

Chapter 21.30C – Harbor and Bay Regulations

Revisions		
Section	Change	Description
21.30C.030.B	REVISED	Review of Applications –Deleted list of specific CLUP policies, standards for public trust lands.
21.30C.040.B	REVISED	Berthing – Deleted berthing standards and procedures.
21.30C.050	ADDED	Protection of Vessel Launching Facilities – Provides for the protection of existing vessel launching facilities.

CLUP Polices Implemented	
Coastal Land Use Plan Policy	Section
3.1.4-1. Continue to regulate the construction of bay and harbor structures within established Bulkhead Lines, Pierhead Lines, and Project Lines.	21.30C.050
3.1.4-2. When applicable, continue to require evidence of approval from the County of Orange, Coastal Commission, U.S. Army Corps of Engineers, and other resource management agencies, prior to issuing permits.	21.30C.060.B
3.1.4-3. Design and site piers, including remodels of and additions to existing piers so as not to obstruct public lateral access and to minimize impacts to coastal views and coastal resources.	21.30C.050.A
3.1.4-4. In residential areas, limit structures bayward of the bulkhead line to piers and floats. Limit appurtenances and storage areas to those related to vessel launching and berthing.	21.30C.050.F.1
3.1.4-5. Encourage the joint ownership of piers at the prolongation of common lot lines as a means of reducing the number of piers along the shoreline.	21.30C.050.F.4
3.1.4-6. Continue to prohibit private piers at street ends.	21.30C.050.F.2
3.1.4-7. Design and site bulkheads to protect the character of the existing shoreline profiles and avoid encroachment onto public tidelands.	21.30C.050.G
3.1.4-8. Limit bulkhead expansion or encroachment into coastal waters to the minimum extent necessary to repair, maintain, or replace an existing bulkhead and do not allow the backfill to create new usable residential land areas.	21.30C.050.G.3
3.3.1-1. Protect, and where feasible, expand and enhance vessel launching facilities in Newport Harbor.	21.30C.030.B
3.3.1-2. 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.	21.30C.030.B
3.3.2-1. Provide a variety of berthing opportunities reflecting State and regional demand for slip size and affordability throughout Newport Harbor.	21.30C.030.B
3.3.2-2. Protect, and where feasible, enhance and expand marinas and dry boat storage facilities.	21.30C.030.B
3.3.2-3. Continue to provide shore moorings and offshore moorings as an important source of low-cost public access to the water and harbor.	21.30C.030.B
3.3.2-4. Provide anchorages in designated areas, which minimize interference with navigation and where shore access and support facilities are available.	21.30C.040.A
3.3.2-5. Continue to enforce the ordinances that require moored and docked vessels to be seaworthy and navigable and thereby preserve the positive image of the harbor and promote public use of the water.	21.30C.040.B
3.3.2-6. Protect, and where feasible, enhance and expand guest docks at public facilities, yacht clubs and at privately owned marinas, restaurants and other appropriate locations.	21.30C.030.B

CLUP Polices Implemented	
3.3.2-7. 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, pump-out stations and other features, through City, County, and private means.	21.30C.030.B
3.3.3-1. Protect, and where feasible, expand and enhance facilities necessary to support vessels berthed or moored in the harbor, such as boat haul out facilities.	21.30C.030.B
3.3.3-2. 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.	21.30C.030.B
3.3.3-3. In considering the essential nature of land uses that support the harbor, consider whether or not such support uses can be relocated to inland locations and/or if technological advances will eliminate the need such support uses in the foreseeable future.	21.30C.030.B
3.3.3-4. 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 working harbor.	21.30C.030.B
3.3.3-5. Develop strategies to preserve uses that provide essential support for the vessels berthed or moored in the Harbor.	21.30C.030.B
4.1.2-5. Continue to require Caulerpa protocol surveys as a condition of City approval of projects in the Newport Bay and immediately notify the SCCAT when found.	21.30C.060.D.2
4.1.3-1. Utilize the following mitigation measures to reduce the potential for adverse impacts to ESA natural habitats from sources including, but not limited to, those identified in Table 4.1.1:	21.30C.020.F 21.30C.060.D.2
A. Require removal of unauthorized bulkheads, docks and patios or other structures that impact wetlands or other sensitive habitat areas.	
Q. Continue to require Caulerpa protocol surveys as a condition of City approval for projects in Newport Bay and immediately notify the SCCAT when found.	
4.1.4-3. Site and design boardwalks, docks, piers, and other structures that extend over the water to avoid impacts to eelgrass meadows. Encourage the use of materials that allow sunlight penetration and the growth of eelgrass.	21.30C.050.D
4.1.4-5. Where applicable require eelgrass and Caulerpa taxifolia surveys to be conducted as a condition of City approval for projects in Newport Bay in accordance with operative protocols of the Southern California Eelgrass Mitigation Policy and Caulerpa taxifolia Survey protocols.	21.30C.060.D.2 21.30C.070.B.2
4.2.3-7. Require the following mitigation measures for dredging projects in the Upper Newport Bay Marine Park:	21.30C.070.C
A. Dredging and spoils disposal must be planned and carried out to limit turbidity and to avoid significant disruption to marine and wildlife habitats and water circulation.	
B. Maintenance dredging shall be encouraged where the dredging enhances commercial or recreational use of the Bay. When dredged material is of an appropriate grain size and grain percentage, this material may be used to restore or replace natural sandy sloping beaches in order to retain the current profiles of Newport Bay. Maintenance dredging activity shall have the approval of the U.S. Army Corps of Engineers and shall meet applicable U.S. Environmental Protection Agency standards.	
C. Dredged material not suitable for beach nourishment or other permitted beneficial reuse shall be disposed of offshore at a designated U.S. Environmental Protection Agency disposal site or at an appropriate upland location.	
D. Temporary dewatering of dredged spoils may be authorized within the Bay's drainage if adequate erosion controls are provided and the spoils are removed. A bond or a contractual arrangement shall be a precondition to dredging of the material, and final disposal of the dewatered material on the approved dump site shall be accomplished within the time period specified in the permit.	
E. Dredged spoils shall not be used to fill riparian areas, wetlands, or natural canyons.	
F. Other mitigation measures may include opening areas to tidal action, removing	

CLUP Polices Implemented	
dikes, improving tidal flushing, restoring salt marsh or eelgrass vegetation, or other restoration measures.	
G. Dredge spoils suitable for beach nourishment should be transported for such purposes to appropriate beaches or into suitable longshore current systems provided that the placement is permitted by a Section 404 permit.	21.30C.070.C
4.2.3-10. Seek permits authorizing maintenance dredging under and around residential piers and floats subject to compliance with all conditions to the current Regional General Permit, including grain size requirements, availability of suitable dredge disposal site, and periodic bioassays.	21.30C.070.B
4.2.3-15. Require new development on the waterfront to design and site docking facilities in relationship to the water's depth and accessibility.	21.30C.050.E
4.2.3-16. Design and site all structures permitted to encroach into open coastal waters, wetlands, and estuaries to harmonize with the natural appearance of the surrounding area.	21.30C.050.C
4.2.3-17. Continue to limit residential and commercial structures permitted to encroach beyond the bulkhead line to piers and docks used exclusively for berthing of vessels. However, this policy shall not be construed to allow development that requires the filling of open coastal waters, wetlands or estuaries that would require mitigation for the loss of valuable habitat in order to place structures closer to the bulkhead line or create usable land areas.	21.30C.050.I
4.2.4-3. 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.	21.30C.070.C.3
4.2.5-1. Avoid impacts to eelgrass (<i>Zostera marina</i>) to the greatest extent possible. Mitigate losses of eelgrass at a 1.2 to 1 mitigation ratio and in accordance with the Southern California Eelgrass Mitigation Policy. Encourage the restoration of eelgrass throughout Newport Harbor where feasible.	21.30C.050.D 21.30C.060.D.2 21.30C.070.B.2

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Chapter 21.30C – Harbor and Bay Regulations

Sections:

21.30C.010	Purpose
21.30C.020	Applicability
21.30C.030	General Provisions
21.30C.040	Vessel Berthing and Storage
21.30C.050	Harbor Development Regulations
21.30C.060	Harbor Development Permits
21.30C.070	Dredging Permits

21.30C.010 – Purpose

This Chapter provides regulations and procedures for development and uses within the Harbor and other tidelands and submerged lands.

21.30C.020 – Applicability

This Chapter applies to and within Newport Harbor and all tidelands and submerged lands under the jurisdiction of the City of Newport Beach, except where otherwise provided in this Chapter.

21.30C.030 – General Provisions

- A. **Establishment of Channels and Harbor Lines.** All channels, turning basins, anchorage areas, and Project, 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 Resources Division for public inspection.
- B. **Review of Applications.** Harbor development permit applications shall be reviewed to insure conformity with the policies of the Coastal Land Use Plan.

21.30C.040 – Vessel Berthing and Storage

- A. **Anchorage and Mooring Location.** No person having charge of any vessel shall berth or anchor the same in Newport Harbor except within the designated areas. 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.
- B. **Vessel Condition.** Vessels assigned must be maintained in an operable and seaworthy condition.

21.30C.050 – Harbor Development Regulations

- A. **Protection of Coastal Access and Resources.** All harbor structures, including remodels of and additions to existing structures, shall be designed and sited so as not to obstruct public lateral access and to minimize impacts to coastal views and coastal resources.
- B. **Protection of Vessel Launching Facilities.** Existing vessel-launching shall be protected, unless replaced with facilities with equal or greater vessel-launching capabilities.
- 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. **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.
- G. **Piers.**
 - 1. **Limits on Use.** Only piers, floats and patio decks and their appurtenances pursuant to subsection (G) (5) of this section shall be permitted bayward of the bulkhead.
 - 2. **Street Ends.** No private piers shall be permitted at street ends.
 - 3. **Setbacks.**
 - a. All piers and slips for residential properties shall be set back a minimum of five feet from the prolongation of the property line.
 - b. With the prior approval of the City, piers and slips for commercial properties may extend past the prolongation of the property line.
 - c. 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 the following conditions exist:

- (1) Where property lines are not approximately perpendicular to the bulkhead line;
 - (2) Where curves or angles exist in the bulkhead line;
 - (3) Where bridges, topography, street ends or publicly owned facilities adjoin the property.
 - d. Setbacks apply to joint ownership piers with the exception that the slips, floats and piers may extend over the common property line.
4. **Joint Ownership.** 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.
5. **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:
 - a. The maximum projection of patio decks encroachments beyond the bulkhead line shall be limited to five feet.
 - b. The minimum setbacks from the prolongations of the side property lines shall be five feet.
 - c. No float shall be permitted within one foot of the decks.
 - d. No permanent structure shall be permitted on the projecting portion of the patios except:
 - (1) Planters and benches not over sixteen (16) inches in height;
 - (2) Railings not over forty-two (42) inches in height with approximately ninety-five (95) percent open area.
 - e. A harbor and building permit has been obtained.
6. **Storage Lockers.** Storage lockers and boat boxes may be installed on shore-connected piers and floats subject to the following limitations:
 - a. The overall height shall not exceed thirty (30) inches when located bayward of residential property zones.
 - b. 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.

- c. 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.
- d. 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.

H. **Other Structures.**

- 1. **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.
- 2. **Floating Dry Docks.** Permits for floating dry docks may be approved by the Harbor Resources Division, subject to the following conditions:
 - a. The location is in waters bayward of commercial, manufacturing or unclassified zones;
 - b. The prior approval of a Harbor Use Permit by the Harbor Commission;
 - c. Permits for floating dry docks are issued for one location only. A new permit must be obtained to move a floating dry dock from one location to another location within the harbor.

I. **Bulkheads.**

- 1. 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 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: 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.

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

3. 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.

21.30C.060 – Harbor Development Permits

A. **Application.** The application and plans and specifications shall be reviewed by the Harbor Resources Division and Building Division to determine whether the proposed work meets all the requirements of this Implementation Plan and any standards and policies adopted by the City Council for such construction or work.

B. **Approval by Other Agencies.**

1. **Coastal Commission.** Proof of prior approval, when applicable, from the California Coastal Commission shall be required before issuing any permit.
2. **U.S. Army Corps of Engineers.** Proof of prior approval of the U.S. Corps of Engineers will be required.
3. **County of Orange.** Proof of prior approval of the County of Orange will be required when work extends over County tidelands.
4. **Approval in Concept.** All development in areas where the Coastal Commission retains coastal development permit authority shall require an approval in concept pursuant to Section 21.52.045 (B) prior to application to the Coastal Commission.

C. **Rendering of Decision.**

1. Approval. The Department 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 Harbor Resources Division.
2. The application shall be denied if:
 - a. The application does not conform to the provisions of this Implementation Plan; or
 - b. The proposed application is likely to create navigational congestion, or otherwise interfere with the rights of other harbor permittees within Newport Harbor, or other oceanfront property owners.
 - c. The proposed application does not conform to the policies and regulations of the Local Coastal Program.

D. **Permit Conditions.**

1. In granting any such application, the Harbor Resources Manager shall issue the permit to the owner or long-term lessee of the abutting upland property and may impose conditions in the permit which are deemed necessary to protect

commerce, navigation or fishing, or the use, operation or development of Newport Harbor.

2. When appropriate where projects involve construction 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.

21.30C.070 – Dredging Permits

A. Permit Required.

1. 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 Harbor Resources Division and other agencies with jurisdictional authority and may be subject to engineering approval by the Public Works Department.
2. Dredging outside the established harbor lines will require prior approval by the Harbor Resources Division and the U.S. Army Corps of Engineers.

B. Required Materials. Applications shall be accompanied by all plans, maps, and other materials required by the prescribed forms, unless specifically waived by the Harbor Resources Manager. Applications shall include the following:

1. Authorization to proceed from the Coastal Commission and the U.S. Army Corps of Engineers;
2. Eelgrass (*Zostera marina*) and *Caulerpa taxifolia* protocol surveys;
3. Grain size analysis;
4. Identification of the dredge disposal site and dredge quantities;
5. Any other materials the Harbor Resources Manager deems necessary to support the application.

C. 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:

1. Only if there is no feasible, less environmentally damaging alternative.
2. If there is no feasible, less environmentally damaging alternative, mitigation measures shall be provided to minimize adverse environmental effects.
3. 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.

4. Diking, filling or dredging projects shall sustain the functional capacity of the wetland, or estuary. In order to establish that the functional capacity is being maintained, the applicant must demonstrate all of the following:
 - a. 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;
 - b. That the project does not harm or destroy a species or habitat that is rare or endangered;
 - c. That the project does not harm a species or habitat that is essential to the natural biological functioning of the wetland or estuary;
 - d. 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.
5. Dredging and dredged material disposal shall avoid significant disruption to marine and wildlife habitats and water circulation.

C. **Limits on Development and Uses.** Development involving diking, filling, or dredging of open coastal waters, wetlands, and estuaries shall be limited to uses consistent with the Section 30233 of the California Public Resources Code (Coastal Act) and Section 21.30B.040 (Allowed Activities and Uses).

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