</p>	<p>Yes, because the boat has to be operable.</p>	<p>The Harbormaster has always had the authority to deny a sub-permit. This is in the rental agreement.</p>
<p>Section 1760.40(H)(9)</p>		
<p>Let's say you belong to the Cruising Club of America. You could say somebody different could come every weekend that was really the Cruising Club of America, but they're all different boats and different people. You</p>	<p>If you own the mooring, you have the ability to let someone else use it. If you do, that person or boater will be required to pay a fee to the City. You can't let somebody use your mooring for free. You can allow them to use</p>	<p>Staff response is correct.</p>

PUBLIC COMMENT	STAFF RESPONSE	SUBCOMMITTEE RESPONSE
could do that and give them the mooring? Maybe they might feel like giving you some money.	it. It's like owning a mooring in Avalon. You can call ahead and say Commissioner Blank is going to use my mooring this weekend. Because he doesn't own the mooring, he has to pay.	
<p>If I have a mooring and it's vacant, I could bring a friend that has a boat in Long Beach and come down. I'm not saying he's going to live on it. They could come into town and stay on the boat on my mooring for free, which I'm not using at the time, for 30 days. That's all been stricken out?</p> <p>Besides that, which I thought was just completely out of line, was the raising of the fees to rent a mooring. The daily fees went up astronomically. Are those fees still at those levels?</p> <p>I've got my friend in Long Beach who'd like to keep his boat because he lives in Newport. It would be nice for him to bring his boat here and leave it on my vacant mooring. If you had had a different pay schedule for that situation—how many boats are even renting moorings after the fees went up compared to what it was before? The fees went up by like 300 percent. It's not a dock. Is the Harbor really making a ton of money on raising those fees?</p> <p>I own the mooring, and my friend's going to pay \$350 a week. He can go to the anchorage, and that won't cost him.</p> <p>Not that many people are using this feature.</p>	<p>They can't stay on it for free.</p> <p>That's correct. That's the proposed change.</p> <p>There are two separate issues. Number 9, we struck "for free." Here's the deal. You can loan your mooring to anyone you'd like, just as you could if you owned a mooring in Avalon.</p> <p>We're a little far afield from this discussion. The fees went from \$16 per night for a 40-foot boat to \$50 per night. That is an increase of 300 percent, but it is still commensurate with other harbors in our general demographic area. That fee schedule was vetted by the City Attorney's Office and the City Council and everybody else.</p> <p>He can go to the anchorage for three days.</p>	<p>A mooring cannot be loaned for free. Once a mooring is vacant it, the City has the right to rent out the mooring, not the permittee.</p> <p>This language was removed as it is the experience of the Harbor Department, that this was being abused by a number of permittees and creates code enforcement issues.</p>
Just thinking out loud. What if that was a 50 percent jump? In that case, his buddy gets a discount. The theory is the fee's pretty high right now. Who knows if it's priced right? His question is are they getting rented out. While you're playing with all this, could that be a	This is an item we discussed at length. The counterpoint is the mooring permittees are out there renting their moorings and taking a cut of the profit.	Permittees not using their moorings for more than 30 days may have their mooring rented by the City. We do not want to create an underground rental market for staying in the harbor.

PUBLIC COMMENT	STAFF RESPONSE	SUBCOMMITTEE RESPONSE
<p>50 percent (inaudible) as far as loaning it out?</p> <p>This is a concern about people renting them out and taking ...</p>	<p>We want the people on the moorings to be boaters who own and use their boats.</p>	
<p>I'd like to clarify that the anchorages have a maximum of three days (crosstalk) five days.</p> <p>If Joe wanted to go on one of my moorings and I loaned it to him, he would have to pay \$1.25 per foot per night for his boat on my mooring, correct?</p>	<p>That is correct without a permit, 72 hours without a permit.</p> <p>Correct.</p>	<p>Staff response is correct.</p>
<p>Section 17.60.60</p>		
	<p>Here are the large commercial marinas.</p> <p>This requires a commercial marina, Mr. Mosher, to enter into a lease or permit with the City. I think Ms. Jacobs would tell us that every commercial marina has an agreement with the City. That's why they would be dealt with differently than a noncommercial pier. Don't know that for sure.</p>	<p>All commercial marinas have lease agreements with the City.</p>
<p>It looks like, in that case, the title may need a little adjustment because the title says public trust lands.</p>		<p>No change.</p>
<p>It still doesn't say commercial piers. It's in (A) actually.</p>	<p>Let's add a title, make this a bulleted, bold section that says "provision for commercial marinas."</p> <p>Let's make sure that's the case.</p> <p>How about "leases, permits including commercial marinas"?</p> <p>I want to make sure this doesn't refer to noncommercial piers because noncommercial piers are also on public trust lands.</p> <p>Is there another example besides a residential that's a noncommercial? It's either</p>	<p>The City has a defined area of responsibility for all public trust tidelands within the harbor. If you read the section, only commercial property is referred to.</p>

PUBLIC COMMENT	STAFF RESPONSE	SUBCOMMITTEE RESPONSE
	<p>residential or commercial, or is there some other category? Previously we said residential noncommercial.</p> <p>Now, we're getting sticky. You can have a residential pier. You could have a residential dock, which is a dock that's permitted in front of a residential use, but it can be a commercial marina if the resident chooses to call it so.</p> <p>In which case, rates are different, and you have a lease, not a permit.</p> <p>I can't answer that. I think you're right.</p> <p>I'm confident in answering it that way.</p> <p>I would agree that the title is misleading. Should it say something like "commercial marinas and piers on public trust lands"?</p> <p>Okay.</p> <p>17.60.60 and 17.60.10 have the same title.</p> <p>The heading of 17.60.60 in the table of contents says Lease/Permits of Public Trust Lands.</p>	
Section 17.65.40(F)		
	<p>That's not right. If you go back to the bottom of page 35, it says the written decision of the Harbor Commission shall be served on the appellant within five working days after the decision. Most likely there should be a period there. It should say "the written decision of the Harbor, Public Works Director, Community Development Director, and/or Harbormaster as applicable shall be served within five working days."</p>	

PUBLIC COMMENT	STAFF RESPONSE	SUBCOMMITTEE RESPONSE
	You are correct.	
Section 17.70.20(C)		
	<p>Where did Hearing Officer come from?</p> <p>It's nowhere else in the provision, so I think it's leftover. I think we can strike that.</p> <p>There is no Hearing Officer. We got rid of all that.</p>	The Hearing Officer reference has been removed.

Commissioner Kenney advised that the proposed changes will be revised as discussed. The subcommittee will reconvene and be prepared to make recommendations for this portion of Title 17 to the full Harbor Commission. If the Harbor Commission approves the subcommittee's recommended changes or modifies and then approves the changes, they will be presented to the City Council for review and approval. The public can testify before the Harbor Commission and the City Council. The public can also submit written comments through a designated website. Commissioner Yahn added that public comments are available for review on the website.

In response to a request for the Harbor Commission's rationale for not increasing the time limit for mooring permittees to remain on their vessels, Commissioners Kenney and Yahn shared their perspectives of the Harbor Commission's rationale.

Joe Ring [phonetic] remarked that increasing the number of nights would not result in boat owners living on their boats. The problem seems to be the increase from three nights to twelve nights. Maybe something between the two could be considered.

Members of the public suggested a special permit for mooring permittees to stay aboard for perhaps seven nights or a mooring permittee contact the Harbor Office to report he will be staying onboard for four or five days.

Commissioner Kenney indicated members of the public could present proposals for some type of short-term permit to the Harbor Commission.

Biddle, Jennifer

From: Jacobs, Carol
Sent: Monday, November 11, 2019 10:37 AM
To: Biddle, Jennifer
Subject: Fwd: BYC Mooring Field independence

For the HC meeting

Carol Jacobs
Assistant City Manager
City of Newport Beach

Begin forwarded message:

From: Daniel O'Madigan Gribble <dogribble@cox.net>
Date: November 10, 2019 at 9:28:07 PM PST
To: "Jacobs, Carol" <cjacobs@newportbeachca.gov>, Title 17 Review <Title17Review@newportbeachca.gov>
Cc: "Nmaboard@indigoharbor.com" <Nmaboard@indigoharbor.com>, John Fradkin <john.fradkin@gmail.com>, Daniel O'Madigan Gribble <dgribble@boatswainslocker.com>, "Blank, Paul" <pblank@newportbeachca.gov>, "Kenney, William, Jr." <wkenney@newportbeachca.gov>, "Yahn, Don" <DYahn@newportbeachca.gov>, "Cunningham, Scott" <SCunningham@newportbeachca.gov>, "Beer, Ira" <IBeer@newportbeachca.gov>, "Marston, Marie" <mmarston@newportbeachca.gov>, "Scully, Steve" <sscully@newportbeachca.gov>, "Borsting, Kurt" <KBorsting@newportbeachca.gov>
Subject: BYC Mooring Field independence

Dear Assistant City Manager Carol Jacobs,
My name is Dan Gribble and I am a long-time Newport Harbor mooring owner, a life-long boater, the owner of a local marine business, and a member of the Newport Mooring Association. I recently had an experience regarding my mooring in the BYC mooring field (#118) that I thought merited some review and discussion, particularly in light of the upcoming finalization of Title 17.

I recently allowed a visiting yachtsman with whom I had become friends to use my mooring for three months while he and his family went home to Uruguay for the holidays. I met him through a mutual friend and since we both have done significant long-distance cruising in our sailboats, we became friends. My boat is in a slip over at Lido Yacht Anchorage near Newport Harbor Shipyard and will be there for several months while work is being done to it so my mooring is empty. Knowing this, and wanting to be welcoming to a visiting cruising yachtsman, I said he could use my mooring for the three months he and his family would be away. He supplied a letter of introduction from his yacht club and I helped arrange for he and his family to get a guest card at Balboa Yacht Club so they could use the facilities and dine there, etc. for the week or so before his departure for Uruguay. He departed Oct. 30th and will be back mid-January.

Shortly after making this arrangement, I received a call from the Harbor Master's office asking why this boat was on my mooring. I explained that my boat was in a slip for several months for

some work and I had allowed a friend to use my mooring. First they insisted that I had to fill out a Permission Form, one for each of the initial two consecutive months he was to use it (couldn't use one form for all months!), and then following that he either had to move the boat or pay rent to the Harbor Master. I told them they must be mistaken because the BYC mooring fields were supervised by the BYC Dockmaster. I was told I was wrong and I had to comply.

On reading the sections of Title 17 related to this, I found the language ambiguous and could see how they might interpret it one way and I another. I met with Harbor Master Kurt Borsting and explained the situation and while he was gracious and listened, ultimately he chose to enforce the regulations as he interpreted them. Surprisingly he told me that the person loaning the mooring can loan it for a maximum of two consecutive months, while the person using the borrowed mooring can do so for three consecutive months. They just have to move to a different mooring. How ridiculous is that?! Since I had no choice but to comply, and since my friend and his family were leaving for home the next day, I managed to arrange with John Fradkin, who is a fellow BYC member and also owns a mooring in the BYC field, to allow my friend to move to his vacant mooring for the last month. John and I will have to move the boat on December 26th. Very convenient.

Now, for all the years I have owned the mooring in the BYC field, whenever my boat was off the mooring I have always told the BYC Dockmaster that it was available for him to use as he saw fit and it has been used by visiting yachtsmen on more than one occasion. I also have made it available to other members, such as when I was between boats and when my current boat was back east and we were sailing her from Newport, RI to Newport Beach, CA. NEVER was this ever questioned by anyone. There is a tradition and decades-long precedent that WITHIN the BYC (and NHYC and LIYC) mooring fields, jurisdiction over the moorings was the responsibility of the respective Clubs' Dockmasters. Until now.

As you probably are aware, there are 75 moorings in the BYC field, 60 of which are permitted to BYC. From what I understand 13 or the remaining 15 are held by BYC members. I also understand that there is effort to claim the remaining two by BYC members if and when they become available. That being the case it only makes sense for my interpretation of the use of those moorings be clarified in writing in the Title 17 Ordinance before it is finalized. I will say that every BYC member I have spoken with about this agrees with me and was of the same understanding. I have also spoken with members of NHYC and had the same response.

I would like to appeal to you and the Harbor Commission to support me and all other yacht club members and provide an exception for those moorings within the Yacht Club designated fields from the regulations about sub-letting and allowing the City to rent them out. If anything the Clubs should be able to rent them out and earn the income! There is no reason for the Harbor Master to even be concerned with the boats and moorings in the Club designated fields because the Clubs' Dockmasters are fully capable and motivated to enforce all the relevant regulations about keeping the boats clean and safe, etc. and should have jurisdiction over the use of the moorings as well to accommodate members' guests and visiting yachtsmen to the respective Clubs. In fact, I spoke with our BYC Dockmaster and he said that he was surprised at my experience because historically he has been the one to administer the field of moorings, with the City's encouragement and support.

[Proposed Changes to Title 17 - Harbor Code_November 13, 2019 Harbor Commission Meeting](#)

I plan to attend the next Harbor Commission meeting on Wednesday November 13 and would like to speak to this issue. I hope that in providing this letter in advance perhaps it can be included in the agenda, as this is an issue that must be addressed in the interests of the mooring holders and the yacht clubs.

Thank you in advance for your consideration,

Dan Gribble
Mooring BYC -118
NMA Member
Owner - SY Brigadoon
CEO – Boatswain's Locker
Cell: +1(949) 350-6120

Biddle, Jennifer

Subject: FW: NMA Resolution on Administration of Yacht Club mooring fields
Attachments: Resolution 2019-1 Endorsing Continued Yacht Club Admin of Mooring Fields.pdf

From: Megan Delaney <mdelaney@cerithconsulting.com>
Sent: Tuesday, November 12, 2019 3:15 PM
To: Jacobs, Carol <cjacobs@newportbeachca.gov>; Borsting, Kurt <KBorsting@newportbeachca.gov>; Blank, Paul <pblank@newportbeachca.gov>; scunninigham@newportbeachca.gov; Kenney, William, Jr. <wkenney@newportbeachca.gov>; Yahn, Don <DYahn@newportbeachca.gov>; mmaston@newportbeachca.gov; Scully, Steve <sscully@newportbeachca.gov>; Beer, Ira <IBeer@newportbeachca.gov>
Cc: Allen, Jessica <jdallen@newportbeachca.gov>
Subject: NMA Resolution on Administration of Yacht Club mooring fields

Honorable members of the Harbor Commission, Ms. Jacobs and Mr. Borstein,

The mission of the Newport Mooring Association is to be vigilant in protecting and promoting the rights and interests of owners of mooring permits in Newport Harbor. Recently, Dan Gribble (BYC #108) brought an issue to our attention regarding the administration of moorings within a designated Yacht Club mooring field.

I know that Mr. Gribble has been in contact with all of you, so I will not go into the issue at length, but I wanted to take the time to articulate the NMA's position with regards to Yacht Clubs and their administration of their designated mooring fields. The NMA believes that the Yacht Clubs should administer those fields, to ensure flexibility and accommodation of their members and visiting yachtsmen's needs. As a part of daily operations, the Yacht Clubs all **provide berthing to their own members, give reciprocal privileges to other yacht club members and boats, provide support for harbor and regional yacht races, and support special harbor events.** This results in a daily juggling of resources, including use of member moorings.

Last night the NMA Board of Directors voted unanimously to endorse the continuation of the long history of the Yacht Clubs' administration of their mooring fields through a resolution. This administration includes the management of the mooring equipment, which vessels are allowed on the moorings, and for what length of time they can be on the moorings. As well, the NMA feels the Yacht Clubs need to continue to manage the safety of their mooring fields, including the condition of the vessels on the moorings, and the required documentation of the vessels on their moorings

I have attached the resolution and hope that you will consider this issue and the needs of the Yacht Clubs.

See you tomorrow at the Harbor Commission Meeting!

Megan

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NMA Resolution No. 2019-1

Additional Material Received
Proposed Changes to Title 17 - Harbor Code
November 13, 2019 Harbor Commission Meeting

A RESOLUTION OF THE BOARD OF DIRECTORS OF THE NEWPORT MOORING ASSOCIATION ENDORING THE CONTINUED YACHT CLUB ADMINISTRATION OF THE MOORINGS WITHIN THEIR DESIGNATED MOORING FIELDS

WHEREAS, the moorings within the Yacht Club fields, including moorings permitted to individuals, have historically been administered by certain Yacht Clubs, namely the Balboa Yacht Club, the Newport Harbor Yacht Club, and the Lido Island Community Association, and

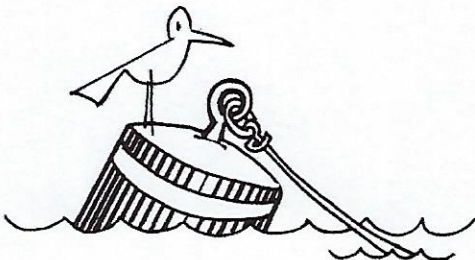
WHEREAS, the Yacht Clubs have the best understanding of the moorings within their fields, and

WHEREAS, these Yacht Clubs have done an excellent job in administering these moorings at no cost to the City of Newport Beach,

NOW, THEREFORE, the Board of Directors of the Newport Mooring Association resolves that these Yacht Clubs should continue to administer all the moorings within their designated mooring fields, including those permitted to individuals, including but not limited to administering:

- The mooring equipment
- Which vessels are allowed on the moorings and for what length of time
- The condition of the vessels on the moorings
- Required documentation of the vessels on the moorings

ADOPTED this 11th day of November, 2019, by unanimous vote.



Byron Grams
President, Newport Mooring Association

Independence of Yacht Club Mooring Fields

My name is Dan Gribble. I sent a letter to Assistant City Manager Carol Jacobs and to all the Harbor Commissioners relating my recent experience with the Harbor Master regarding the use of my mooring at BYC-118 by a visiting yachtsman friend. I will not repeat the contents of that letter, but would like it to be included in the official record. The subject dealt with the management and control of the Yacht Club designated mooring fields, and specifically that of Balboa Yacht Club.

As stated in my letter, it has been a long-held tradition and decades-long precedence that the Dockmasters of the respective Yacht Clubs manage and control the moorings within the Yacht Club designated fields, including but not limited to:

- The mooring equipment
- Which vessels are allowed on the moorings and for what length of time
- The condition of the vessels on the moorings
- Required documentation of the vessels on the moorings

Historically the Dockmasters have taken on the responsibility for these tasks and have done so in accordance with the spirit of the law and done it well. Only recently was this situation questioned when unexpectedly the Harbor Master's office intervened as explained in my letter.

As a yachtsman myself, having spent the last three years sailing our boat nearly 20,000 miles from the East Coast of the US to the West Coast, I know very well what it is like to visit a new and unknown port. We visited well over a dozen different countries and dozens of harbors, not to mention the many we visited on the US coasts. I can tell you that the experience can either be quite simple and pleasant, or quite the opposite. It was always a very gratifying experience to meet a local who willingly assisted us with the local regulations, local marine knowledge, and just made us feel welcome and valued. In the instances where that did not occur, particularly in a foreign port, we felt uncomfortable, confused, and sometimes even taken advantage of or threatened. I believe it is in the best interests of everyone concerned, from the visiting yachtsman to the City of Newport Beach, that we act as welcoming ambassadors to these visitors. As members of Yacht Clubs, we have a unique ability to make first contact through our reciprocal yacht club policies to welcome visiting yachtsmen and not only make them feel at home, but to make them want to return and tell their friends. The practice of allowing such visitors to utilize available moorings within our Yacht Club fields, without having to go through excessive paperwork, complexity of regulations, and added cost, and to do so in compliance with the spirit of the law, is a tradition we must maintain. The current wording of Title 17 in this regard creates an unnecessary obstacle to obtaining that outcome.

As an example, a visitor wanting to borrow a mooring can do so for up to 90 days but the person loaning the mooring can only do so for 60 consecutive days, requiring the visitor to move to a different mooring after 60 days. To further complicate the process, one must fill out

three separate identical forms, one for each month, rather than simply have one form include all the dates. One might expect such complexity perhaps in a Banana Republic bureaucracy but certainly not here in Newport Beach where we supposedly wish those visitors to be our guests, spend money, and leave to tell their friends to come and do the same.

In conclusion, I would like to ask the Harbor Commission, in their review and re-write of Title 17, to change and clarify the ambiguous language of section 17.60.040 related to the Yacht Club designated moorings such that the governance and control of those moorings extends to the privately held moorings within those fields that belong to Yacht Club members and not just to those moorings held specifically by the Yacht Clubs.

Thank you for your time.

Dan Gribble
BYC Member
NMA Board Member
Owner – Mooring BYC-118
CEO – Boatswain's Locker
Owner – SY Brigadoon



CITY OF

NEWPORT BEACH

Harbor Commission Staff Report

November 13, 2019
Agenda Item No. 6.4

TO: HARBOR COMMISSION

PREPARED BY: Carol Jacobs, Assistant City Manager, (949) 644-3313
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PREPARED BY: Carol Jacobs, Assistant City Manager,
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TITLE: Proposed City Council Policy – Offshore Mooring Extensions

ABSTRACT:

At the Harbor Commission meeting of June 12, 2019, the Harbor Commission reviewed proposed amendments regarding offshore mooring extensions in conjunction with their 2018 Goals and Objectives to “Establish policies for modifications to mooring sizes”. The Commission reviewed and approved a Harbor Department Policy based on this recommendation. After further review, it is recommended that the Harbor Commission recommend a new City Council Policy establishing how and when moorings may be extended.

RECOMMENDATION:

- 1) Determine this action is exempt from the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(2) and 15060(c)(3) of the CEQA Guidelines because this action will not result in a physical change to the environment, directly or indirectly;
- 2) Approve the proposed City Council Policy on mooring extensions and request staff to present to City Council for consideration (Attachment A).

FUNDING REQUIREMENTS:

There is no fiscal impact related to this item.

DISCUSSION:

On July 1, 2017, the City took over the management of the City’s offshore and onshore mooring fields. The City manages over 1,200 moorings located within the Harbor and approximately 800 of those are offshore moorings in eight mooring fields (Attachment B). Over the past several years, the Harbor Department has received a number of requests

for mooring extensions and determined that the City's Municipal Code nor the Harbor Department had a process or method to grant a mooring extension request.

On October 10, 2018, a subcommittee of the Harbor Commission (Beer and Drayton) was appointed to review the offshore mooring extension process. The subcommittee worked with the City's Harbor Department and Information Technology staff to determine the existing mooring configurations within each row and field. As the subcommittee soon discovered, there is no best practice for establishing maximum lengths and vessel mixes within mooring fields. In addition, mooring fields are often odd shaped and conditions in each mooring field differ.

The subcommittee's goals in establishing the maximum lengths is threefold: 1) to ensure the fields are safe and have adequate maneuverability; 2) to maximize the space within the mooring fields in the most effective manner possible and 3) provide staff and the community with guidance for mooring field extension requests providing a fair and equitable process.

The subcommittee developed a general methodology to establish the maximum size vessels within each row of each mooring field. The maximum lengths were calculated allowing for approximately three boat lengths for maneuverability. Once those distances were determined, the subcommittee then reviewed those lengths with conditions in the fields and revised the three boat length methodology to suit field conditions.

The subcommittee drafted a Harbor Policy to implement the mooring extensions, which is presented here as a draft City Council Policy (Attachment A). The attachment to the Council Policy identifies the maximum length of a mooring for each mooring location. The draft policy will require the Harbormaster to review each request to make a determination if the vessel length extension is appropriate for each specific mooring. There are several locations in the mooring fields in which the fairway within the field is very narrow, is irregular or the row is adjacent to a public beach or restricted navigational area and the Harbormaster must use judgement to ensure the boat will not infringe on the other mooring permittees, those field observations have been taken into consideration in the policy.

New language has been proposed in the Title 17 update and is in Section 17.60.040(N), Mooring Permits.

ENVIRONMENTAL REVIEW:

Staff recommends the City Council find this action 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) and 15060(c)(3) (the activity is not a project as defined in Section 15378) of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, because it has no potential for resulting in physical change to the environment, directly or indirectly.

NOTICING:

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

ATTACHMENTS:

Attachment A – Proposed City Council Policy – Mooring Extensions (including Attachment A to the policy)

Attachment B – Aerial photos of the mooring fields

REQUEST FOR MOORING EXTENSION

Purpose:

The City of Newport Beach is responsible for managing the Offshore Moorings located on the City's tidelands. In order to manage this limited space, the purpose of this policy is to provide a fair and consistent process for reviewing requests for a mooring extension within the City's managed offshore mooring fields. This policy ensures implementation of the City of Newport Beach Municipal Code.

Policy:

It is the policy of the Harbor Department to maintain and manage the City's mooring fields. It is the responsibility of the Harbor Department to maintain an adequate supply of moorings at all vessel lengths to support the many recreational users in the Harbor.

It is the policy of the Harbor Department to ensure adequate maneuverability for all vessels located within the City's mooring fields in order to best utilize the space with the mooring fields for use by the mooring permittees and the public.

Definitions:

Row. A row is defined as a line of parallel or nearly parallel moored boats separated by a fairway.

Fairway. An area of water adjacent to slips or mooring buoy location that feeds into a channel which is used for direct access to slips or moorings. When associated with built slips, the fairway water area is defined as lying between the outer end of the mooring buoy on either side of the fairway as set forth in this policy.

Vessel Length/Width. The term "vessel length/width" are terms described as follows:

- a) The Length Overall as published by the manufacturer of a particular vessel (LOA) is the length used to determine (a) the required mooring size for a particular vessel, (b) the size and specification for the chains, weights and tackle necessary to secure a vessel on a particular mooring for a permittee.
- 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. Adjusted LOA is used to determine the maximum vessel length that can fit in any particular slip or side-tie.
- c) Width which includes all vessel attachments including boarding steps, rub rails, etc.
- d) In the event that the LOA cannot 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 state issued registration document, or if none is available, then third by other official documentation certifying the LOA of the vessel acceptable by the Harbormaster at his or her discretion.

e) Maximum Vessel Length. The longest a vessel can be within any given row. This is established by the Harbor Commission upon recommendation by the Harbormaster.

Procedures:

A Mooring Permittee shall in writing complete a Request for Mooring Extension form providing all requested information.

The Harbormaster shall review the request for compliance with all Title 17 Regulations and the approved list of Maximum Vessel Lengths by Field and Row to determine if the request can be granted (Attachment A).

If the request does not exceed the maximum length in the mooring field row per Attachment A, the Harbormaster may approve up to a five-foot extension. However, the Harbormaster has the discretion to deny the request based upon existing conditions, navigational concerns or restrictions that may result from allowing such extension.

If the request is for more than five feet, and within the maximum vessel lengths, the Harbor Commission will decide the issue.

The decision of the Harbor Commission may be appealed to the City Council if denied.

The Harbor Commission may periodically review the Maximum Vessel Lengths set forth in Attachment A and update as necessary.

Exceptions may be made based on end-tie or proximity to the channel, public beaches and footprint of the mooring field and general navigational considerations.

Attachment A – Mooring lengths by field

CITY OF NEWPORT BEACH
MAXIMUM VESSEL LENGTHS IN CITY MOORING FIELDS

Mooring Field/Row	Average Vessel Length	Row Width	Fairway West	Fairway East	Guidance for Exeptions to Maximum Length Based on Site Conditions
A-01	43	76	45	N/A	40
A-02	45	76	39	45	45
A-03	41	65	52	39	40
A-04	46	69	40	52	50
A-05	48	72	36	40	45
A-06	40	71	44	36	45
A-07	40	84	71	44	45
A-08	70	118	71	71	90
A-09	58	84	75	71	55
A-10	48	76	38	75	50
A-11	40	68	55	38	45
A-12	50	70	42	55	50
A-13	46	66		42	50
A-14	43	51	45	0	45
A-15	41	71	75	45	40
A-16	58	64	74	75	65
A-17	50	56	71	74	55
A-18	41	59	65	71	45
A-19	47	62	56	65	50
A-20	42	64	62	56	45
A-21	56	65	56	62	50
A-22	51	66	55	56	50
A-23	49	57	76	55	50
A-24	40	59	56	76	45
A-25	51	66	82	56	50
A-26	48	68	67	82	50
A-27	42	59	51	67	50
A-28	40	67	20	51	40

CITY OF NEWPORT BEACH
MAXIMUM VESSEL LENGTHS IN CITY MOORING FIELDS

Mooring Field/Row	Average Vessel Length	Row Width	Fairway West	Fairway East	Guidance for Exeptions to Maximum Length Based on Site Conditions
B-01	44	76	37	N/A	45
B-02	39	67	51	37	40
B-03	38	66	46	51	45
B-04	38	68	45	46	45
B-05	45	46	73	45	40
B-06	48	60	44	73	50
B-07	43	46	51	44	45
B-08	45	67	36	51	40
B-09	53	67	24	36	50
B-10	40	56	157	24	40
B-11	48	53	61	157	55
B-12	40	51	48	61	45
B-13	43	53	27	48	40
B-14	40	51	36	27	40
B-15	48	59	44	36	40
B-16	40	47	34	44	40
B-17	40	60	17	34	40
B-18	45	61	27	17	40
B-19	43	64	31	27	45

CITY OF NEWPORT BEACH
MAXIMUM VESSEL LENGTHS IN CITY MOORING FIELDS

Mooring Field/Row	Average Vessel Length	Row Width	Fairway West	Fairway East	Guidance for Exeptions to Maximum Length Based on Site Conditions
C-01	60	110	65	94	75
C-02	51	78	52	65	55
C-03	55	58	54	52	50
C-04	42	79	63	54	40
C-05	43	71	44	63	45
C-06	42	58	41	44	45
C-07	48	67	53	41	50
C-08	43	69	59	53	45
C-09	43	69	N/A	59	40

CITY OF NEWPORT BEACH
MAXIMUM VESSEL LENGTHS IN CITY MOORING FIELDS

Mooring Field/Row	Average Vessel Length	Row Width	Fairway West	Fairway East	Guidance for Exeptions to Maximum Length Based on Site Conditions
D-01	40	44	38	N/A	30
D-02	48	62	15	38	40
D-03	30	38	38	15	30
D-04	40	62	33	38	40
D-05	50	67	31	33	50
D-06	40	64	30	31	40
D-07	43	60	17	30	45
D-08	30	56	17	17	30
D-09	40	57	54	17	45
D-10	40	51	52	54	40
D-11	40	47	28	52	40
D-12	43	60	59	28	45
D-13	53	70	34	59	45
D-14	35	54	19	34	40
D-15	45	69	21	19	40
D-16	45	70	22	21	50
D-17	33	75	46	22	45
D-18	48	69	92	46	50
D-19	45	57	24	92	50
D-20	53	56	47	24	45
D-21	40	62	44	47	50
D-22	40	49	30	44	40
D-23	43	57	40	30	40
D-24	35	50	29	40	40
D-25	40	49	78	29	40
D-26	43	53	75	78	50
D-27	48	50	0	75	50

CITY OF NEWPORT BEACH
MAXIMUM VESSEL LENGTHS IN CITY MOORING FIELDS

Mooring Field/Row	Average Vessel Length	Row Width	Fairway West	Fairway East	Guidance for Exeptions to Maximum Length Based on Site Conditions
F-01	53	74	45	37	50
F-02	45	67	38	45	50
F-03	63	71	49	38	50
F-04	45	68	51	49	50
F-05	43	61	45	51	45
F-06	55	71	56	45	50
F-07	53	70	51	56	50
F-08	58	66	38	51	50
F-09	48	77	81	38	60
F-10	60	84	46	81	65

CITY OF NEWPORT BEACH
MAXIMUM VESSEL LENGTHS IN CITY MOORING FIELDS

Mooring Field/Row	Average Vessel Length	Row Width	Fairway West	Fairway East	Guidance for Exeptions to Maximum Length Based on Site Conditions
H-01	50	81	59	N/A	60
H-02	55	80	66	59	60
H-03	49	72	31	66	50
H-04	43	68	40	31	45
H-05	42	58	34	40	40
H-06	38	49	40	34	40
H-07	44	57	52	40	45
H-08	45	73	0	52	50

CITY OF NEWPORT BEACH
MAXIMUM VESSEL LENGTHS IN CITY MOORING FIELDS

Mooring Field/Row	Average Vessel Length	Row Width	Fairway West	Fairway East	Guidance for Exeptions to Maximum Length Based on Site Conditions
J-01	43	70	58	N/A	45
J-02	52	67	62	58	50
J-03	40	72	26	62	45
J-04	41	62	22	26	40
J-05	36	57	46	22	40
J-06	41	56	46	46	40
J-07	42	57	46	46	45
J-08	42	51	65	46	40
J-09	50	69	59	65	50
J-10	52	73	52	59	50
J-11	52	70	0	52	50

CITY OF NEWPORT BEACH
MAXIMUM VESSEL LENGTHS IN CITY MOORING FIELDS

Mooring Field/Row	Average Vessel Length	Row Width	Fairway West	Fairway East	Guidance for Exeptions to Maximum Length Based on Site Conditions
K-01	45	69	44	12	50
K-02	48	64	27	44	45
K-03	45	52	52	27	45
K-04	48	45	33	52	45
K-05	48	59	46	33	45
K-06	40	61	26	46	40
K-07	48	65	46	26	45
K-08	48	69	40	46	50
K-09	40	78	47	40	50
K-10	43	66	89	47	45
K-11	65	82	10	89	65



A-Mooring (Mooring Size Analysis)



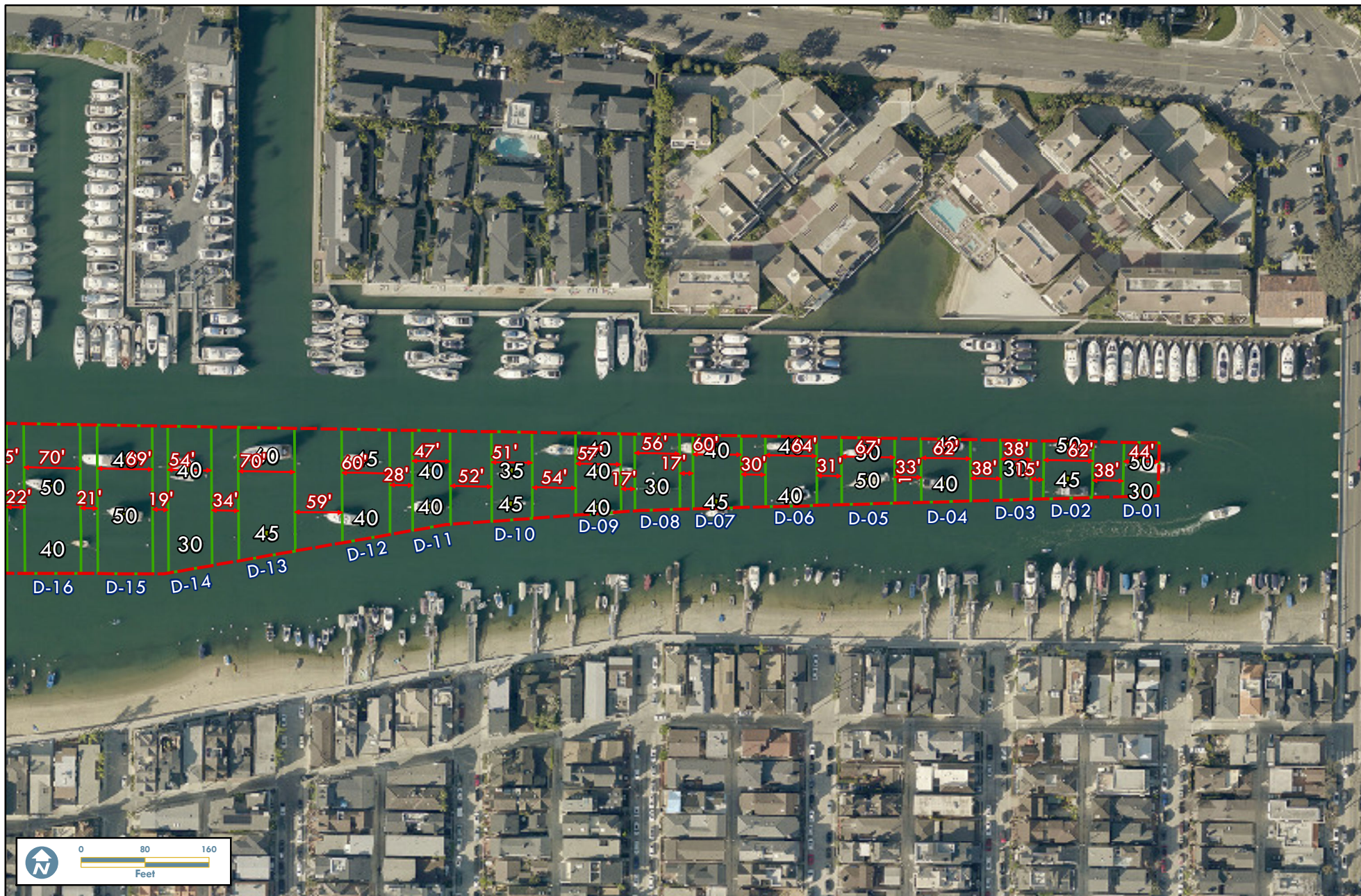
A-Mooring (Mooring Size Analysis)



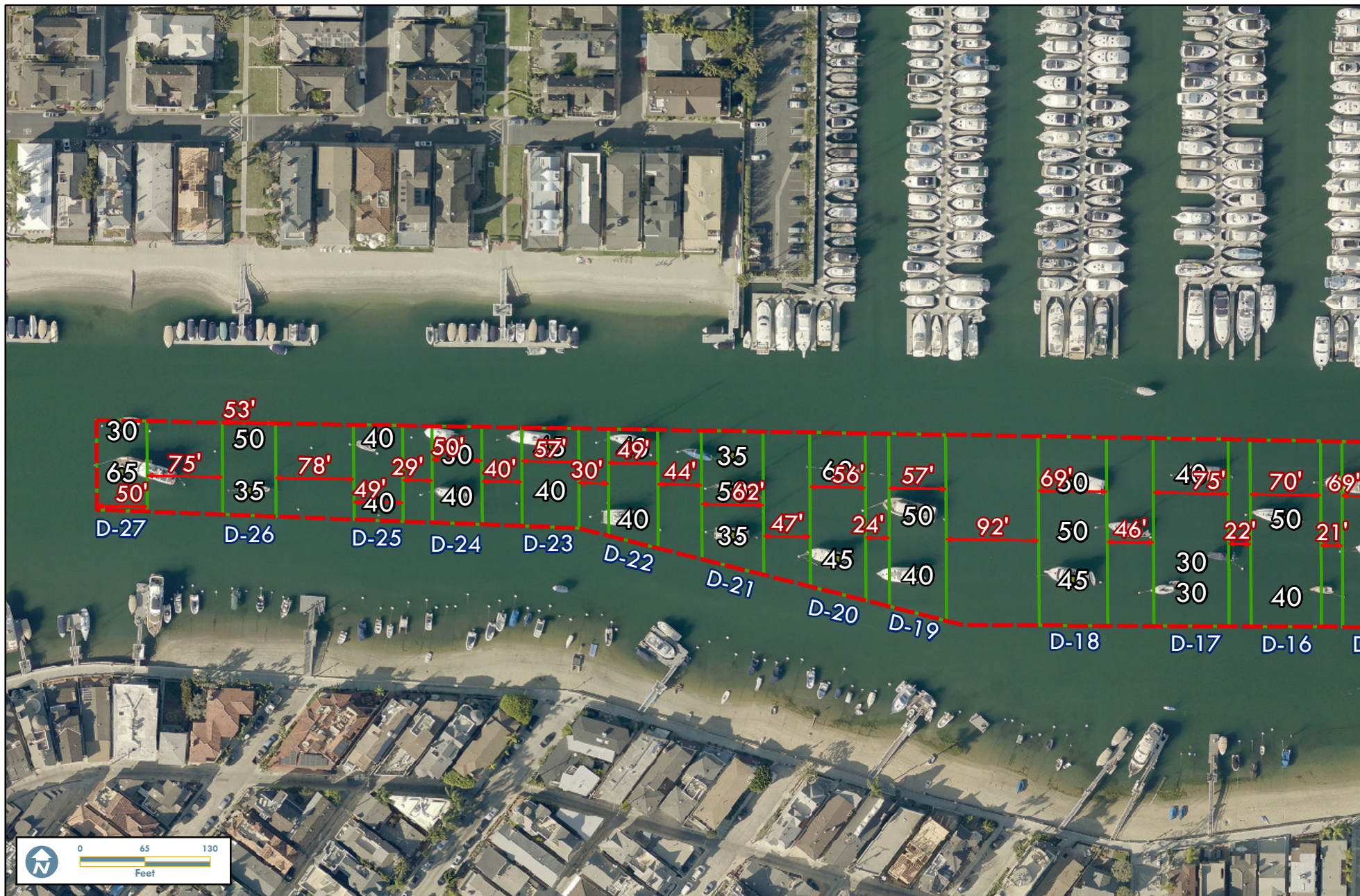
B-Mooring (Mooring Size Analysis)



C-Mooring (Mooring Size Analysis)



D-Mooring (Mooring Size Analysis)



D-Mooring (Mooring Size Analysis)



F-Mooring (Mooring Size Analysis)







K-Mooring (Mooring Size Analysis)



CITY OF

NEWPORT BEACH

Harbor Commission Staff Report

November 13, 2019
Agenda Item No. 6.5

TO: HARBOR COMMISSION

PREPARED BY: Carol Jacobs, Assistant City Manager, (949) 644-3313
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PREPARED BY: Carol Jacobs, Assistant City Manager,
cjacobs@newportbeachca.gov

PHONE: 949-644-3313

TITLE: Create a Subcommittee to work with the Parks, Beaches and Recreation Commission to Explore a Community Pool at Lower Castaways

ABSTRACT:

At the City Council meeting of November 5, 2019, the City Council directed the Parks, Beaches and Recreation Commission and the Harbor Commission to work together to explore the possibility of a community pool at Lower Castaways Park.

RECOMMENDATION:

- 1) Determine this action is exempt from the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(2) and 15060(c)(3) of the CEQA Guidelines because this action will not result in a physical change to the environment, directly or indirectly;
- 2) Appoint three members of the Harbor Commission to a subcommittee to work with the Parks, Beaches and Recreation Commission on a community pool at Lower Castaways Park.

FUNDING REQUIREMENTS:

There is no fiscal impact related to this item.

DISCUSSION:

At the City Council meeting of November 5, 2019, the Recreation and Senior Services Department provided the City Council with a staff report requesting direction to explore the possibility of a community pool at Lower Castaways Park (Attachment A). This park is 4.04 acres and currently has a few minor leases on the property. Attachment B is a map of the area.

The City Council requested that the Parks Beaches and Recreation Commission work with the Harbor Commission to explore the possibilities of a community pool, considering the needs of the harbor at Lower Castaways Park. Recreation staff anticipates this project could take up to three years to develop a plan to move forward. Staff is requesting three members from the Harbor Commission to work on this project.

ENVIRONMENTAL REVIEW:

Staff recommends the City Council find this action 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) and 15060(c)(3) (the activity is not a project as defined in Section 15378) of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, because it has no potential for resulting in physical change to the environment, directly or indirectly.

NOTICING:

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

ATTACHMENTS:

Attachment A – Staff Report from Recreation and Senior Services
Attachment B – Site Map



CITY OF

NEWPORT BEACH

City Council Staff Report

November 5, 2019
Agenda Item No. 11

TO: HONORABLE MAYOR AND MEMBERS OF THE CITY COUNCIL

FROM: Laura Detweiler, Recreation and Senior Services Director - 949-644-3151, ldetweiler@newportbeachca.gov

PREPARED BY: Jonathon Harmon, Recreation Manager, jharmon@newportbeachca.gov

PHONE: 949-644-3156

TITLE: Consideration of Directing the Parks, Beaches & Recreation Commission to Evaluate the Feasibility of a Community Pool at Lower Castaways Park

ABSTRACT:

Mayor Diane Dixon has asked the City Council to consider directing the Parks, Beaches & Recreation Commission to evaluate the feasibility of a community pool at Lower Castaways Park that serves recreational & therapeutic needs.

RECOMMENDATION:

- a) Find this project exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15262 (Feasibility and Planning Studies) of the CEQA Guidelines, because this project has no potential to have a significant effect on the environment; and
- b) Direct the Parks, Beaches & Recreation Commission to form an ad hoc committee to study the feasibility of a community pool at Lower Castaways Park through architectural review and community outreach.

FUNDING REQUIREMENTS:

The current adopted budget includes sufficient funding for the hiring of an architect to study the feasibility of the Lower Castaways Park site. Approximately \$15,000 is available from the CIP, Master Facilities Plan Strategic Planning account, 57201-980000.

DISCUSSION:

There is an existing deficit of available pool time in Newport Beach to serve the high schools, community programs, competitive aquatics, and recreational programs. Additionally, there is not a public therapeutic pool option. The City currently shares pool use with Corona del Mar High School and Newport Harbor High School, balancing a full schedule of both school and community activity. Demand for aquatic programming greatly outweighs the available time and space at the two high school pools.

A dedicated community aquatic facility would satisfy these needs by allowing for increased lap swim hours, year-round swim lessons, and a variety of aquatic based fitness and therapeutic classes for all ages. The addition of a community pool would also free up the high school pools for increased school, club, and competitive programming.

Staff have identified a 4.04-acre undeveloped park parcel at Lower Castaways Park (Attachment A) as a possible location for the community pool. The Parks, Beaches & Recreation Commission would be tasked with evaluating the feasibility of the location with assistance from staff and an architectural consultant. Community outreach meetings and surveys will be conducted as part of the process to pinpoint facility and programming needs.

As it relates to future project funding of the pool, the Honorable Evelyn Hart has indicated her commitment to leading a fundraising effort to offset half of the project costs through private funding.

Staff prepared a forecasted budget for the new community pool based on estimated revenues, expenditures, and potential growth. Revenues of \$200,000 were based on community activities seven days a week including, but not limited to, swim lessons, aqua fitness classes, therapeutic aquatics, and adult masters and lap swim. Expenditures were broken down into staff costs (approximately \$650,000) and maintenance and operations costs (approximately \$250,000). Annual General Fund support will be necessary to cover the \$700,000 gap between maintenance and operational expenses and revenues. These figures are based on a 25-yard lap/non-competitive pool model.

ENVIRONMENTAL REVIEW:

Staff recommends the City Council find this project exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15262 (Feasibility and Planning Studies) of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, because it has no potential to have a significant effect on the environment.

NOTICING:

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

ATTACHMENT:

Attachment A – Map of Lower Castaways Park/Project Location

ATTACHMENT A





CITY OF NEWPORT BEACH

Harbor Commission Staff Report

November 13, 2019
Agenda Item No. 6.6

TO: HARBOR COMMISSION

FROM: Carol Jacobs, Assistant City Manager, 949-644-3313
cjacobs@newportbeachca.gov

TITLE: Harbor Commission 2020 Objectives and Subcommittee Reports
for Progress of Current Objectives

ABSTRACT:

The Harbor Commission has completed a number of Objectives since the last full update of the Objectives in 2018. At the October 9, 2019 meeting, the Harbor Commission created a subcommittee to review the current updated Objectives. They were tasked with adding to, deleting and modifying the current Objectives for the City Council's consideration in January/February 2020. The subcommittee for Objective Review will report their recommendations for consideration of the full Harbor Commission. Each subcommittee will also report their progress from the last month.

RECOMMENDATION:

- 1) Find this action exempt from the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment) and 15060(c)(3) (the activity is not a project as defined in Section 15378) of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, because it has no potential for resulting in physical change to the environment, directly or indirectly.
- 2) Review and approve updates to the Harbor Commission Objectives for 2020, and recommend that they be forwarded to the City Council for consideration.
- 3) Receive and file current subcommittee reports.

FUNDING REQUIREMENTS:

There is no fiscal impact related to this item.

DISCUSSION

The Harbor Commission has established objectives, which have been presented to the City Council on an annual basis for a number of years. The purpose of the Objectives is to systematically review the operations of the harbor and work to improve the harbor for all stakeholders. The last full update of the Objectives was completed in February of 2018 and the Harbor Commission recently revised and updated the objectives in July of 2019.

A subcommittee was created at the October 9, 2019 Harbor Commission meeting to develop the 2020 objectives and then bring those forward to the full Harbor Commission for consideration. The subcommittee will present their recommendations to the full Harbor Commission for consideration. The approved objectives would then be presented to the City Council as soon as practical.

Current subcommittees will report on their progress for the month.

ENVIRONMENTAL REVIEW:

Staff recommends the Harbor Commission find this action 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) and 15060(c)(3) (the activity is not a project as defined in Section 15378) of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, because it has no potential for resulting in physical change to the environment, directly or indirectly.

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

ATTACHMENTS:

Attachment A – Harbor Commission 2018 Objectives, Revised July, 2019



City of Newport Beach

Harbor Commission Purpose & Charter

Newport Harbor supports numerous recreational and commercial activities, waterfront residential communities and scenic and biological resources. The purpose of the Harbor Commission is to provide the City of Newport Beach with an advisory body representing these diverse uses of Newport Harbor and its waterfront.

1. Advise the City Council in all matters pertaining to the use, control, operation, promotion and regulation of all vessels and watercraft within Newport Harbor.
2. Approve, conditionally approve, or disapprove applications on all harbor permits where the City of Newport Beach Municipal Code assigns the authority for the decision to the Harbor Commission.
3. Serve as an appellate and reviewing body for decisions of the City Manager on harbor permits, leases, and other harbor-related administrative matters where the City of Newport Beach Municipal Code assigns such authority to the Harbor Commission.
4. Advise the City Council on proposed harbor-related improvements.
5. Advise the Planning Commission and City Council on land use and property development applications referred to the Harbor Commission by the City Council, Planning Commission, or the City Manager.
6. 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 Capital Plan.
7. Advise the City Council on the implementation of assigned parts of the Tidelands Capital Plan such as:
 - Dredging priorities
 - In-bay beach sand replenishment priorities
 - Harbor amenities such as mooring support service areas and public docks

Harbor Commission - 2019 Objectives

The following objectives are intended to support the mission of the Harbor Area Management Plan and the two most essential responsibilities of the Harbor Commission: (1) Ensuring the long-term welfare of Newport Harbor for all residential, recreational, and commercial users; (2) Promoting Newport Harbor as a preferred and welcoming destination for visitors and residents alike.

These calendar year 2019 Objectives are subject to the review and approval of the Commission, and final approval by the Newport Beach City Council. Harbor Commission ad hoc committees, as established by the Commission, bear principal responsibility for coordinating the Commission's efforts, along with staff support, in achieving these Objectives.

City of Newport Beach - Harbor Commission
2018 Objectives
Updated July 10, 2019

2019 Objectives	Functional Area
<p>1.1 Identify sustainable low-cost solutions to dredge the deep-water channels throughout the harbor.</p> <p>1.2 Identify opportunities to streamline the RGP54 permit process.</p> <p>1.3 Evaluate options for near shore dredging. Establish a sustainable program that consistently nourishes harbor beaches on a yearly basis.</p>	<p>1.0 Harbor Dredging (<i>Cunningham</i>, Marston)</p> <p><i>Advise the City Council on:</i></p> <ul style="list-style-type: none"> ○ <i>Dredging methodologies</i> ○ <i>Dredging priorities</i> ○ <i>Eelgrass protection</i> ○ <i>Beach re-nourishment</i>
<p>*Functional Areas 2 and 3 (combined 7/10/19)</p> <p>2.1 Evaluate current enforcement of applicable City codes throughout the harbor. Report back to Commission by July.</p> <p>2.2 Evaluate potential enhancements to city amenities provided to mooring permittees, residents and visitors.</p> <p>2.3 Establish policies for modifications to mooring size.</p> <p><u>Future Priorities</u></p> <ul style="list-style-type: none"> A. Work with Harbormaster's office to evaluate mooring management and oversight. B. Identify and address derelict vessels in the harbor. C. Complete evaluation for establishing day moorings off Big Corona beach. D. Evaluate options to consolidate and reduce the footprint of current mooring fields. 	<p>2.0 Harbor Operations, Management, Amenities, and Capital Improvements (<i>Beer</i>, Yahn, Scully)</p> <ul style="list-style-type: none"> ○ <i>Matters pertaining to use, control, operation, promotion, regulation of all vessels and watercraft.</i> ○ <i>Advise the City Council on proposed harbor-related improvements.</i> ○ <i>Advise the City Council on harbor amenities such as mooring support service areas and public docks.</i>
<p>3.1 Review and update City Municipal Codes, Title 17, Harbor Policies 1-5 and Marine Activities Permits.</p>	<p>3.0 Harbor Policies, Codes, Regulations (<i>Kenney</i>, Blank, Yahn)</p> <ul style="list-style-type: none"> ○ <i>Approve, conditionally approve, or disapprove applications on all harbor permits.</i> ○ <i>Serve as an appellate and reviewing body for decisions on harbor permits, leases, and other harbor-related administrative matters.</i>

City of Newport Beach - Harbor Commission
2019 Objectives
Updated July 10, 2019

2019 Objectives	Functional Area
<p>4.1 Establish a dialogue with representatives of the Harbor Charter Fleet industry, other commercial vessel operators and rental concessionaires to promote best practices for charter and commercial boat operations in Newport Harbor with particular attention to vessel specifications, noise and pollution control/compliance and long-range plans for berthing.</p>	<p>4.0 Commercial, Recreational and Educational Activities (Scully, Kenney, Marston)</p> <ul style="list-style-type: none"> ○ <i>Matters pertaining to use, control, operation, promotion, regulation of all vessels and watercraft.</i> ○ <i>Serve as an appellate and reviewing body for decisions of the City Manager on harbor permits, leases, and other harbor-related administrative matters.</i>
<p>5.1 Draft a Harbor Plan that can be used independently or in conjunction with an update to the General Plan and/or Harbor Area Management Plan (HAMP). Specific attention should be paid to state requirements including conservation for harbors, MLPA/MPAs and fisheries and work previously done by the Harbor Commission related to preservation of marine related activities and businesses in Newport Harbor and the Harbor Financial Master Plan.</p> <p><u>Future Priorities</u></p> <p>A. Create a Vision Statement for the Harbor describing the purposes, uses and characteristics in the year 2050. Reference how that Vision aligns with the current two most essential responsibilities of the Harbor Commission: (1) Ensuring the long-term welfare of Newport Harbor for all residential, recreational, and commercial users; (2) Promoting Newport Harbor as a preferred and welcoming destination for visitors and residents alike.</p>	<p>5.0 Long Term Vision for Harbor (Harbor Strategic Planning) (Blank, Cunningham, Scully)</p> <ul style="list-style-type: none"> ○ <i>Advise the City Council on the City General Plan.</i>

*Numbering of Objectives was changed to reflect the combining of Objectives 2 and 3 at the Harbor Commission Meeting of July 10, 2019.



CITY OF

NEWPORT BEACH

Harbor Commission Staff Report

November 13, 2019
Agenda Item No. 6.7

TO: HARBOR COMMISSION

FROM: Kurt Borsting, Harbormaster
kborsting@newportbeachca.gov

TITLE: Harbormaster Update – October 2019

ABSTRACT:

The Harbormaster is responsible for the on-water management of the City's moorings, the Marina Park Marina and Code Enforcement on the water. This report will update the Commission on the Harbor Department's activities for October 2019.

RECOMMENDATION:

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

FUNDING REQUIREMENTS:

There is no fiscal impact related to this item.

DISCUSSION:

Follow Up Meeting with US Coast Guard Representatives (LA/LB Sector)

On October 21 Harbor Commissioner Ira Beer, Public Works Manager Chris Miller, and Harbormaster Kurt Borsting attended a meeting with various representatives of the US Coast Guard, at their LA/LB Sector Base in San Pedro. The purpose for the meeting was to seek clarification and direction in connection with a previously submitted proposal to establish a permanent anchorage area adjacent the Harbor's Turning Basin immediately West of Lido Isle. The consultation yielded valuable insights about potential modifications that the City may wish to incorporate into its previously submitted proposal, prior to resubmitting the West Anchorage concept for further USCG review.

Public Information and Departmental Outreach Efforts

Outreach to community stakeholder groups continued during October 2019. Taking advantage of these 'get the word out' opportunities has assisted the department in informing the general public about the Harbor Department and its mission.

On October 2 the landing page and multiple sub-pages of Harbor Department's website were updated. Enhancements to the site include scrolling banner photos on the site's main page, incorporating on-line slip and mooring reservations functionality into the site, reducing the number of 'clicks' required by users to navigate to topics of interest, as well as updating informational text and photos. These efforts are on-going, with additional sub-pages of the site now under review.

On October 9 a mass-email was sent from the Harbor Department to all City mooring permittees. The message provided information about expected high wind conditions, predicted as part of local weather forecasts. In advance of this expected high-wind event, boat owners who utilize the mooring fields were encouraged to check on their vessels, the condition of their lines, as well as confirming their boats were properly and safely secured to their moorings.

On October 17 Harbormaster Kurt Borsting, along with Assistant City Manager Carol Jacobs and Harbor Commission Chairperson Paul Blank co-presented overview information about the Harbor Department to participants of the Leadership Tomorrow program, as part of their "Water Day" workshop. Leadership Tomorrow is a non-profit organization serving the communities of Costa Mesa, Irvine, Newport Beach and Tustin. The program brings business and civic leaders together from across these communities, for a series of monthly workshops and seminars on topics of shared interest.

Abandoned Vessel Auction – October 30

On Wednesday, October 30, an abandoned boat auction was held at the City's Marina Park guest slip facility. The public sale featured twenty-three previously impounded and abandoned vessels. Sixteen of the vessels were small kayaks, row boats, and other human powered crafts. One 15' Bayliner with outboard, and four sailboats ranging from 14' to 34' in length were also available for purchase. The program was well attended. Twelve of the smaller human-powered craft were sold, yielding \$890 in revenue to the department. Boats which did not sell will be removed from the harbor and dismantled, following a required ten day hold period. Competitive bids for their removal are in the process of being collected.

As has been done with other recent boat sales, the auction was organized to take place concurrent with the OC Sheriff's Boat Auction, allowing both agencies to share resources and benefit from a larger pool of bidders vs. hosting individual events at different times.

Code Enforcement Activity

During October 2019, Code Enforcement staff opened 84 new cases and successfully resolved/closed 69 existing files.

During October 2019, four pre-dawn Harbor patrols were organized by Code Enforcement and Harbor Service Worker Lead staff. These activities, which began at 4:30 a.m., focused on collecting follow up information associated with potential unauthorized live-aboard activity in the City mooring fields. These early morning patrol efforts will be continuing into November.

October 16 Code Enforcement and Fire Department personnel conducted inspections of all commercial docks in the Harbor. Ten violations were observed, associated with improper vessel storage, which if left unaddressed, would have fire safety implications. All dock operators were notified of these violations, requesting timely correction non-compliant issues. Re-inspections of the docks will take place in the coming weeks to ensure the identified areas of concern were brought back into compliance.

ENVIRONMENTAL REVIEW:

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

NOTICING:

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

ATTACHMENTS:

Attachment A – Harbor Department Statistics, Fiscal Year through October 2019

Harbor Department Statistics Fiscal Year 2019-20

	July	August	Sept.	Oct.	Nov.	Dec.	Jan.	Feb.	Mar.	April	May	June	YTD
Anchorage	45	26	7	9									87
Assisting Vessels Over 20'	4	5	4	1									14
Assisting Vessels under 20'	24	19	5	3									51
Bridge Jumpers	6	68	6	2									82
Daily Anchorage Check	141	257	140	112									650
Discharge/Pollution	3	9	6	3									21
Dock/Pier/Bridge Issue	14	16	12	10									52
Emergency	-	1		-									1
General Assist	35	41	15	11									102
Hazards/Debris	22	58	8	10									98
Impound	15	16	4	4									39
Incident	10	4	13	7									34
Mooring Assist	30	13	10	6									59
Mooring Check	229	581	220	171									1,201
Noise	3	-	6	-									9
Paddleboard/Kayak	247	179	8	1									435
Public Contact	147	156	89	36									428
Public Dock Enforcement	345	371	294	522									1,532
Pump Out	13	21	11	7									52
Registration & Insurance		242	199	46									487
Sea Lions	36	88	122	49									295
Speeding	87	58	41	5									191
Swim Line	1	3	4	1									9
Trash	247	283	278	176									984
Rentals - Marina Park Slips	143	147	107	99									496
# of nights	370	399	295	297									1,361
Rentals - MP Sand Lines	9	9	7	10									35
# of nights	43	32	28	59									162
Mooring Sub-permittee	61	54	48	28									191
# of nights	404	392	350	219									1,365
Code Enforcement													
New Cases	116	130	150	84									480
Closed Cases	117	165	152	69									503
Verbal Warning	14	37	59	35									145
Warning Notices	122	118	163	100									503
Admin Cites	5	6	4	10									25
MAPS Issued				3									3

Harbor Department Definitions

Anchorage	Anchorage Check of vessels in anchorage each day
Assisting Vessels Over 20'	Assisting or educating Vessels over 20' (Anchorage Boundary Issue, Pump Out sinking vessel)
Assisting Vessels under 20'	Assisting or educating Vessels under 20' (Anchorage Boundary Issue, Pump Out sinking vessel)
Bridge Jumpers	Warning/Educating people not to jump
Daily Anchorage Check	Count of boats in anchorage each day
Discharge/Pollution	Any pollutant being discharged into the water
Dock/Pier/Bridge Issue	Gangway detached, Maintenance Issues, etc
Emergency	Any emergency sent to 911
General Assist	General Harbor Information, Misc Catch All
Hazard/Debris	Large Debris in water such as log, chair, shopping cart, etc.
Impound	Vessel Impounded in place or at dock
Incident	Progressed Incident but not level of Emergency
Mooring Assist	Helping Permittee or Sub-permittee on or off of the mooring
Mooring Check	Checks on moorings that are necessary outside the daily mooring vacancy checks, Checking lines, etc
Noise	Noise complaint
Paddleboard/Kayak	Assisting or educating paddleboarders or kayakers
Public Contact	Education of rules and regulations in the harbor
Public Dock Enforcement	Boat tagged at public dock
Pump-Out Dock	Pump-Out Dock Issue (Enforcement of time limits or inoperable pump)
Registration and Insurance	Follow up with Permittees on Expired Documents
Sea Lion	Sea Lion Complaint, Abatement Effort
Speeding	Wake Advisement/ educating boaters to slow down
Swim Line	Replace/readjust/broken swim line issues
Trash	Daily trash pick up