

## **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.”~~~~

~~910. 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.~~

~~811.~~ 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 approximating 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.
- ~~910.~~ 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).~~
- ~~101.~~ 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 ~~ast~~ 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:

<b>17.05.010</b>	<b>Title.</b>
<b>17.05.020</b>	<b>Purpose.</b>
<b>17.05.030</b>	<b>Applicability.</b>
<b>17.05.040</b>	<b>Administrative Authority.</b>
<b>17.05.050</b>	<b>Duties of the City Manager.</b>
<b>17.05.055</b>	<b>Duties of the Harbormaster.</b>
<b>17.05.060</b>	<b>Duties of the Public Works Director.</b>
<b><u>17.05.062</u></b>	<b><u>Duties of the Community Development Director.</u></b>
<b>17.05.065</b>	<b>Duties of the Harbor Commission.</b>
<b>17.05.070</b>	<b>Establishment of Channels, Turning Basins, Etc.</b>
<b>17.05.080</b>	<b>Public Trust Lands.</b>
<b>17.05.090</b>	<b>Local Coastal Program.</b>
<b>17.05.100</b>	<b>Coordination with Resource Agencies.</b>
<b>17.05.110</b>	<b>Rules for Interpretation.</b>
<b>17.05.120</b>	<b>Payment of Fees.</b>
<b>17.05.130</b>	<b>Permits Nontransferable.</b>
<b><u>17.05.140</u></b>	<b><u>Public Hearings.</u></b>

#### **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, ~~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 15<sup>th</sup>, ~~the~~ 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 15<sup>th</sup>, ~~t~~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 H~~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 the H~~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.

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~~ 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 ~~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~~ 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, ~~T~~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 ~~Newport~~the Harbor other than that allowed by this ~~Code~~ ~~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

~~3.~~ 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 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~~~~T~~ 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 Servicing 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 “Harbor Construction Development Permit” 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~~ repartment 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~~ ity 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, Pproof of prior approval of the County of Orange ~~will~~shall be required before the issuance of an approval in concept or harbor development permit~~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 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 (1~~5~~20) 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 otherA 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.

**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.

**17.60.080**—~~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 ~~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 reviewing~~ 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 enjoinder 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**.