

TITLE 17

HARBOR CODE

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Chapter 17.01

DEFINITIONS

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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 the Municipal Code, the following rules of construction shall apply:

- A. The particular shall control the general.
- B. Unless the context clearly indicates 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. Alteration Construction. The term "Alteration Construction" shall mean

the construction work relating to 20% to 50% of the total replacement value of the dock, as well as other criteria as stated in subsequent sections of this document. 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. Alteration construction requires city, state and federal approvals.

2. 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.
3. Applicant. The term "Applicant" shall mean the owner of the business or vessel, an authorized representative of the owner or a person as defined further herein.

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 locations of the boat; i.e., at the waterline where the boat directly interfaces the dock, 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.
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. Board. The term "Board" shall mean the Board of Supervisors of the County of Orange as the governing body of the Harbor, Beaches and

Parks Department.

7. 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.
8. Building Director. The term "Building Director" shall mean the Building Director of the City of Newport Beach, or the Building Director's designee.
9. Bulkhead or Seawall. The term "Bulkhead" or "Seawall" shall mean the retaining wall that separates dry land areas and water areas.
10. 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 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.
11. Business or Business Activity. The terms "Business" and "Business Activity" shall mean all activities 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 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. Commercial. The term “Commercial” shall mean any business activity whether the business activity is non-profit 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.
13. Commercial Fishing Vessel. The term “Commercial Fishing Vessel” shall mean a vessel registered by the Department of Fish and Game pursuant to Section 7880 of the Fish and Game Code of the State of California, when operating under the authority of the Fish and Game permit.

14. 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. 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 of Newport Beach Building Department may require additional requirements, based on the specific details of a particular application and project.
2. Director. The term "Director" shall mean the Director of the Harbors, Beaches and Parks Department of the County of Orange.
3. 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.
4. 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.
5. 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 that feeds into a channel, and which is used for direct access to slips. 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...)
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 1st Session of the 75th Congress in 1937.
3. Finger. The term "Finger" shall mean a portion of a floating dock section that is perpendicular to the walkways and is used for tying up and boarding vessels.
4. Fire Chief. The term "Fire Chief" shall mean the Fire Chief of the City of Newport Beach or his or her respective designee.
5. 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: 1) Dead Load only freeboard, and 2) 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 waterline and the top of the deck.

6. 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. 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...)

H. Definitions: H

1. Harbor Commission. The term "Harbor Commission" shall mean the Harbor Commission of the City of Newport Beach.
2. 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.
3. 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; 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.”

4. Harbormaster. The term "Harbormaster" shall mean the commander of the Orange County Sheriff's Harbor Patrol Division, or successor entity.
 5. Harbor Regulations. The term “Harbor Regulations” refers to Title 17 of the Newport Beach Municipal Code.
 6. Harbor Resources Manager. The term "Harbor Resources Manager" shall mean the Harbor Resources Manager of the City of Newport Beach, or the Harbor Resources Manager's designee.
 7. 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.
 8. Habitat. The term “Habitat” shall mean the locality, including the physical and biological environment, in which a plant or animal lives.
 9. 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.”
 10. Houseboat. The term “Houseboat” shall mean any vessel or structure on or in any waterway, floating or non-floating, which is designed or fitted out as a place of habitation and is not principally used for transportation.
- 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.

3. Live-Aboard. The term "Live-Aboard" shall mean the use or occupancy of a vessel as a domicile for a period exceeding 72 hours in any thirty (30) day period.
4. Local Coastal Program (LCP). The term "Local Coastal Program" 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 construction work relating to no more than 20% of the total replacement value of the dock, as well as other criteria as stated in subsequent sections of this document. 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 or anchorage) in which five or more vessels are continuously wet-stored (in water) and/or dry-stored (on land/racks) for more than 30 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 terms “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 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 19-year average of only the higher high water heights.
8. Mean Low Water. The term “Mean Low Water” shall mean the 19-year average of the lower low water heights (for diurnal tides, low water and lower low water are the same).
9. Mean Lower Low Water (MLLW). The term “Mean Lower Low Water” shall mean the 19-year average of only the lower low water heights. MLLW refers to the datum used to define elevations of structures within the bay and along the coastline. For landside developments using a MSL (Mean Sea Level) datum, add 2.76 feet to MSL elevations to equate to MLLW elevations.
10. 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.
11. 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 any appliance 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.
12. Mooring Area. The term “Mooring Area” shall mean an area designated for a group of moorings.
13. Motorboat. The term "Motorboat" shall mean any vessel being propelled by machinery.

14. Mud Line. The term "Mud Line" shall mean the highest elevation of accumulated sediments adjacent to the structure in question.

K. Definitions: N

1. New Construction. The term "New Construction" shall mean the construction work relating to 50% or more of the total replacement value of the dock, as well as other criteria as stated in subsequent sections of this document. 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. Non-Profit Organization. The term "Non-Profit 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 single or double buoy, weight and chain installed for the purpose of berthing a vessel as provided by Chapter 17.25 of the Newport Beach Municipal Code.
2. 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 (12-200 miles). This includes navigation channels, turning basins, vessel berthing, anchorage and mooring areas of Newport Bay.
3. Operable. The term "Operable" shall mean capable of 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.

4. 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. 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.
2. Permittee. The term "Permittee" shall be the person who holds a validly issued permit under any provision of this title.
3. 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.
4. 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 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. Non-Commercial Pier. The term "Non-Commercial Pier" shall mean a pier used for private recreational purposes by the owner or occupant(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.

5. Pierhead Line. The term “Pierhead Line” shall mean the harbor water area perimeter lines established in Newport Harbor by the federal government 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 City Council. Vessels may extend channelward of the Pierhead Line.
6. Planning Director. The term “Planning Director” shall mean the Planning Director of the City of Newport Beach, or the Planning Director’s designee.
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 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).
11. Public Works Director. The term “Public Works Director” shall mean the Public Works Director of the City of Newport Beach, or the Public Works Director’s designee.

N. Definitions: R

1. Residential. The term “Residential” shall mean those properties that are designated by the zoning code for a residential use, as opposed to commercial.

2. 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.
3. 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 waterline, 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 boats by its membership.
3. Seaworthy. The term "Seaworthy" shall mean that the vessel's hull, keel, decking, cabin and mast are structurally sound and generally free from dry-rot.
4. Shore. The term "Shore" shall mean the narrow strip of land in immediate contact with the sea, including the zone between high and low water. 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 approximates the mean low water line from the time the chart was prepared.
6. Shore Mooring. The term "Shore Mooring" shall mean a mooring for vessels which are 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 mooring buoy located in the water, inside or at the Pierhead Line.
7. Side Tie. The term "Side Tie" shall mean a berth where the dock is alongside only one side of the boat.
8. 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.

9. Sport Fishing Charter. The term "Sport Fishing Charter" shall mean a vessel chartered solely for sport fishing outside of Newport Harbor.
10. 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).

P. Definitions: T

1. Tidelands. The term "Tidelands" shall mean lands that are located between the lines of mean high tide and mean low tide (from California Code of Regulations, Section 13577).
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 northerly 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 and include every description of watercraft used or capable of being used as a means of transportation on water. This includes all vessels of 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.
2. Vessel Length/Width. The term "Vessel Length/Width" are terms to

describe 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...

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.

T. Definitions: Z

1. Zostera marina. See Eelgrass.

Chapter 17.05

GENERAL PROVISIONS

Sections:

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- 17.05.040 Administrative Authority.**
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- 17.05.080 Public Trust Lands.**
- 17.05.090 Local Coastal Program.**
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- 17.05.110 Rules for Interpretation.**
- 17.05.120 Payment of Fees.**
- 17.05.130 Permits Non-Transferable.**

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.

1. 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.
2. Maintain and enhance public access to the harbor water and waterfront areas.
3. Enhance the water quality and protect the marine environment in the harbor.
4. Preserve and enhance the visual character of the harbor.
5. Preserve and enhance historical resources of the harbor.
6. Provide for the ongoing administration and maintenance of the harbor.
7. Recover the costs of services provided to tidelands users and the fair market rental value where appropriate.

8. 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.
9. 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 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; provided, however, that some or all of the duties necessary to be performed in the administration may be performed by the Manager or his deputies or assistants pursuant to a contract providing therefore between the City and the County of Orange.

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 ordinances and tidelands trust requirements.
- B. Order any vessel improperly berthed to change its position or location as he may designate, and in case his 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.

17.05.060 Duties of the Harbor Resources Manager.

It shall be the duty of the Harbor Resources Manager to:

- A. Act for and assist the City Manager in administering the provisions of this title, coordinating with appropriate department directors for services falling within their respective functions as defined in Title 2 of this Code, and coordinating as required with other governmental agencies and with interested civic associations.
- B. Administer the harbor-related policies adopted by the City Council and the Harbor Commission, maintaining files and records of all pier permits issued, and to recommend to the City Manager appropriate changes and modifications to harbor-related policies.
- C. 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.
- D. Issue approvals in concept for development located on tidelands or submerged lands that did not involve a discretionary action authorized by Title 20 of the Newport Beach Municipal Code where the authority is specifically assigned to the City Council, Planning Commission, Planning Director, or Zoning Administrator.

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 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 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 Resources 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.
- B. 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.
- 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 tidelands to be leased for residential purposes until June 27, 2043.
 - 2. Balboa Bay Club. 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 Club 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 non-permanent recreational and landscaping purposes.

17.05.090 Local Coastal Program.

- A. Discretionary applications shall be reviewed to insure 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.
 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,

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 code or its application to a specific site, the Harbor Resources Manager shall determine the intent of the provision and issue a written administrative interpretation. An interpretation by the Harbor Resources Manager may be appealed to the Harbor Commission, as provided in 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.** All fees required to be paid under any provision of this Title shall be due and payable on a schedule established by the Administrative Services Director.
- 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. Failure to pay the fee plus any accrued penalty within 120 days of when the fee was due shall constitute grounds for revocation of the permit by the Harbor Resources Manager.
- D. **Administration.** The Harbor Resources Manager shall administer the provisions of this Title, except for the collection of fees, which shall be the responsibility of the Administrative Services Director.

17.05.130 Permits Non-Transferable.

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 the provisions for issuance of such permit, license or approval.

Chapter 17.10

MARINE ACTIVITIES PERMIT

Sections:

- 17.10.005 Findings and Purpose.**
- 17.10.020 Permit for Commercial Activities in Newport Harbor Required.**
- 17.10.025 Exemptions.**
- 17.10.030 Application for Permit.**
- 17.10.040 Filing Fee.**
- 17.10.050 Issuance of Permit.**
- 17.10.070 Power to Impose Conditions; Hold Harmless.**
- 17.10.075 Insurance.**
- 17.10.080 Duration of Permit.**
- 17.10.085 Enforcement, Right of Entry.**
- 17.10.090 Suspension / Revocation.**
- 17.10.095 Appeal.**
- 17.10.100 Transfer of Permit.**
- 17.10.110 Licenses and Fees Not Exclusive.**
- 17.10.120 Application to Existing Commercial Activities.**

17.10.005 Findings and Purpose.

- A. Newport Harbor is a limited resource with an extensive existing and growing demand for marine and recreational use; and
- B. There has been an increase in the nature and intensity of commercial activities such as harbor cruises, dinner cruises, boat rentals and water taxi services occurring on the waters of Newport Harbor; and
- C. Some of these vessels carry a number of passengers and some are owned or operated by persons who do not have a fixed base of operation on or near the bay that can provide adequate boarding, parking or sanitation facilities necessary to serve their clients and customers; and
- D. Commercial activities on Newport Harbor require City services which may not be paid by the patrons or passengers of commercial operators on Newport Harbor; and
- E. Commercial activity on Newport Harbor has created an additional demand for available parking and created traffic congestion in and around the waterfront; and
- F. This commercial activity has sometimes created a level of noise which has interfered with the right of residents, persons who own property and visitors on or near Newport Harbor to the peaceful enjoyment of their property and public

areas; and

- G. Commercial activity, especially the mix of large craft with limited maneuverability and restricted uplands access, has the potential to interfere with the safe navigation of boats and vessels operating on waters of Newport Harbor; and,
- H. The requirements of the chapter are necessary to minimize the traffic congestion, parking shortages, excessive noise, and the discharge of waste that could result from unregulated commercial activity and to ensure safe operation within the capacity and constraints of Newport Harbor; and
- I. The Harbor and Bay Element of the General Plan establishes an objective to preserve existing commercial uses in Newport Harbor to the extent necessary to maintain and enhance the charm and character of the harbor and to provide support services for visitors, recreational boaters and other water dependent activities by enforcing existing ordinances and, if necessary, establish new standards for the operation of entertainment, sport fishing and work boats; and
- J. In adopting this chapter the City Council intends that the health, safety and welfare of those who use, enjoy and own property near Newport Harbor are not adversely affected by commercial activities conducted on those waters and that suitability and capability of the Newport Harbor infrastructure to accommodate future permit dependent operations are adequately considered in permit application processes; and
- K. Fees and charges imposed on commercial users of Newport Harbor should recover City cost and contribute to major harbor maintenance projects (i.e. dredging); and
- L. Leases should be used where appropriate to recover the fair market value of the use of public tidelands from holders of permits for marine commercial activities on tidelands properties; and
- M. To 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.

17.10.020 Permit for Commercial Activities in Newport Harbor Required.

- A. No person shall operate any charter on the waters of Newport Harbor without first obtaining a Marine Activities Permit pursuant to this chapter.
- B. No person shall schedule, arrange, or coordinate the operation of a bareboat charter or certificated charter on the waters of Newport Harbor without first obtaining a Marine Activities Permit pursuant to this chapter.

- C. No person who owns a certificated vessel (a vessel inspected by the United States Coast Guard pursuant to Title 46 of the Code of Federal Regulations) shall permit or allow the use of the vessel as a certificated charter on the waters of Newport Harbor without first obtaining a Marine Activities Permit pursuant to this chapter.
- D. No person shall operate a bareboat charter or certificated charter on the waters on Newport Harbor without having a valid Marine Activities Permit on board the vessel at all times during the charter.
- E. No owner of a vessel shall permit that vessel to be used as a bareboat charter on the waters of Newport Harbor unless a valid Marine Activities Permit has been issued for the bareboat charter.
- F. No person shall engage in, or conduct, any commercial activity on Newport Harbor, unless that person has obtained a permit for such activity pursuant to the provisions of this chapter.

17.10.025 Exemptions.

The requirements of this chapter are not applicable to the following:

- A. Commercial fishing vessels and sports fishing charters traversing on the waters of Newport Harbor to engage in commercial fishing or other operations outside of Newport Harbor;
- B. A person operating a single vessel as a charter for consideration with six or fewer passengers if the vessel is less than 100 tons, or twelve or fewer passengers if the vessel is greater than 100 tons.
- C. Businesses operating pursuant to a franchise or lease agreement with the City of Newport Beach.
- D. Vessels exempted by this section shall not be used for office purposes unless such use is specifically authorized via a permit issued pursuant to this chapter.
- E. Commercial activities operating pursuant to a permit issued by the Army Corp of Engineers, or a Special Events Permit or Commercial Film Permit issued by the City of Newport Beach.
- F. Private marinas operating with a commercial pier permit issued by the City.

17.10.030 Application for Permit.

An application for permit under this chapter shall be filed with the Harbor Resources Manager, upon forms provided by the City, and shall contain such information which the

Harbor Commission or Harbor Resources Manager may require.

17.10.040 Filing Fee.

An application or renewal of an application for a Marine Activities Permit shall be accompanied by the fee established by resolution of the City Council.

17.10.050 Issuance of Permit.

Upon receipt of a complete application for a Marine Activities Permit, the Harbor Resources Manager shall investigate the information contained in the application. The Harbor Resources Manager shall refer the application to the Planning Department to verify that all of the applicable Zoning Code regulations or conditions have been addressed or complied with and Public Works to insure safe vehicular ingress and egress, and the safe loading and unloading of passengers and supplies. The Harbor Resources Manager may also refer the application to the Harbor Commission, other appropriate City departments, or to the Orange County Sheriffs Harbor Patrol for investigation, report or recommendation. The Harbor Resources Manager may inspect, or cause to be inspected, the vessel(s), marine sanitation device(s) of the vessel(s), boarding facilities, parking and all upland support facilities listed in the application. The Harbor Resources Manager shall notify applicant of his decision in writing within ninety (90) days from the date on which a completed application is received.

Except as provided in this section, the Harbor Resources Manager may issue the Marine Activities Permit upon a determination that approval of the application will not adversely affect the health, safety or welfare of those who use, enjoy, or own property near Newport Harbor.

The Harbor Resources Manager shall approve the application unless:

- A. The proposed commercial activity is likely to create noise which would adversely affect use or enjoyment of the waters of Newport Harbor by members of the public, or interfere with the rights of those who own property near the waters of Newport Harbor to the peaceful and quiet enjoyment of that property;
- B. The proposed commercial activity is likely to contribute to the problem of water pollution and/or litter in the waters of Newport Harbor;
- C. The vessel or craft to be used by the applicant does not satisfy the applicable standards of the United States Coast Guard, or city, county, state or federal requirements of law;
- D. The proposed commercial activity is likely, when viewed in conjunction with other anticipated charters and marine operations, to create a hazard to safe navigation, or otherwise interfere with the rights of others to use the waters of Newport Harbor;

- E. The proposed commercial activity does not provide facilities to ensure adequate parking, safe vehicular ingress and egress, and the safe loading and unloading of passengers and supplies for the period subject to permit. For the purpose of this section, parking shall not be considered adequate unless the number of parking spaces required by Chapter 20.66 of the Municipal Code are provided for the duration of the permit and will be available during the days and hours of operation specified by the permit and that any off-site parking arrangements have been approved by the Planning Commission or the Planning Director;
- F. The commercial activity would violate city, county, state or federal requirements of law;
- G. The applicant has misrepresented material facts in the application;
- H. The proposed commercial activity does not provide uplands support, docking or boarding facilities sufficient to safely accommodate the size of vessel(s) or number of passengers indicated on the application;
- I. The proposed commercial activity includes an upland use that requires a use permit or other approval under the City Zoning Code and such permit has not been obtained;
- J. The applicant has a permit which is currently suspended or has been revoked, or a notice of revocation or suspension no longer subject to appeal has been issued within the past ninety (90) days.

17.10.070 Power to Impose Conditions; Hold Harmless.

- A. In granting any permit pursuant to this chapter, the Harbor Resources Manager, or the Harbor Commission on appeal, may impose any additional conditions on the permit to ensure that the proposed commercial activity will be compatible with the predominantly recreational character of Newport Harbor, the rights of other persons using Newport Harbor, the interests of residents and property owners whose properties abut or are in close proximity to Newport Harbor, and the interests of the general public. Any such permit shall contain a provision stating that the permittee shall defend, indemnify and hold the City and the County of Orange harmless from any claim for damages, penalties or fines arising out of the exercise of the permit; or the activities of the permittee carried on under the authority of such permit.

The Harbor Resources Manager or Harbor Commission, on approval or review, shall have the power to impose new conditions or modify existing conditions with regard to any permit issued pursuant to this chapter upon a determination that the operations by the permittee, in the absence of the new or modified

conditions, does adversely impact the health, safety or welfare of those who use, enjoy and own property near or on the waters of Newport Harbor.

B. All permits issued pursuant to this chapter are subject to the following standard conditions:

1. Adequate off-street parking shall be provided for all passengers or patrons of the commercial harbor activity;
2. No passenger loading or unloading is to occur at any fuel dock or public dock;
3. Passengers transported to or from the commercial harbor activity shall not be picked up from, or unloaded on, City streets unless specifically approved by the Harbor Resources Manager;
4. All passengers and provisions shall be loaded and unloaded only from docks or piers where the abutting uplands property is commercially-zoned, unless specifically approved in writing, in advance, by the Harbor Resources Manager;
5. Music and sound from the vessel shall be controlled so as not to disturb a person of normal sensitivity at a point one hundred (100) feet from the hull of the vessel;
6. Music, live entertainment, and all forms of amplified sound are prohibited after ten p.m.;
7. Air horns, whistles, bells, and other noisemaking equipment shall not be used, except as required by Coast Guard regulations;
8. All trash and litter generated by the activity shall be properly disposed of in a private trash receptacle;
9. All vessels in excess of 25 feet in length shall operate within main navigational channels, as far from shore as practical, and the route of travel must be at least one hundred (100) feet from any residence;
10. All vessels equipped with marine sanitation devices shall comply with United States Coast Guard requirements in the use of approved holding tanks for raw sewage, and dye tablets shall be installed in holding tanks during the operation of the commercial harbor activity as required by the Harbor Resources Manager;
11. All federal, state, county and city statutes, rules, ordinances, laws and regulations shall be obeyed;

12. All required insurance shall be maintained in full force and effect for the full term of the permit.
13. All signs shall comply with the applicable provisions of Title 20 of this code.

17.10.075 Insurance.

Businesses operating on the harbor with a permit issued pursuant to this chapter shall maintain and provide to the City proof of insurance covering its operation, with such policy limits and coverage as established by the City Risk Manager. Proof of insurance must clearly identify the activities and/or vessels covered.

17.10.080 Duration of Permit.

Unless otherwise specified, a permit issued pursuant to this chapter shall be valid for twelve (12) months from the date of issuance, unless terminated or revoked prior. The Harbor Resources Manager may issue a permit for a shorter duration, provided the applicant meets all the requirements of this chapter for the duration of the period remitted.

17.10.085 Enforcement, Right of Entry.

- A. Enforcement. It shall be the duty of the Harbor Resources Manager to enforce each and all of the provisions of this title, and the Chief of Police shall render such assistance in its enforcement as may be required from time to time by the Harbor Resources Manager.
- B. Right of Entry. The Harbor Resources Manager and each and all of his assistants and any police officer or City employee whose job includes the enforcement of this chapter, shall have the power and authority to enter, free of charge, and at any reasonable time, any place of business or vessel subject to the requirements of this chapter.

17.10.090 Suspension / Revocation.

Any permit granted pursuant to the provisions of this chapter may be suspended or revoked, by the Harbor Resources Manager, in whole or in part, upon fifteen days prior written notice to the permittee, directing the permittee to appear at the time, date and place specified in the notice to show cause why the permit shall not be suspended or revoked. The notice shall specify the reasons for the proposed action. A permit may be suspended or revoked on any of the following grounds:

- A. That the permit holder has made a misrepresentation as to any material fact set forth in the application;

- B. For violation of any law, rule, condition of permit or regulation of the United States, the United States Coast Guard, the State of California, the City of Newport Beach, or the County of Orange relating to the commercial activities authorized by any permit issued pursuant to this chapter;
- C. That the commercial activities of permittee adversely affect the health, safety or welfare of those who use, enjoy or own upland property in Newport Harbor;
- D. That the commercial activities of permittee fall within the criteria for denial of an application, as set forth in subparagraph A through J of Section 17.10.050;
- E. The permittee has discharged or has permitted or allowed any other person on a vessel operating under the permit to discharge any human or animal excreta from any head, toilet, holding tank or similar facility into the waters of Newport Harbor;
- F. Failure to continuously maintain insurance in the appropriate coverage and amounts.

17.10.095 Appeal.

Appeals of any decision of the Harbor Resources Manager shall be made in accordance with Chapter 17.65.

17.10.100 Transfer of Permit.

No permit issued pursuant to the provisions of this chapter shall be transferable either by assignment, sale, hypothecation, and operation of law or otherwise without permission of the Harbor Commission having first been obtained. Application for transfer of any permit shall be subject to the same terms, conditions and requirements as an application for an original permit. In approving the transfer of any existing permit, the Harbor Commission may impose such conditions as it may determine are in the public interest.

17.10.110 Licenses and Fees Not Exclusive.

Fees and permits required by this chapter shall be in addition to any license, permit or fee required under any other chapter of this Code or any other provision of law.

17.10.120 Application to Existing Commercial Activities.

The commercial activities of those holding valid permits issued prior to the effective date of this chapter (March 24, 2006) may be continued to the extent authorized by the prior permit, provided the previously approved commercial activity shall not be increased or

expanded beyond the activities conducted as of March 24, 2006, the effective date of this Chapter adopted by Ordinance No.2006-3 § 2 (part). The holder of a permit issued under Chapter 17.41 (repealed effective March, 2006) shall apply for a renewal of the permit issued under 17.41 as required by this Chapter on or before December 1, 2008 and, shall be issued a permit under this chapter to operate under the previously approved conditions and any condition of this chapter not inconsistent with the operations and activities authorized under the previously issued permit.

All Marine Activities Permits issued under this section shall be deemed to meet the requirements of Chapter 17.10 for renewal purposes unless or until such time as the Harbor Resources Manager or the Harbor Commission determines there is a substantial change in the commercial activity. A substantial change may include, but is not limited to the following:

- A. An increase in or expansion of the operational characteristics of the commercial activity.
- B. Change in the vessel(s) authorized to operate under the terms of the permit, which change results in an increase in size or capacity of the vessel.
- C. Change in the maximum number of patrons or passengers authorized to participate in the commercial harbor activity on an authorized vessel.
- D. Change in the approved off-street parking agreement(s), or loss of parking provided prior to the effective date of this ordinance.
- E. Change in the physical condition of the dock, gangway or pilings that would compromise the safety of the patrons or passengers.
- F. Change in the location where the vessel(s) is berthed and/or loads and unloads patrons or passengers and/or provisions for the commercial activity.
- G. Change in the approved route of travel.
- H. Failure to correct a violation of the standard conditions imposed pursuant to Section 17.10.070 B.

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 Propulsion Vessels Prohibited.**

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 a.m. and eight p.m.
 - 2. The use of motors on any vessel or watercraft being launched or recovered shall not be permitted within two hundred (200) 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 devices may be used for purposes of launching any vessel or watercraft at said 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 in the performance of his 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 may designate any water area or tidelands or filled lands in or upon which harbor improvement work is being performed as a closed area. 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. The channel between Bay Island and Balboa Peninsula is designated as a closed area from and including June 1st through September 15th of each year; no person shall operate any motorboat into or through said channel.
 2. 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 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 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 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 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 shall be 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.

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 Director.
- 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 Harbor Resources Manager.

- 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 Harbor Resources Manager 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 Harbor Resources or the Harbor Patrol. Any such property shall be dealt with as provided in the appropriate provisions of Chapter 1.20 of the Newport Beach Municipal Code, 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 or, if provided by contract with the County, shall be paid to the County Treasurer for the County.

17.20.060 Air 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 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.

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 of this Code. At the Rhine Wharf the Harbor Resources Manager shall have the authority to authorize this activity, via a Rhine Wharf Permit, under either of the following conditions: (1) A commercial fishing vessel is loading or unloading, and no other mooring or berthing space is available in the harbor for this purpose; or (2) a vessel is taking refuge from inclement weather and no other mooring or berthing space is available in the 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 paragraph (2) above.

B. Obstruction Prohibited. No person shall intentionally obstruct the free access to and departure from any portion of any pier.

C. Time Limits. Public piers and other 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 City Manager is authorized and directed to post signs limiting the time during which a vessel may be docked or supplies or gear may be placed at or on any such pier or facility to the following:

1. Washington Street pump out pier: bayward and westerly side is twenty (20) minutes, easterly side is two (2) hours and the upland side is twelve (12) hours;
2. Fernando Street pump out pier: bayward and easterly side is twenty (20) minutes, westerly side is two (2) hours and the upland side is twelve (12) hours;
3. Opal Avenue pier: bayward side is twenty (20) minutes, easterly side is two (2) hours, no berthing allowed on the westerly side and the upland side is twelve (12) hours;
4. M, 15th and 19th Streets, Coral, Emerald, Sapphire and Park Avenue piers: bayward side is twenty (20) minutes, the sides are two (2) hours and the upland sides are twelve (12) hours;
5. The Rhine Wharf Park is four (4) hours, subject to the following conditions:
 - a. The Harbor Resources Manager shall have the authority to limit the size of vessels using said facility.
 - b. Vessels using this facility shall be in the actual process of loading, unloading or engaged in temporary repairs.
 - c. The Harbor Resources Manager may authorize an extension of the four hour period where special circumstances dictate such an extension.
 - d. The Harbor Resources Manager shall have the authority to limit the size of vessels and time of use of future facilities developed at the Rhine Wharf.

When a sign is in place giving notice of such time limits, no person shall dock a vessel at any such facility for a period of time in excess of that period, or permit any supplies or gear to remain on such facility for a period in excess of that posted on the sign.

- D. Vessel Tie-up Method. Every vessel berthed at any pier in Newport Harbor shall be fastened in such a manner as to assure the security of such vessel fore and aft at a minimum.

- 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 arrester 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 Harbor Resources Manager. 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 Section 17.25.020 (I). 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.
- 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 of the property lines of the property to which the pier is connected in accordance with Section 17.35.020.
 - 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 15' 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 holds a current and valid permit except with the permission of the Harbor Resources Manager 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 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 mooring lines with a spreader line having floats attached thereto to keep said line afloat when the mooring is unoccupied.
- G. Buoy Markings. Mooring buoys shall be painted with the number allocated thereto by the Harbor Resources Manager to the mooring, the numeral(s) of which shall be at least three inches in height.
- H. Maintenance. All moorings shall be kept in good and serviceable condition in the location assigned by the Harbor Resources Manager.
- I. Mooring, Anchoring and Vessel Condition Requirements.
 - 1. Mooring Anchoring. 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 Harbor Resources Manager as single mooring areas. Vessels in single mooring areas shall be tied from the bow.
 - 2. Vessel Condition – Seaworthiness and Operability. Vessels assigned to a mooring by permit must be maintained in an operable and seaworthy condition. If, based upon the appearance of the vessel, inspection by the City or Orange County Harbor Patrol or other facts, the Harbor Resources Manager has cause to believe a vessel is not seaworthy and operable; the Harbor Resources Manager shall give written notice to the permittee requesting a demonstration that the vessel is seaworthy and operable. The permittee shall, upon written notice specifying the date and time, demonstrate to the Harbor Resources Manager that the vessel assigned

to the mooring is seaworthy or operable. In the event that the Harbor Resources Manager determines that vessel is not seaworthy or operable, the permittee shall: (1) commence repairs within thirty (30) days of the mailing of the written notice of such determination and complete repairs within ninety (90) days of the commencement unless the Harbor Resources Manager, upon written request from the permittee specifying the reasons therefore, approves an extension of time to complete the repairs; or (2) remove the vessel within thirty (30) days of the mailing of the written notice of such determination and request assignment of a different vessel that is 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 Harbor Resources Manager may repeat his 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 vessels 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, polluted or does not comply with the provisions of Chapter 15.09 of the Newport Beach Municipal Code.
 - c. Accumulation or storage of rubbish, trash, debris, rubble, containers, and boxes that is visible aboard the vessel or stored inside the vessel in such away 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 and health such as but not limited to: propagation of vermin, rats, insects, 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 and hatches, excessive marine growth attached to the vessel, the vessel is inoperable for its intended use, partially destroyed or partially repaired for more than 3 continuous months, provides access to marine mammals, is actively seeping hazardous or toxic material into the surrounding waters, and would present a physical danger to public safety personal 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 is: (1) Offensive to a person of ordinary sensibility; (2) continues after a written or oral request to terminate the conduct ;(3) is offensive to a considerable number of people.
- j. Anchorage in an area controlled by the City without adequate anchor(s) rope and chain appropriate for the wind and sea conditions encountered in Newport Bay.
- k. Inability of a vessel on a shore mooring to be self-righting on an incoming tide without flooding the vessel.
- l. Attachment to a mooring in such a way that the vessel regularly drifts and impedes safe navigation in the bay.
- 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 Section 10.50 of the Municipal Code.

- 4. If, based upon the appearance of the vessel, inspection by the City or Orange County Harbor Patrol or other facts, the Harbor Resources Manager determines that a sea lion has boarded a moored vessel, the Harbor Resources Manager shall provide the permittee with a notice of determination 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 thirty (30) days of the mailing of the notice of determination. If the Harbor Resources Manager determines that appropriate deterrent measures have not been taken within thirty (30) days of the mailing of the notice of determination, the Harbor Resources Manager shall provide the permittee with a second notice of determination and the permittee shall: (1) take any and all necessary action to employ and maintain appropriate sea lion deterrent measures within seven (7) days of the mailing of the second notice of determination; or (2) remove the vessel within seven (7) days of the mailing of the second notice of determination. 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.
- 5. Exceptions. 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 Harbor Resources Manager at least once every two (2) years and shall be repaired so as to be in good condition before being replaced, provided that the Harbor Resources Manager 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 Harbor Resources Manager may authorize said contractor to inspect the mooring in behalf of the Harbor Resources Manager and certify the results to the Harbor Resources Manager in writing.
- L. Rental Not Permitted. Except as authorized in Section 17.60.040.(B.1.a), no mooring may be leased or rented by the permittee to another person except with the written permission of the Harbor Resources Manager.
- M. Administration. Pursuant to an agreement between the County of Orange and the City of Newport Beach, the Director of the Harbors, Beaches and Parks Department of the County of Orange 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.

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). As used in this section, the term "store" shall mean to leave or permit to remain unattended for an extended period of time 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 non-commercial purposes provided a vessel storage permit has been approved by the Harbor Resources Manager. 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 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 Harbor Resources Manager:

- (1) The permit 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;
 - (2) The permit shall not engage in, or permit, any activity that unreasonably interferes with the use of the beach or adjoining waters by the public;
 - (3) The permit shall not cause or permit any activity that pollutes any public or private property of the waters of Newport Bay;
 - (4) The permit may be revoked by the Harbor Resources Manager, 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 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.**

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. Such permit may be issued if the City Council determines that under the circumstances the proposed landing or take off will not create a hazard to life or property. 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 Chapter 9.04: Fire Code of Title 9.

17.30.030 Live Bait.

- A. Live Bait Receivers Defined. A live bait receiver is an object for confining live bait 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 Receivers. All live bait receivers used within the waters of Newport Harbor shall be provided with screen trays in the bottom thereof so as to retain all dead bait within the receiver which can be raised to dispose of the dead bait. 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 Receivers. Storage of live bait other than in a receiver conforming to the requirements hereof is prohibited. After three days written notice to the owner of a nonconforming receiver, it may be removed by the Harbor Resources Manager and stored at the expense of the owner.
- D. Commercial Bait Boats and Receivers. All boats used to catch or furnish live bait

or receivers shall, at all times, have aboard a covered receptacle in which shall be placed all dead bait. 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 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 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 approval of the Harbor Resources Manager.

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; Non-Commercial 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 Building Department prior to the issuance of a harbor development permit using the “Alternate Material or Method of Construction” appeals process.
- 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 hereby authorized is not otherwise provided by law, as may be prescribed by the US 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 said 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, shall be cause for the revocation of the permit.
- 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. 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 said debris. Cost for such pollution control will be borne by the permittee.
- J. Rights to Impose Rental or Other Charges. The approval of permits 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. The imposing of tidelands rental or use fees shall not be extended to include private residential piers and slips constructed and used solely by the abutting uplands owner for non-commercial recreational purposes, unless otherwise directed by state mandate.
- K. Special Event Permits. If a Permittee proposes a use of the harbor other than that allowed by the Newport Beach Municipal Code, he/she must first obtain a "Special Event Permit" as provided by Chapter 11.03 of the 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 will be granted to persons other than the owners or long-term lessee of the abutting upland properties.
2. The permit application 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 Section 17.35.020D 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, non-commercial 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.city.newport-beach.ca.us>
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 (5) feet from the prolongation of the property line.
2. All piers and slips for commercial properties may extend to, but not 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 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.
 - 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 5 feet.
2. The minimum setbacks from the prolongations of the side property lines shall be 5 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 16 inches in height.

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 60% of the replacement value of the pier and float has been destroyed.

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 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 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.

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 harbor and, if they shall fail to do so, the 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.

Piers and floats may not extend beyond the Pierhead Line unless approved by Council Policy as may be amended from time to time.

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, subject to the following conditions:

1. The location is in waters bayward of commercial, manufacturing or unclassified zones.
2. The prior approval of a Harbor Use Permit by the Harbor Commission.
3. Permits for floating dry docks are issued for one location only. A new permit must be obtained to move a floating dry dock from one location to another location within the harbor.

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 may approve bulkheads located between U.S. Bulkhead Station No. 112 and No. 109, not to exceed the bayward side of the "Vacated East Bay Avenue." U.S. Bulkhead Station No. 104 for the addresses at 2209, 2223, 2227, 2231 and 2233 Bayside Drive: Staff recommendation for a bulkhead at these properties shall not exceed a point bayward of the average high tide line established at a point forty (40) feet landward of the face of the bulkhead at the property at 2137 Bayside Drive, and then on a straight line from that point to the bayward most point of the bulkhead at the property at 2301 Bayside Drive.

- 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 Building Department.
- D. All bulkhead construction permits shall be subject to a detailed construction drawing being approved by the Building 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 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; Non-Commercial Piers.

- A. No new, non-commercial piers on Balboa Island shall be approved unless determined by the Harbor Resources Division and Harbor Commission to be in the public interest. New non-commercial piers, if approved, shall be constructed in strict conformance with this section 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 to existing structures shall be limited to the following:
 - 1. The overall square footage of the revised structure shall be equal to or less than the square footage of the permitted structure;
 - 2. The revised structure 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 is wholly within the original permitted area as specified in the existing permit on file with the City.
- C. Whenever any application to install a new, non-commercial pier is submitted to the Harbor Commission all property owners (according to the latest equalized assessment roll prepared by the County of Orange and available to the City) within 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. 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.
 2. That the permittee shall be responsible for all maintenance dredging, in accordance with the design profile for Promontory Bay, for the area between the Bulkhead Line and Pierhead Line as delineated by the harbor development permit.
- B. Grand Canal. There shall be no permits issued for shore moorings or pier platforms fronting on alleys, avenues or other public easements terminating on the Canal. There shall be no new permits issued for shore moorings or pier platforms bayward of those lots at the extreme south end and north end of Grand Canal. The following conditions are to be in effect and placed on each harbor development permit for the Grand Canal:
1. The permittee shall be allowed either one pier platform, or in lieu thereof, two 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 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 Resources Division shall be prohibited.
 3. The permittee shall be allowed no more than one vessel per shore mooring.
 4. Any shore mooring approved for the Grand Canal shall display a permit number issued by the Harbor 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 Chapter 20.66 of the Municipal Code.

17.35.090 Signs.

No sign permitted on the tidelands shall exceed 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.**
- 17.40.140 Suspension and Revocation.**
- 17.40.150 Procedure for Suspension or Revocation.**
- 17.40.160 Appeal.**

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 otherwise adversely impact the health, safety and welfare of those that visit, work around, or live near, the Bay.

17.40.020 Live-Aboards Prohibited.

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.

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 Harbor Resources Manager. No live-aboard permit shall be issued except to a person holding a valid mooring permit issued pursuant to Chapter 17.60 of the Newport Beach Municipal Code. 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 in any calendar year.

17.40.040 Application for Live-Aboard Permit.

An application for a live-aboard permit shall be filed with the Harbor Resources Manager 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 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 Harbor Resources Manager 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 the Newport Beach Municipal Code. 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 Harbor Resources Manager shall investigate the information contained in the application. The Harbor Resources Manager shall deny the application if:

- A. The vessel which will serve as the principal residence is not equipped with a fully operational sanitation device sufficient in capacity to insure 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. Issuance of the permit, given the specific circumstances of the application, would significantly impact persons residing, working or visiting the Bay;

- D. 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.

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 chapter 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 non-transferable 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 Harbor Resources Manager may impose such conditions on the permit as are reasonably necessary to insure that the activities of the permittee comply with the provisions of this chapter.
- B. The Harbor Resources Manager shall have the power to promulgate rules and regulations to insure 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.

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 or on property surrounding the bay except in trash receptacles owned and maintained by the City of Newport Beach.

17.40.090 Compliance with Law.

The permittee, and others authorized to live aboard any vessel, shall comply with all applicable state and federal laws, the provisions of the Newport Beach Municipal Code,

and all conditions, express and implied, to the permit. Failure to comply with these laws, ordinances, or policies shall constitute grounds for revocation of the permit.

17.40.100 Discharge Log.

Each permittee shall maintain a log for the use of pumpout facilities. The log shall contain the date, time, and location waste was discharged. The discharge log shall be available for inspection by the Harbor Resources Manager at all reasonable hours and upon request. The log shall be submitted to the Harbor Resources Manager with the renewal application.

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 percent of the number of offshore mooring permits issued by the City pursuant to Chapter 17.60.
- B. The Harbor Resources Manager 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 of the Newport Beach Municipal Code. 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) of this section, the Harbor Resources Manager 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.

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

17.40.140 Suspension and Revocation.

- A. Any permit granted pursuant to this chapter and Chapter 17.60 may be suspended or revoked by the Harbor Resources Manager 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 Harbor Resources Manager determines there may be grounds for suspension or revocation of a permit issued pursuant to this chapter, the Harbor Resources Manager shall give notice of intent to suspend or revoke the permit and the right of the permittee to request a hearing before the Harbor Resources Manager within fifteen (15) working days from the date on which notice is given. The notice shall state the reason for the proposed suspension or revocation and shall be accompanied by any documents in the possession of the Harbor Resources Manager that pertain to the grounds for the proposed action. Notice shall be deemed given when:

- A. Deposited in the United States mail, first class, postage prepaid, and addressed to permittee at any mailing address specified on the application for permit;
- B. Personally delivered to permittee; or
- C. Affixed to permittee's vessel in a conspicuous location, or any combination of the foregoing.

If the permittee does not request a hearing within fifteen (15) working days of the date notice is provided, the decision of the Harbor Resources Manager shall be final and permittee shall not be entitled to appeal to the Harbor Commission.

17.40.160 Appeal.

Appeals 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 City Building 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 restroom facilities, one for women and one for men, for each 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 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 and the Building 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 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 Coastal Bay Water Quality Citizens Advisory 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 caused by the discharge of human waste from vessels using the harbor.
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 human waste into the bay could result in a quarantine for water contact sports, a prohibition against gathering of shellfish from the waters of Newport Harbor and may lead to the onset and spread of disease in humans.
6. The discharge of human waste into the waters of Newport Bay, if allowed to continue, could jeopardize the economic viability of businesses which utilize, or are located on Newport Bay, and severely restrict recreational use of the bay.
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.

B. 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. Application for permit shall be made on forms prepared, and furnished, by the Harbor Resources Manager. 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 Harbor Resources Manager to determine if the proposed work meets all requirements of this chapter and other provisions of the Newport Beach Municipal Code. The Harbor Resources Manager 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 Director prior to installation of the pumpout facility.
- C. 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 Excreta. No person shall discharge, permit or allow any other person on a vessel under his control or command to discharge any human or animal excreta from any head, toilet or similar facility on a vessel into the waters of Newport Bay.
- B. Vessel Holding Tank Requirements.
1. Vessel Wastes. No person shall own or operate a vessel equipped with any head (toilet) or receptacle for human body wastes in the waters of Newport Bay 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 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, timber or 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 may remove the same with or without notice, at his 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 expense in conspicuous locations on the premises thereof standard signs to inform the public of the regulations prohibiting the discharge of toilets 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 Required For Harbor Structures.**
- 17.50.020 Application For Harbor Development Permits.**
- 17.50.030 Processing of Application.**
- 17.50.040 Rendering of Decision.**
- 17.50.050 Permit 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.**

17.50.010 Permits Required For Harbor Structures.

- A. No person or agency shall build, 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 said waters or ocean, without first obtaining a written "Harbor Construction Permit" 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. The County of Orange may do construction work or fill or dredge within Newport Harbor, or cause the same to be done, without such a permit so long as such work is done pursuant to a harbor development plan on lands owned by the County or pursuant to a request therefore by the City Council.
- C. A separate permit will be required by the Harbor Resources Division for dredging (see Chapter 17.55: Dredging Permits).

17.50.020 Application For Harbor Development Permits.

- A. Required Forms. Applications for authority to erect, revise and do maintenance work on structures shall be filed in the office of the Building Department and the Harbor Resources Division in writing on forms prescribed by the Building Director. Plans showing the location, extent and character of the proposed work and required fees shall accompany the application. The Building Department shall not issue a permit without prior approval of the Harbor Resources Division.

- B. Required Materials. Applications shall be accompanied by all plans, maps, and other materials required by the prescribed forms, unless specifically waived by the Building Director. The Building Director may request additional materials deemed necessary to support the application. Plans accompanying the application must comply with the Uniform Administrative Code adopted by the City of Newport Beach
- 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. The application must be signed by the Harbor Permittee or his authorized agent. The applicant has the opportunity of submitting "Alternate Materials of Design and Methods of Construction" that may deviate from the Design Criteria through the appeal process. Sufficient justification must be provided to the City to review any appeal request. If such a request is desired, obtain the necessary form from the City.
- 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 Harbor Resources Manager and Building Department to determine whether the proposed work meets all the requirements of this Code and any standards and policies adopted by the City Council or required by state or federal regulatory agencies for such construction or work.
- B. Approval by Other Agencies.
 - 1. Coastal Commission. Proof of prior approval, when applicable, from the California Coastal Commission shall be required before issuing any permit.
 - 2. U.S. Army Corps of Engineers. Proof of prior approval of the U.S. Corps of Engineers will be required.
 - 3. County of Orange. Proof of prior approval of the County of Orange will be required when work extends over County tidelands.
 - 4. Approval in Concept. All development in areas where the Coastal Commission retains coastal development permit authority shall require conceptual approval from the Harbor Resources Manager prior to application to the Coastal Commission. An approval in Concept from Harbor Resources 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 300' of the proposed work shall be notified in writing by the Harbor Resources Division of the pending application. Notice will be sent ten (10) days prior to a decision by the Harbor Resources Division, and after the Department has rendered a decision. The permit shall not be issued until the appeal period provided in Chapter 17.65: Appeals.
- D. Prior to the issuance of a permit, the applicant will 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 Building Department is authorized to approve and issue new permits and revisions to existing permits that conform to the Design Criteria and all applicable standards and policies in conjunction with plan reviews by the Harbor Resources Division.
- B. The application shall be denied if:
 1. The application does not conform to the provisions of this Code, the Design Criteria approved by the City Council; or
 2. The proposed application is likely to create navigational congestion, or otherwise interfere with the rights of other harbor permittees within Newport Harbor, or other oceanfront property owners.
 3. The proposed application does not conform to the policies and regulations of the certified Local Coastal Program.

17.50.050 Permit Conditions.

- A. In granting any such application, the Harbor Resources Manager shall issue the permit to the owner or long term lessee of the abutting upland property and may impose conditions in the permit which are deemed necessary to protect commerce, navigation or fishing, or the use, operation or development of Newport Harbor.
- B. When appropriate where projects involve construction on or near the waterway, eelgrass (*Zostera marina*) and *Caulerpa taxifolia* protocol surveys shall be required as a condition of City approval of projects in the Newport Bay. The

Southern California Caulerpa Action Team (SCCAT) shall be immediately notified if *Caulerpa taxifolia* is found.

- 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 Municipal Code.
- D. Inspection. Inspection shall be done by the Building Department for conformity with the California Building Code, Design Criteria and the approved plans.

17.50.060 Bond Requirements.

If the nature of the proposed work 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 120 percent of the estimated cost of the work will be required to guarantee the faithful performance of the proposed work.

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 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 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 or similar structure by any purported transfer made without such prior written approval of the City. The Harbor Resources Manager is authorized to approve transfers of permits.

17.50.080 Expiration, Extension, Violation and Revocation.

- A. Expiration. All construction permits shall expire unless the work contemplated shall have been completed within 180 days from the date of approval per the 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 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.

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 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 Orange County Harbor Patrol or other facts, the Harbor Resources Manager determines that a sea lion has boarded a permitted structure and/or any vessel or other appurtenances attached to the structure, the Harbor Resources Manager shall provide the permittee with a notice of determination 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 thirty (30) days of the mailing of the notice of determination. If the Harbor Resources Manager determines that appropriate deterrent measures have not been taken within thirty (30) days of the mailing of the notice of determination, the Harbor Resources Manager shall provide the permittee with a second notice of determination and the permittee shall take any and all necessary action to employ and maintain appropriate sea lion deterrent measures within seven (7) days of the mailing of the second notice of determination. 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.

Appeals 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.**

17.55.010 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 Harbor Resources Division 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 Harbor Resources Division 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 Harbor Resources Division in writing on forms prescribed by the Harbor Resources Manager.
- B. Required Materials. Applications shall be accompanied by all plans, maps, and other materials required by the prescribed forms, unless specifically waived by the Harbor Resources Manager. Applications shall include the following:
 - 1. Eelgrass (*Zostera marina*) and *Caulerpa taxifolia* protocol surveys.
 - 2. Grain size analysis.
 - 3. Identification of the dredge disposal site and dredge quantities.
 - 4. Any other materials the Harbor Resources Manager 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 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.
 - 4. That the project does not significantly reduce consumptive (e.g., fishing, aquaculture and hunting) or non-consumptive (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 the Section 30233 of the California Public Resources Code (Coastal Act) and the certified Local Coastal Program (see Section 20.76.040 of Title 20: Diking, Filling, and Dredging Projects).

Chapter 17.60

HARBOR PERMITS AND LEASES

Sections:

- 17.60.010 Permits and Public Trust Lands Leases; General.**
- 17.60.020 Application For Permits.**
- 17.60.030 Annual Pier Permits For Non-Commercial Piers.**
- 17.60.040 Mooring Permits.**
- 17.60.050 Houseboats.**
- 17.60.060 Public Trust Lands Leases.**
- 17.60.080 Appeal.**

17.60.010 Permits and Public Trust Lands Leases; General.

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 Harbor Resources Manager shall have the authority 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 Harbor Commission or the City Council.

17.60.020 Application for Permits.

- A. Required Forms. Applications for permits which pertain to the harbor under the provisions of this Title shall be filed in the office of the Harbor Resources Division, in writing, on forms prescribed by the Harbor Resources Manager.
- B. Required Materials. Applications shall be accompanied by all plans, maps, and other materials required by the prescribed forms, unless specifically waived by the Harbor Resources Manager. The Harbor Resources Manager 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. Commercial Users. Commercial uses of public tidelands shall be subject to rental or lease charges reflective of the fair market value related to such use as established by appraisal.

17.60.030 Annual Pier Permits for Non-Commercial Piers.

- A. Pier Permits. Permits for piers and other structures used for non-commercial purposes in Newport Harbor shall be renewed annually in order to maintain comprehensive records concerning such structures, conduct periodic inspections, and enforce all applicable laws and regulations, and administer public trust lands.
- B. Fees.
 - 1. Fee Required. Every owner or permit holder who maintains a pier used for non-commercial purposes, any part of which extends into the waters of Newport Harbor, including any pier located on private property, on a dedicated channel, or County tide and submerged lands, shall pay to the City an annual pier permit fee.
 - 2. Fee Schedule. Non-commercial pier permit fees are due and payable on the schedule established by the Administrative Services Director in accordance with the amount identified in the Master Fee Schedule.
- C. Transfer of Non-Commercial Annual Pier Permits.
 - 1. Permits for harbor structures are issued subject to the condition that any improvements constructed shall not be sold in whole or part, leased, or transferred, without the written consent of the City.
 - 2. Whenever a permittee sells the abutting upland property, a request shall be made to the City to transfer the permit. Forms for this purpose may be obtained from the Harbor Resources Division. Failure to apply for a transfer within 30 days from the date that the abutting upland property changed ownership will result in an additional fee as established by resolution of the City Council.
 - 3. The Harbor Resources Division is authorized to approve transfers to the new owners or long-term lessee of the abutting upland property.
 - 4. Prior to the transfer of an annual 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. A fee will be charged for this inspection, established by Resolution of the City Council.

17.60.040 Mooring Permits.

- A. Permit Required. No person shall place, erect, construct or maintain moorings or buoys in the waters of Newport Harbor over City-owned or controlled tidelands without first having obtained a mooring permit from the Harbor Resources Manager. Any work described and authorized in the permit must be completed within sixty (60) days after issuance of the permit.

- B. Issuance of Permit; Conditions. The Harbor Resources Manager, in furtherance of the tideland grants to the City, may issue a permit to allow the permittee to temporarily use a portion of the waters of Newport Harbor for the mooring of a vessel. Each permit so issued by the Harbor Resources Manager shall be issued to the permittee, specify the vessel for which the permit is issued and provide that the permittee may change the vessel for which the permit has been issued upon written notification to the Harbor Resources Manager, and which permit shall allow the permittee to moor only the vessel owned by him and assigned to the permit to such mooring or buoy.
 1. Exceptions:
 - a. Permits issued to Yacht Clubs in Single Point Mooring Areas. When a permit is issued to a yacht club in a single point mooring area, the club shall be permitted to assign the mooring to one of its members. The club shall keep a record of the person and vessel to which the mooring has been assigned.
 - b. Mooring of a tender. A vessel no longer than fourteen (14) feet in overall length may be secured to the permitted vessel or may be secured to the mooring in the absence of the permitted vessel.
 - c. Multiple Vessel Mooring System Pilot Program. The Harbor Resources Manager may approve Multiple Vessel Mooring Systems in single point mooring areas of Newport Harbor during the duration of this pilot program. A Multiple Vessel Mooring System is defined as a floating platform secured to a single point mooring to which may be secured vessels shorter in overall length than the side of the platform to which the vessel is to be moored. An application for a Multiple Vessel Mooring System shall be submitted in writing to the Harbor Resources Manager, who shall evaluate the application based upon standards he shall have established. Newport Beach Municipal Code Section 17.60.040 (B)

(1) (c) shall remain in effect only until June 30, 2008, and as of that date is repealed, unless a later enacted ordinance, that is enacted before June 30, 2008, deletes or extends that date. Prior to June 30, 2008, the Harbor Resources Manager shall present a report to the City Council recommending that the program either be made permanent, modified, or allowed to expire.

- C. Plans and Specifications Required. No 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 Harbor Resources Manager and at a location approved by the Harbor Resources Manager, or;
 2. In accordance with other plans and specifications for said mooring or buoy which have been submitted by the applicant, showing the construction of said 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 Harbor Resources Manager.
- D. Unpaid Fees. When the permittee is in arrears for a period of one hundred twenty (120) days or more, the Harbor Resources Manager may, at his discretion, cancel the permit upon five (5) days written notice to the permittee by first-class mail to the address shown on the permit. If the mooring is not removed by the permittee within thirty (30) days after cancellation of the permit, then it shall be deemed abandoned and the title thereto shall vest in the City.
- E. Unauthorized Use of Mooring. No person shall use a mooring unless he holds a current and valid permit, except with the permission of the Harbor Resources Manager for temporary use, as herein provided.
- F. Transfer of Permit. No permittee shall transfer a permit for a mooring or buoy granted under the provisions of this chapter without the prior written approval of the Harbor Resources Manager. No permittee shall retain any right to use the mooring or buoy after having divested himself of the ownership of the vessel to be moored thereto. Upon such divesting, the ownership in such mooring or buoy shall remain with the permittee, but the right of use thereof shall vest in the City until such time as the City shall grant a permit for such mooring or buoy to another person. The permittee shall remove the mooring or buoy within thirty (30) days after divesting himself of ownership of the vessel to be moored thereto or, upon failure to remove the mooring or buoy, titles shall vest in the City. The City may, thereafter, sell the mooring or buoy.
- G. Revocation of Permit.

1. Grounds for Revocation. Any permit granted for a mooring or buoy in Newport Harbor may be revoked upon any of the following grounds set forth in Section 17.70.020 or for any of the following:
 - a. The mooring or buoy has fallen into a state of disrepair;
 - b. The vessel assigned to the mooring has been determined not to be seaworthy or operable or has been determined to be a public nuisance and the owner has not made the necessary repairs within the time required by this chapter;
 - c. The mooring permittee has failed or refused to allow an inspection of the vessel to determine if it is seaworthy and operable or a public nuisance;
 - d. Living aboard a vessel assigned to a mooring without a Live-aboard Permit.
2. Notice and Hearing. In the event the Harbor Resources Manager determines there are grounds to revoke a permit issued pursuant to this Chapter, the Harbor Resources Manager shall proceed in the manner described by Section 17.70.020.
3. Upon revocation, it shall be the duty of the owner of the mooring to immediately remove the mooring. If not removed within thirty (30) days, said mooring and vessel may be removed by the Harbor Resources Manager and the cost of mooring and vessel removal shall be paid by the mooring permittee, and the same may be collected in any court of competent jurisdiction or recovered by the City from the proceeds of sale of the mooring.
4. If said mooring is unoccupied, it may be temporarily assigned as a mooring for guest vessels by the Harbor Resources Manager.

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 Leases.

The following restrictions shall apply to leases of public trust lands:

- A. Leases. In the event public trust lands are used for commercial purposes by an entity other than the City, then that entity shall enter into a lease with the City. The City shall, upon Resolution of the City Council, transition any such lands currently operating under a permit to leases. Such 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.
- B. Land Use. Leases 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 Chapter 20.74 of Title 20: Public Access and Recreation.
- D. Revenue. Rent under this Section shall be based upon fair market value, as determined by the City Council. Such determination shall be based upon the findings of a City selected appraiser.

17.60.080 Appeal.

Appeals to this chapter shall be made in accordance with Chapter 17.65.

Chapter 17.65

APPEALS

Sections:

- 17.65.010 Authorization.**
- 17.65.020 Time Limits.**
- 17.65.030 Initiation.**
- 17.65.040 Procedures.**

17.65.010 Authorization.

Decisions of the Harbor Resources Manager resulting from the Manager's administration of this code may be appealed to the Harbor Commission by any interested person. Decisions of the Harbor Commission may be appealed to the City Council by a member of the City Council pursuant to the provisions of this chapter.

17.65.020 Time Limits.

Appeals shall be initiated within fourteen (14) days of the decision.

17.65.030 Initiation.

- A. Filing of Appeals. Appeals of decisions of the Harbor Resources Manager shall be made in writing to the Harbor Resources Manager.
- B. Fee. Appeals shall be accompanied by a fee as established by resolution of the City Council.
- C. Effect on Decisions. Decisions that are appealed shall not become effective until the appeal or review is resolved.

17.65.040 Procedures.

- A. Hearing Date. An appeal shall be scheduled for a hearing before the appellate body within thirty (30) days of the filing of the appeal unless both applicant and appellant body consent to a later date.
- B. Notice and Public Hearing. An appeal hearing shall be a public hearing if the decision being appealed required a public hearing. Notice of public hearings shall be given in the manner required for the decision being appealed.
- C. Plans and Materials. At an appeal hearing, the appellate body shall consider only the same application, plans and project related materials that were the subject of the original decision.

- D. Hearing. At the hearing, the appellate body shall review the record of the decision and hear testimony of the appellant, the applicant and any other interested party.
- E. Required Findings. At an appeal hearing, the appellate body shall make the findings prescribed in the individual chapters of this Code when affirming, modifying or reversing the original decision.
- F. Decision and Notice. After the hearing, the appellate (or reviewing body) shall affirm, modify or reverse the original decision. When a decision is modified or reversed, the appellate (or reviewing) body shall state the specific reasons for modification or reversal. Decisions on appeals shall be rendered within thirty (30) days of the close of the hearing. The Harbor Resources Manager 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.

Chapter 17.70

ENFORCEMENT

Sections:

17.70.010 Declaration of Nuisance; Abatement.

17.70.020 Revocation of Permit.

17.70.010 Declaration of Nuisance; Abatement.

Any building or structure 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 hereby declared to be unlawful and a public nuisance; and the City Attorney 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 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, 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.

17.70.020 Revocation of Permit.

- A. Ground for Revocation. Any permit heretofore or hereafter granted for any structure, work, or activity in the waters of Newport Harbor or the Pacific Ocean may be revoked by the Harbor Commission upon any of the following grounds:
1. The work, structure, use or activity has become detrimental to commerce, navigation or fishing;
 2. The work, structure, use or activity is detrimental to the use, operation or development of the harbor;
 3. The work, structure, use or activity has become a source of pollution of the harbor;
 4. The work, structure, use or activity does not comply with the permit or does not meet the standards adopted by the Harbor Commission for such work or structure;
 5. The permittee has failed for a period of sixty (60) days to pay the fee or fees heretofore or hereafter imposed for the occupancy of tidelands, filled tidelands or submerged lands upon which such work or structure exists;

6. The work or structure has fallen into a state of disrepair;
 7. 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;
 8. The permittee has breached or failed to comply with the terms or conditions contained in the permit or upon which the permit was granted.
 9. The work, structure, use or activity violates the terms of the Tidelands Trust Grants to the City.
- B. Notice and Hearing. Any such permit shall be revoked only after a public hearing before the Harbor Commission at which the permittee has an opportunity to be heard. At least fifteen (15) 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, setting out the date, time and place of hearing.
- The Harbor Commission may 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 shall render its decision 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. Decision and Notice. Within 10 days of the conclusion of the hearing, the Harbor Commission shall render a decision. The City Clerk shall notify the permittee or applicant of the decision of the Harbor Commission.
- D. Effective Date. The decision to revoke a permit shall become final 14 days after the date of decision, unless appealed.
- E. Rights of Appeal. Appeals shall be as prescribed by Chapter 17.65: Appeals.