



# California Fair Political Practices Commission

July 16, 1986

Robert H. Burnham  
City Attorney  
City of Newport Beach  
P.O. Box 1768  
Newport Beach, CA 95628-8915

Re: Your Request for Advice  
Our File No. A-86-210

Dear Mr. Burnham:

Thank you for your letter requesting advice on behalf of City Councilmembers Evelyn Hart and Phil Maurer, concerning their duties under the conflict of interest provisions of the Political Reform Act.<sup>1/</sup>

## QUESTION

As holders of permits to maintain moorings over City tidelands, are Councilmembers Hart and Maurer prohibited from participating as members of the City's Tidelands Affairs Committee in the process of drafting revisions to the City's current anchorage and mooring ordinance?

## CONCLUSION

Councilmembers Hart and Maurer are prohibited from participating as members of the City's Tideland Affairs Committee in the process of drafting revisions to the City's current anchorage and mooring ordinance.

## FACTS

Mayor Phil Maurer and Councilmember Evelyn Hart each currently hold a permit to maintain a mooring over City tidelands. The mooring permits are governed by the Anchorage and Mooring Regulations contained in Chapter 17.22 of the Newport Beach Municipal Code. Newport Beach City staff is now considering amendments to this Ordinance, and has developed a draft revised ordinance that has been circulated to current mooring permittees. These revisions would normally be reviewed by the City's Tideland Affairs Committee, consisting of Mayor Maurer, Councilmember Hart and one other Councilmember.

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<sup>1/</sup> Government Code Sections 81000-91015. All statutory references are to the Government Code unless otherwise indicated.

There are approximately 1,200 on-shore and off-shore moorings located on City tidelands in Lower Newport Bay. Of these, approximately 800 are off-shore moorings. Off-shore moorings can accommodate vessels from 18 feet up to 103 feet, depending upon the location of the mooring, and consist of a float attached to a heavy chain, which is in turn secured to a large heavy cast iron weight on the bay floor. The total cost of installing an off-shore mooring for a 40 foot boat would be approximately \$4,000. The mooring equipment is personal property owned by the permittee. Annual maintenance costs are approximately \$300 and the permittee is required by ordinance to lift the mooring for inspection once every two years and make necessary repairs. Based upon current fees of \$13 per foot, per year, total mooring costs for a 40 foot vessel over a ten year period would be approximately \$11,000. This compares favorably with the \$45,600 it would cost to keep a 40 foot vessel in a slip in Newport for the same period of time (assuming a slip fee of \$9.50 per foot/per month which, according to a recent study, is the average fee charged by marinas in Newport Beach).

The primary focus of the proposed amendments is a practice that has developed as a result of an interpretation of Section 17.22.080 of the current code. That section has been interpreted to allow permits to be transferred when the boat assigned to the mooring is sold. The practice is to "sell" mooring permits by transferring title to the vessel assigned to the mooring for a price up to \$10,000 more than the fair market value of the boat. The City is unsure of the frequency of these "sales." City staff recently conducted a public meeting to obtain comments on the proposed revisions from current permittees. Approximately 150 permittees attended, and many of those speaking at the meeting said they purchased boat and mooring at a price in excess of the value of the vessel. However, some speakers expressed doubt that this practice is wide-spread.

City staff's tentative approach to the sale of moorings is to prohibit all transfers subject to certain exceptions. The major exception would be a one-time right to transfer the permit, for value, for a period of approximately five years after the revised ordinance is adopted. This provision would sanction the current practice for the five year period and allow those who made an investment in a mooring to recover the money expended. The ordinance would also permit transfers to family members and those that acquire a vessel assigned to a mooring upon the death of the permittee.

The other major proposed change would add a requirement that permittees, upon request, demonstrate their vessel is seaworthy and operable. (See Section 17.22.055 of Exhibit "B.") The City would enforce these requirements only when there is cause to believe the vessel was not in compliance. Some permittees have

placed "derelict" vessels on moorings to preserve their rights under the permit. These derelict vessels contribute to the practice of selling mooring permits and to the slow movement of the list of those waiting for the opportunity to obtain a mooring. Currently the waiting list contains more than 2,000 names.

#### ANALYSIS

Section 87100 prohibits a public official from making, participating in or in any way attempting to use his official position to influence a governmental decision in which he has a financial interest. An official has a financial interest in a decision if it is reasonably foreseeable that the decision will have a material financial effect, distinguishable from its effect on the public generally, on the official or a member of his immediate family or on specified economic interests. Section 87103. More specifically, an official may not participate in a decision if it is reasonably foreseeable that the personal expenses, income, assets, or liabilities of the official or his immediate family will be increased or decreased by at least \$250 by the decision and the effect of the decision on the official or his immediate family will be distinguishable from its effect on the public generally. 2 Cal. Adm. Code Section 18702.1.

In the present situation, Mayor Maurer and Councilmember Hart hold mooring permits which, under the current system, when transferred along with title to a boat, may increase the sale price of a boat by up to \$10,000 more than the fair market value of the boat. Given the shortage of moorings, the long waiting list for mooring permits, and the substantially higher cost of keeping a boat in a slip, we believe that the complete prohibition on transferring mooring permits for value, which would begin five years after adoption of the amended ordinance, would increase or decrease the value of the permits by at least \$250 during the five year period in which they could still be transferred. Accordingly, Mayor Maurer and Councilmember Hart may not participate in the decision regarding the proposed ordinance unless the effect of the decision is not considered to be distinguishable from the effect on the public generally. We should note that, because of a recent change in Section 87103 (Chap. 611, Stats. 1985) and the adoption of regulation 18702.1, discussed above, the conclusion reached here differs from our conclusion in the Advice Letter to Patrick Coughlan, City Attorney for West Lake Village, No. A-82-036, and in this regard, that letter is expressly overruled.

For the "public generally" exception to apply to this situation, the ordinance would have to affect a "significant segment" of the public, and it would have to affect Mayor Maurer

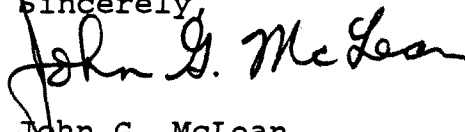
Robert H. Burnham  
July 16, 1986  
Page 4

and Councilmember Hart "in substantially the same manner" as it would affect other members of that segment of the public. 2  
Cal. Adm. Code Section 18703.

The Commission has considered the "public" to consist of the entire jurisdiction of the agency in question. See, Legan Opinion, 9 FPPC Opinions 1, No. 85-001, August 20, 1985, copy enclosed. Thus, in the present case, the "public" would consist of the entire City of Newport Beach. Even assuming the holders of all 800 mooring permits are affected in substantially the same manner, we do not believe they constitute a significant segment of the public. See, Legan Opinion, supra. Furthermore, it is not clear that all or even a substantial portion of the permit holders are from the City of Newport Beach. They may, in fact, be from outside.

If you should have any further questions, please contact me at (916) 322-5901.

Sincerely,



John G. McLean  
Counsel  
Legal Division

JGM:km

cc: Patrick Coughlan



# CITY OF NEWPORT BEACH

OFFICE OF THE CITY ATTORNEY  
P.O. BOX 1768, NEWPORT BEACH, CA 92658-8915

(714) 644-3131

June 20, 1986

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JUN 23 3 52 PM '86

Fair Political Practices Commission  
428 "J" Street, Suite 800  
Sacramento, CA 95814

Re: Request for Opinion

Gentlemen:

Evelyn Hart and Phil Maurer, members of the Newport Beach City Council, would like to know if they have a conflict of interest that would prevent them from participating in the process of drafting revisions to the City's current anchorage and mooring ordinance. These revisions would normally be reviewed by the City's Tideland Affairs Committee, consisting of the Mayor and two members of the City Council. Maurer is the Mayor and Hart is one of the appointees. Hart and Maurer were elected to the Council in 1978 and 1980, respectively, and each has continuously served since his and her election. A permit to maintain a mooring over City tidelands was granted to Hart in 1961, to Maurer in 1954, and each permit has remained valid since issuance. Hart and Maurer own the vessels assigned to their respective moorings.

The mooring permits issued to Hart and Maurer are governed by the Anchorage & Mooring Regulations contained in Chapter 17.22 of the Newport Beach Municipal Code. (A copy of the current Ordinance is attached as Exhibit "A.") Newport Beach City staff is now considering amendments to this Ordinance, and we have developed a draft revised Ordinance that has been circulated to current mooring permittees. (A copy of the revised Ordinance is attached as Exhibit "B.") Staff is proposing a number of changes but, in my opinion, only two of these changes represent a significant departure from the language in, or interpretation of, the current Ordinance. Before we discuss these specific changes, some general information may be helpful in understanding the context of this opinion request.

There are approximately 1,200 on-shore and off-shore moorings located on City tidelands in Lower Newport Bay. Of these approximately 800 are off-shore moorings. Off-shore moorings can accommodate vessels from 18 feet up to 103 feet depending upon the location of the mooring and consist of a float attached to a heavy chain, which is in turn secured to a large heavy cast iron weight on the bay floor. The total cost of

installing an off-shore mooring for a 40 foot boat would be approximately \$4,000. The mooring equipment is personal property owned by the permittee. Annual maintenance costs are approximately \$300 and the permittee is required by Ordinance to lift the mooring for inspection once every two years and make necessary repairs. Based upon current fees of \$13 per foot, per year, total mooring costs for a 40 foot vessel over a ten year period would be approximately \$11,000. This compares favorably with the \$45,600 it would cost to keep a 40 foot vessel in a slip in Newport for the same period of time (assuming a slip fee of \$9.50 per foot/per month which, according to a recent study, is the average fee charged by marinas in Newport Beach).

The primary focus of the proposed amendments is a practice that has developed as a result of an interpretation of Section 17.22.080 of the current code. That section, which appears to prohibit transfers except as approved by the City Manager, has been interpreted to allow permits to transfer when the boat assigned to the mooring is sold.<sup>1</sup> The practice is to "sell" mooring permits by transferring title to the vessel assigned to the mooring for a price up to \$10,000 more than the fair market value of the boat. The City is unsure of the frequency of these "sales." Staff recently conducted a public meeting to obtain comments on the proposed revisions from current permittees. Approximately 150 permittees attended, and many of those speaking at the meeting said they purchased boat and mooring at a price in excess of the value of the vessel. However, some speakers expressed doubt that this practice is wide-spread.

Staff's tentative approach to the sale of moorings is to prohibit all transfers subject to certain exceptions. (See Section 17.22.065). The major exception would be a one-time right to transfer the permit, for value, for a period of approximately five years after the revised Ordinance is adopted. This provision would sanction the current practice for

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<sup>1</sup> The County of Orange staff has given this interpretation to the Ordinance. The County of Orange administered the City's Mooring Ordinance pursuant to agreement. The County has jurisdiction in the harbor and has adopted ordinances with respect to moorings because Lower Newport Bay is part of the County Harbor Improvement District (see Section 5900 of the Harbors and Navigations Code) and some tidelands in the lower bay harbor have been granted to the County.

June 20, 1986

the five year period and allow those who made an investment in a mooring to recover the money expended. The other exceptions, which I believe would be approved under the current Ordinance, involve transfers to family members and those that acquire a vessel assigned to a mooring upon the death of the permittee.

The other major proposed change would add a requirement that permittees, upon request, demonstrate their vessel is seaworthy and operable. (See Section 17.22.055 of Exhibit "B.") The City would enforce these requirements only when there is cause to believe the vessel was not in compliance. Some permittees have placed "derelict" vessels on moorings to preserve their rights under the permit.<sup>2</sup> These derelict vessels contribute to the practice of selling mooring permits and to the slow movement of the list of those waiting for the opportunity to obtain a mooring. (Current waiting list contains more than 2,000 names).

I don't believe the changes to the Mooring Ordinance will have any short-term effect on the value of mooring permits, the value of mooring equipment, or the procedures by which the permits and equipment are transferred. The long-term effects are speculative given the significant demand for moorings and the difficulty in drafting prohibitions that cannot be avoided with some imagination or ingenuity. However, you may come to a different conclusion. If you need any additional information, please call me.

Very truly yours,



Robert H. Burnham  
City Attorney

RHB/jc  
Enclosures

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The current Ordinance and the revised draft both contain provisions that a mooring permit may be cancelled if the mooring remains vacant for a period of 90 days or more. (See Section 17.22.100 of the current Ordinance and Section 17.22.080 of the revised Ordinance).

ANCHORAGE AND MOORING REGULATIONS 17.20.040-17.22.010

with any petroleum product directly from a tank wagon or truck. (Ord. 1090 (part), 1964: 1949 Code § 10303).

**17.20.040 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. (Ord. 1090 (part), 1964: 1949 Code § 10304).

**17.20.050 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. (Ord. 1090 (part), 1964: 1949 Code § 10305).

Chapter 17.22

ANCHORAGE AND MOORING REGULATIONS

Sections:

- 17.22.010 Location.
- 17.22.020 Permit Necessary.
- 17.22.030 Issuance of Permit; Conditions.
- 17.22.040 Plans and Specifications Required.
- 17.22.050 Fees.
- 17.22.060 Delinquent Fees.
- 17.22.070 Unauthorized Use of Mooring.
- 17.22.080 Transfer of Permit.
- 17.22.090 Revocation of Permit.
- 17.22.100 Cancellation; Use of Unoccupied Moorings.
- 17.22.110 Rental Not Permitted.
- 17.22.120 Chains and Fastenings.
- 17.22.130 Buoy Markings.
- 17.22.140 Maintenance.
- 17.22.150 Mooring Anchoring Requirements.
- 17.22.160 Specifications.
- 17.22.170 Inspection of Moorings.
- 17.22.180 Application of Chapter.
- 17.22.190 Appeal.
- 17.22.200 Administration.

**17.22.010 Location.** No person having charge of any vessel shall moor or anchor the same in Newport Harbor except within the areas and at the places designated therefor. Any vessel which is moored or anchored at a

place not designated for such vessel shall, upon the demand of the City Manager, be forthwith moved to the place or places designated therefor. In the designation of mooring areas and anchorages, 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 the same shall be secured both fore and aft except as provided in Section 17.22.150. Every vessel moored or anchored in any part of a 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. (Ord. 1607 § 1 (part), 1975).

**17.22.020 Permit Necessary.** 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 permit therefor from the City Manager upon written application signed by the registered owner of the vessel to be moored, or by an agent so authorized in writing. Any work described and authorized in the permit must be completed within sixty (60) days after issuance thereof. (Ord. 1607 § 1 (part), 1975).

**17.22.030 Issuance of Permit; Conditions.** The City 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 City 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 City 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. (Ord. 1607 § 1 (part), 1975).

**17.22.040 Plans and Specifications Required.** No permit shall be issued for placing, erecting, constructing or maintaining a mooring or buoy except:

(A) In accordance with standard plans and specifications approved by the City Manager and at a location approved by the City Manager, or

(B) 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 City Manager. (Ord. 1607 § 1 (part), 1975).

**17.22.050 Fees.** Fees for permits issued under this Chapter shall be paid in amounts and at a time as provided by resolution of the City Council. (Ord. 1607 § 1 (part), 1975).

**17.22.060 Delinquent Fees.** When the permittee is in arrears for a period of thirty (30) days or more, the City Manager may, at his option, 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, it shall be deemed abandoned and the title thereto shall vest in the City. (Ord. 1607 § 1 (part), 1975).

**17.22.070 Unauthorized Use of Mooring.** No person shall use a mooring unless he holds a current and valid permit therefor, except with the permission of the City Manager for temporary use, as herein provided. (Ord. 1607 § 1 (part), 1975).

**17.22.080 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 City 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. (Ord. 1607 § 1 (part), 1975).

**17.22.090 Revocation of Permit.**

(A) **Grounds for revocation.** Any permit granted for a mooring or buoy in Newport Harbor may be revoked by the City Council upon any of the following grounds:

- (1) The mooring or buoy has become detrimental to commerce, navigation or fishing;
- (2) The mooring or buoy is detrimental to use, operation or development of Newport Harbor;
- (3) The mooring or buoy has fallen into a state of disrepair;
- (4) The space occupied by the mooring or buoy in the vessel affixed thereto is over publicly owned land and such space is to be devoted to a more necessary public use;
- (5) The use of the space 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 City Council at which the permittee has an opportunity to be heard. At least five (5) 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 forth the date, time and place of hearing. After such hearing, City Council may revoke,

17.22.100–17.22.130 HARBOR REGULATIONS

conditionally revoke, conditionally refuse to revoke or refuse to revoke any permit. (Ord. 1607 § 1 (part), 1975).

**17.22.100 Cancellation; Use of Unoccupied Moorings.** Each such permit shall be subject to the following conditions which shall be printed on the permit form:

(A) Said permit may be canceled at any time for violation of any condition of the permit or any provision of this Chapter including payment of any fees upon giving five (5) days' written notice to the permittee by first-class mail to the address shown on the permit;

(B) Upon cancellation, it shall be the duty of the owner of said mooring to immediately remove the same;

(C) If not removed within thirty (30) days, said mooring may be removed by the City Manager and the cost thereof shall be paid by the occupant of said mooring place, and the same may be collected in any court of competent jurisdiction;

(D) If said mooring is unoccupied, it may be temporarily assigned as a mooring for guest vessels by the City Manager;

(E) If not used by the owner for a period of ninety (90) consecutive days, it shall become the property of the City, unless such time has been extended in writing, provided that any such extension shall not exceed ninety (90) additional days, and thereafter such mooring shall automatically become the property of the City to be removed or sold and, if sold, all proceeds of such sale are to be paid to the City. (Ord. 1607 § 1 (part), 1975).

**17.22.110 Rental Not Permitted.** No mooring may be leased or rented by the permittee to another person except with the written permission of the City Manager. (Ord. 1607 § 1 (part), 1975).

**17.22.120 Chains and Fastenings.** (A) No person shall erect, construct or maintain any mooring in Newport Harbor unless all chains and fastenings are of sufficient size to stand a breaking strain of at least six (6) times the weight of the mooring.

(B) All mooring lines on buoys shall be so arranged that when dropped they will immediately sink. With a double mooring, however, it shall be permissible to connect two (2) mooring lines with a spreader line having floats attached thereto to keep said line afloat when the mooring is unoccupied. (Ord. 1607 § 1 (part), 1975).

**17.22.130 Buoy Markings.** Mooring buoys shall be painted with the number allocated thereto by the City Manager to the mooring, the numeral(s) of which shall be at least three (3) inches in height. (Ord. 1607 § 1 (part), 1975).

ANCHORAGE AND MOORING REGULATIONS 17.22.140–17.22.200

**17.22.140 Maintenance.** All moorings shall be kept in good and serviceable condition in the location assigned by the City Manager and the numbers thereon maintained in a legible condition at all times. (Ord. 1607 § 1 (part), 1975).

**17.22.150 Mooring Anchoring Requirements.** 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 said vessels from swinging, turning or drifting, except in areas designated by the City Manager as single mooring areas. Vessels in said single mooring areas may be tied from the bow or stern only. (Ord. 1607 § 1 (part), 1975).

**17.22.160 Specifications.** Specifications for the size of chains required on moorings and weights of moorings shall be adopted by resolution of the City Council. (Ord. 1607 § 1 (part), 1975).

**17.22.170 Inspection of Moorings.** Each mooring shall be lifted by the owner for inspection by the City 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 City 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 licensed marine contractor, then the City Manager may authorize said contractor to inspect the mooring in behalf of the City Manager and certify the results to the City Manager in writing. (Ord. 1607 § 1 (part), 1975).

**17.22.180 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. (Ord. 1607 § 1 (part), 1975).

**17.22.190 Appeal.** Any person aggrieved by the denial or cancellation of a permit by the City Manager may appeal to the City Council by filing a written appeal within ten (10) days after the rendering of the denial or cancellation by the City Manager. The decision of the City Council on the appeal shall be final. (Ord. 1607 § 1 (part), 1975).

**17.22.200 Administration.** Pursuant to an agreement between the County of Orange and the City of Newport Beach, the Director of Harbors, Beaches and Parks of the Orange County Harbors, Beaches and Parks District shall administer all provisions in this Chapter dealing with moorings and buoys, except the revocation of permits by the City Council and collection of all fees hereafter. (Ord. 1607 § 1 (part), 1975).

## Chapter 17.24

## STRUCTURES IN HARBOR

**Sections:**

- 17.24.010 Permit Required for Construction or Alteration.
- 17.24.020 Exception for Work by District.
- 17.24.030 Transfer of Permit.
- 17.24.040 Application for Permit-Plans-Fee.
- 17.24.050 Processing of Application.
- 17.24.060 Applications Requiring Council Approval.
- 17.24.070 Permit Conditions.
- 17.24.080 Required Approval by Corps of Engineers.
- 17.24.090 Revocation of Permit.
- 17.24.100 Structure Without Permit Declared a Nuisance--  
Abatement.

**17.24.010 Permit Required for Construction or Alteration.** 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, excavating or dredging in said waters or ocean, without first obtaining a written permit to do so from the City. (Ord. 1099 (part), 1964: 1949 Code § 10400(a)).

**17.24.020 Exception for Work by District.** Notwithstanding the provisions of this section, the District 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 not owned by the City or pursuant to a request therefor by the City Council. (Ord. 1099 (part), 1964: 1949 Code § 10400(b)).

**17.24.030 Transfer of Permit.** No person shall transfer a permit for a pier, float or similar structure granted under the provisions of this Chapter without prior written approval of the City. No person who as an abutting upland owner or lessee of real property was granted a permit for a pier, float or similar structure shall retain any right of use in such pier, float 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, float or similar structure by any purported transfer made without such prior written approval of the City.

**THIS IS A DRAFT DOCUMENT AND FOR INFORMATIONAL PURPOSES ONLY**

**ANCHORAGE AND MOORING ORDINANCE**

17.22.005 Findings and Purpose.

The purpose of this Ordinance is to protect the safety of persons using the waters of Newport Harbor, establish anchorage and mooring regulations that are consistent with the public trust imposed over those waters, and to maximize the recreational and/or commercial boating opportunities afforded by offshore and onshore moorings authorized by this Chapter.

The City Council finds that, over the years, a practice has developed whereby mooring permits are transferred from one private party to another for Ten Thousand Dollars (\$10,000.00) or more. This practice involves the sale of a vessel assigned to a mooring for an amount that reflects both the value of the boat and the price the purchaser must pay for the mooring. This practice permitted persons to profit from moorings placed on submerged lands held in public trust, has substantially increased the cost of securing a permit to moor vessels within Newport Harbor, and has made ineffective the procedures designed to give all persons an equal opportunity to obtain a mooring permit.

The City Council finds and declares that the purposes, goals and objectives of this Ordinance are satisfied, and the problems presented by existing practices, are avoided, in that:

1. Vessels are prohibited from mooring and anchoring within the harbor at locations that could pose a threat to navigation;

2. The privilege of a mooring is granted only to the persons with vessels that are capable of operation in a safe manner;

3. Procedures for granting and transferring mooring permits are designed to give all persons an equal opportunity to obtain a mooring permit; and

4. Persons currently enjoying the privilege of maintaining a mooring in Newport Harbor are treated fairly, and the cost of obtaining a mooring permit, does not make it difficult for persons of modest means to secure the opportunity to moor vessels in Newport Harbor.

17.22.010 Definitions.

For the purposes of this Chapter, the following words and phrases shall be defined as specified in this Section.

A. **CITY MANAGER** shall mean the City Manager of the City of Newport Beach, the Marine Director or the designee of either;

B. **FEDERAL NAVIGATIONAL CHANNEL** shall mean that portion of the waters in Newport Harbor designated as such on the United States Coast and Geodetic Survey Chart of Newport Bay.

C. **WATERS OF NEWPORT HARBOR** shall mean all territory bayward of the United States Bulkhead Line established by United States Army Corps of Engineer.

D. **OPERABLE** means capable of safely maneuvering under its own power whether by sail or power, from the mooring to the open waters of the Pacific ocean and back to the mooring;

E. **SEAWORTHY** shall mean that a vessel's hull, decking, cabin, mast, engine, equipment or other components are structurally sound and/or in good working order and repair.

F. **AUTHORIZED MOORING REPAIR SERVICE** shall mean a company or individual who has demonstrated to the City Manager sufficient ability, knowledge and equipment to properly and adequately maintain and repair harbor moorings.

G. **IMMEDIATE FAMILY** shall mean a spouse, son, daughter, mother, father, grandmother or grandfather, whether related by blood, marriage, adoption or operation of law, of the permittee.

17.22.015 Anchorage Prohibitions/Temporary Permit.

A. No person having charge of any vessel shall moor or anchor same in Newport Harbor except within the areas and at the places designated on the United States Coast and Geodetic Navigational Chart of Newport Bay or at a location approved by temporary permit issued by the City Manager;

B. No person having charge of any vessel shall moor or anchor same in any part or portion of the Federal Navigational Channel;

C. No person having charge of any vessel shall moor or anchor same in a manner which would allow the vessel to swing or drift into any portion of the Federal Navigational Channel, any turning basin or other channel; and

D. The City Manager may grant a temporary mooring or anchorage permit, and in so doing shall give due consideration to the needs of commerce, the utilization of turning basins, the use of channels for navigation, and other factors which may be pertinent to the safety of persons using the harbor. The City Manager may impose such conditions that he or she deems necessary to protect the permittee and other persons or vessels using the harbor.

17.22.020 Mooring Prohibitions.

A. No persons shall place, erect, construct or maintain mooring or buoys in the waters of Newport Harbor granted to, or controlled by, the City of Newport Beach without first having obtained a permit from the City Manager;

B. No person shall use a mooring unless he or she holds a current and valid permit therefor;

C. No person shall moor any vessel at a mooring other than the vessel assigned to the mooring for which the permit has been granted;

D. No person shall moor any vessel that is not in an operable and seaworthy condition; and

E. Except as otherwise provided in this Chapter, no person shall sell, transfer, rent, lease or assign, in whole or in part, the right to use or occupy any mooring.

17.22.025 Permit Procedures.

A. Except as provided in subsection F, mooring

permits shall be issued only to natural persons, not to corporations, partnerships, or similar entities, groups or associations;

B. Within ninety (90) days from the date on which any mooring permit is relinquished, cancelled, terminated or revoked, a new permit for the mooring shall be issued to the natural person first on the waiting list established pursuant to the provisions of Section 17.22.035; provided that person, within this ninety (90) day period shows proof of ownership of a vessel currently registered or documented in accordance with applicable state or federal laws and which is of a size, width and length commensurate with the mooring space available, the mooring type, and the length of the mooring installed at that location. If the first person on the waiting list is unable to provide proof of ownership within the time required, or otherwise becomes ineligible for issuance of the permit, a permit shall be issued to the next person on the waiting list provided proof of ownership is provided within the time required by this section, and the person is otherwise eligible for issuance of the permit;

C. The City Manager shall issue the permit and specify the vessel assigned to the mooring;

D. Fees for permits must be paid prior to approval of the permit and in the amount, and at the time, required by resolution of the City Council;

E. The permittee is authorized to perform only the work, construction or maintenance described in, and authorized by the permit; and

F. The City Manager may issue permits authorizing the installation and maintenance of moorings and buoys bayward of bayfront property owned or occupied by a corporation, association or similar entity engaged in promoting and encouraging recreational boating or sailing on the waters of Newport Harbor where public access to the Bay is restricted, there is inadequate public parking to accommodate permittees, or other similar factors are present which justify issuance of the permit. The City Manager, upon written request from permittee, may approve removal of vessels from onshore moorings from October 1 through May 31.

G. The City Manager may assign any vacant mooring to a guest vessel on a temporary basis.

17.22.030 Temporary Guest Mooring Permit.

The City Manager may grant a temporary guest mooring permit for a period not to exceed thirty (30) days within any ninety (90) day period upon payment of the fee established by resolution of the City Council.

17.22.035 Waiting List.

A waiting list for both offshore and onshore mooring shall be established and maintained by the City Manager. Only natural persons are eligible for placement on the waiting list. A non-refundable fee shall be paid prior to placement on the waiting list. A non-refundable fee shall be paid on or before January 31 of each calendar year to maintain a person's position on the waiting list. These fees shall be established by City

Council resolution in an amount to offset the costs of maintaining a valid and current waiting list.

17.22.040 Maintenance.

All moorings, buoys, lines, chains and fastenings, and related equipment, must be maintained by the permittee to continuously conform to the standard plans and specifications or the plans and specifications submitted by the permittee and approved by the City Manager.

17.22.045 Standards for Work, Moorings and Vessels.

All persons and permittees must comply with the following standards and each of the standards shall be considered conditions to the mooring permit:

A. Work, construction or maintenance authorized by permit must be completed within sixty (60) days after issuance of the permit and must be completed in accordance with either the standards, plans and specifications, or in accordance with plans and specifications submitted by the permittee and approved by the City Manager, and at the location specified in the permit;

B. 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 vessel from swinging, turning or drifting, except in areas designated by the City Manager as single mooring areas. Vessels in single mooring areas may be tied from the bow only;

C. Vessels assigned an offshore mooring shall be a minimum of eighteen (18) feet in length. Vessels assigned to the mooring shall be commensurate with the space available, the mooring type, and length of the mooring installed at that location. Vessels assigned an onshore mooring shall not exceed eighteen feet (18'0") in length or eight feet (8'0") in width;

D. All chains and fastenings attached to the mooring must be of sufficient size and strength to withstand a breaking strain of at least six (6) times the weight of the mooring.

E. All mooring lines attached to buoy(s) shall be arranged such 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 to keep the line afloat and visible when the mooring is unoccupied;

F. It is the responsibility of each mooring permittee, at his or her sole cost and expense, to demonstrate to the City Manager that the mooring complies with all applicable City standards. The City Manager may, upon prior written notice, require any mooring to be lifted to insure that it is in good condition and repair. To insure that moorings are maintained in good condition and repair, each permittee shall, at least once every two (2) years:

1. Retain an authorized mooring repair service to lift the mooring, inspect the mooring, and certify the condition of the mooring to the City Manager, specifying the repairs, if any, that need to be made, to bring the mooring into conformance with applicable City standards. In the event the mooring is in need of repair, repairs must be commenced within

thirty (30) days from the date of inspection and thereafter diligently pursued until completion; or

2. The permittee may lift and inspect the mooring in the presence of a City employee designated by the City Manager and commence, within thirty (30) days from the date of inspection, all repairs deemed necessary by that employee to bring the mooring into conformance with City standards. The permittee shall be charged an inspection fee to cover the cost incurred by the City in an amount established by resolution of the City Council.

G. Vessels assigned moorings shall comply with all federal, state and local laws, ordinances, rules, policies, standards and regulations.

H. The City Manager may establish additional standards, rules and regulations pertaining to moorings, vessels, or any other matter covered by this Chapter. Permittee shall be required to fully comply as if the standards, rules and regulations were specified in this Section.

17.22.050 Compliance.

The permittee shall be required to comply with all provisions of this Chapter. All permits issued pursuant to this Chapter are hereby expressly conditioned upon full compliance with all provisions of this Chapter.

17.22.055 Vessel Condition.

A. Operability. Vessels assigned to a mooring by a

permit must be maintained in an operable and seaworthy condition. A permittee shall, upon the written request of the City Manager specifying the date and time, demonstrate that the vessel assigned to the mooring is operable. In the event the City Manager determines the vessel is inoperable, the permittee must commence repairs within thirty (30) days of written notice of the determination of inoperability and complete repairs within sixty (60) days from commencement unless the City Manager, upon written request from permittee specifying the reasons therefor, approves an extension of time to complete the repairs.

B. The permittee shall permit the City Manager to inspect the vessel assigned to the mooring to determine if the vessel is seaworthy. The City Manager shall specify the date and time of the inspection by giving written notice to the permittee. If the City Manager determines the vessel is unseaworthy, the permittee must commence repairs within sixty (60) days and diligently pursue completion of the repairs to the point the vessel is seaworthy.

17.22.060 Change in Ownership.

A. The permittee shall notify the City Manager of any proposed change in the ownership of the vessel assigned to the mooring at least thirty (30) days prior to the effective date of the change;

B. In the event permittee sells or transfers the ownership of the vessel assigned to the mooring, permittee shall have ninety (90) days to acquire another vessel and request its assignment to the mooring; and

C. Except as provided in B, in the event permittee transfers, sells or assigns the vessel or any interest in the vessel, other than to a member of the permittee's immediate family, the permit shall be subject to cancellation or revocation as provided in this Chapter.

17.22.065 Transfer of Permit/or Mooring Equipment.

A. A permit issued pursuant to this Chapter shall not be transferred except by the City Manager, and except as provided in this Chapter, no permittee shall have the power or right to transfer any mooring permit, any right granted by a mooring permit, or any mooring equipment;

B. A permit granted pursuant to this Chapter may be transferred by the City Manager in the following cases;

1. The ownership of the vessel is transferred to a member of permittee's immediate family.

2. The vessel registered to the mooring becomes the property of any person by will or court action upon the death of the permittee; or

3. The permittee, prior to \_\_\_\_\_, requests the City Manager to transfer his or her mooring permit and: (a) the permittee, on the date of the request is in full compliance with the Chapter; (b) the permit was issued to permittee on or before the date of the adoption of this Ordinance; (c) the permittee has transferred all right, title and interest to the vessel assigned to the mooring and the mooring equipment to the proposed transferee; and (d) there has been no

transfer of that permit since the effective date of this Ordinance. In the event of a transfer pursuant to this section, the new permittee shall be subject to all provisions of this chapter and shall not be entitled to transfer the permit pursuant to this sub-section.

C. In the event a permittee relinquishes his or her permit to a mooring or buoy, or in the event the rights of permittee are cancelled or terminated as provided in this Chapter, the mooring equipment may be sold by the owner to the person assigned the permit from the waiting list. In the event the former permittee is unable or unwilling to consummate the sale, he or she shall remove the mooring or buoy, and all related equipment, within thirty (30) days from the date the rights were relinquished or terminated. In the event the mooring, buoy, or related equipment, is not removed within thirty (30) days, title to the property shall vest to the City, and the City Manager may sell or dispose of the property. Mooring equipment shall be sold for no more than the actual replacement value, based upon the nature and type of equipment and installation costs.

17.22.075 Cancellation.

A. By accepting a permit.

1. Permittee acknowledges that the City holds the tide and submerged lands upon which the mooring is located in trust for the public and that the rights of the public to navigate, fish or engage in commerce on the waters of Newport Harbor are paramount to the rights of permittee; and

2. Permittee also acknowledges the right of

the City to void or cancel any permit, without cause or fault of permittee, in the event the City Manager determines the mooring is unsafe, inconsistent with provisions of law or the tideland grants, necessary for the development of the harbor, or needed for a more public use; and

3. Permittee waives and gives up any right to a hearing to contest or challenge any determination that grounds for cancellation exist.

B. Permittee, upon acceptance of the permit, agrees that the permit may be cancelled in the event the City Manager determines:

1. The mooring or buoy has become detrimental to commerce, fishing or navigation;

2. The mooring or buoy is detrimental to the use, operation or development of Newport Harbor;

3. The space occupied by the mooring, buoy or assigned vessel is determined to be needed for a more necessary public use;

4. The presence of the mooring or buoy or vessel or the use of the space occupied by each, violates the terms of the tideland grants to the City, or any provision of state, federal or local law, ordinance, rule or regulation; or

C. In the event a permit is cancelled, the permittee shall be entitled to placement at the top of the waiting list. In the event more than one (1) permit is cancelled at any one

time, the former permittee shall be placed on the waiting list by reference to the date on which their mooring permit was issued, with the earliest issued permit ranking first.

17.22.080 Grounds for Revocation.

Any permit granted pursuant to this Chapter may be revoked by the City Manager upon a determination that:

1. The permittee has violated, failed to comply with any of the provisions of, or requirements imposed by, this Chapter;

2. 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;

3. The permittee, without the consent of the City Manager has failed to use the mooring for a period of ninety (90) days or more.

4. The permittee has failed to comply with any provision of Title 17 of the Newport Beach Municipal Code, City Council Policies pertaining to use of the harbor, or rules or regulations pertaining to moorings adopted by the City Manager or Marine Director.

17.22.085 Procedure for Revocation.

In the event the City Manager determines there are grounds for revocation of a permit, the City Manager shall give notice of intent to revoke the permit and the right of permittee

to request a hearing before the City Manager within fifteen (15) days from the date on which notice is given. The notice shall be accompanied by any documents in the possession of the City Manager that pertain to the grounds for revocation. Notice shall be deemed given when deposited in the United States Mail, first class postage prepaid, and addressed to permittee at the address shown on the permit. If permittee does not request a hearing within fifteen (15) days, the decision of the City Manager shall be final and permittee shall not be entitled to appeal to the City Council. In the event permittee requests a hearing, the City Manager shall notify permittee of his or her decision within fifteen (15) days after the hearing stating the reason for the decision, and advise permittee of his or her right to appeal the decision to the City Council.

17.22.090 Appeal.

Any person aggrieved by revocation of a permit by the City Manager may appeal to the City Council. The appeal shall be filed within fifteen (15) days after the date of the notice of the decision of the City Manager. The City Council may hear the appeal, or may appoint a hearing officer to take evidence, and submit findings and recommendations. The City Council shall render its decision within thirty (30) days after the hearing or submittal of findings and recommendations by a hearing officer. The decision of the City Council shall be final.



# California Fair Political Practices Commission

June 26, 1986

Robert H. Burnham  
Newport Beach City Attorney  
P.O. Box 1768  
Newport Beach, CA 92658-8915

Re: 86-210

Dear Mr. Burnham:

Your letter requesting advice under the Political Reform Act has been received on June 23, 1986 by the Fair Political Practices Commission. If you have any questions about your advice request, you may contact me directly at (916) 322-5901.

We try to answer all advice requests promptly. Therefore, unless your request poses particularly complex legal questions, or unless more information is needed to answer your request, you should expect a response within 21 working days.

Very truly yours,

A handwritten signature in cursive script that reads "John G. McLean".

John G. McLean  
Counsel  
Legal Division

JGM:plh