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## Chapter 21.30C – Harbor and Bay Regulations

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### 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 non-residential 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 21.52.015 (Coastal Development Permits) 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).