

CITY OF SANTA BARBARA WATERFRONT DEPARTMENT

MEMORANDUM

Date: September 17, 2015
To: Harbor Commission
From: Scott Riedman, Waterfront Director
Subject: **Definition of “Vessel”**

RECOMMENDATION: That Harbor Commission:

- A. Receive a staff report on the proposed addition of a definition of “Vessel” and related amendments to Title 17 of the City of Santa Barbara Municipal Code, and
- B. Recommend City Council approve an Ordinance adding a definition of “Vessel” and related amendments to Title 17 of the City of Santa Barbara Municipal Code.

BACKGROUND

In November, 2013, the Harbor Commission received a report on a proposed definition of “Vessel” (Attachment 1). The report described increased public interest in berthing “floating homes” in Santa Barbara Harbor, craft that don’t leave their slips and whose owners undertake considerable alterations just to meet the Department’s “operability” requirement (*“A vessel’s ability to maneuver safely under its own power from any place in the Harbor District to the open waters of the Pacific Ocean and back to its point of origin”*). The report reiterated Coastal Act and Harbor Master Plan priorities for the harbor’s ocean-dependent uses such as commercial fishing and recreational boating, and said staff would work with the City Attorney’s Office on a definition of “Vessel” that would preclude further berthing, docking or mooring of floating homes in City waters.

In September, 2014, the Harbor Commission conceptually approved a proposed definition of “Vessel” and related amendments to Title 17 of the City of Santa Barbara Municipal Code (Attachment 2). The proposed definition (*“A self-propelled craft whose physical characteristics indicate that it was designed and constructed for the purpose of carrying people or goods over water”*) reflected a majority opinion from a January, 2013 U.S. Supreme Court decision on a maritime case related to this topic. Staff was directed to work with the City Attorney’s Office on language incorporating this definition into the City of Santa Barbara’s Municipal Code.

DISCUSSION

Working with the City Attorney’s Office, staff has developed draft Code language for the Commission’s consideration that:

1. Defines “Vessel;”

2. Requires that after December 1, 2015, only watercraft meeting the definition of "Vessel" may be berthed, moored or anchored in the Harbor District;
3. Allows craft currently berthed, moored or anchored in the Harbor District to remain, without having to meet the definition of "Vessel"; and
4. Exempts craft in #3 above from meeting "Operability" requirements while requiring that such craft make no length or beam variations after December 1, 2015).

Note: The proposed Municipal Code language (and ultimate Ordinance) does not affect liveboard regulations in any way. It only regulates the kind of watercraft that may berth, moor or anchor in the Harbor District.

CONCLUSION

With adoption of the proposed Ordinance, the City will have, as of December 1, 2015, the legal means to prevent the berthing, mooring or anchoring of craft that do not meet the definition of "Vessel," thus preventing the proliferation of floating homes in Santa Barbara Harbor, where the City's priority obligations are to accommodate commercial fishing and recreational boating.

Attachments: 1. November 21, 2013 Harbor Commission staff report
2. September 25, 2014 Harbor Commission staff report
3. Draft Municipal Code Language—definition of "Vessel"

Prepared by: Mick Kronman, Harbor Operations Manager

CITY OF SANTA BARBARA WATERFRONT

DEPARTMENT MEMORANDUM

Date: November 21, 2013
To: Harbor Commission
From: Scott Riedman, Waterfront Director
Subject: Harbor Operations Report

Annual Training Conference—CA Harbormasters and Port Captains Association

During the week of October 28th, Mick Kronman, Harbor Operations Manager, attended the 65th annual training conference of the California Harbormasters and Port Captains Association in Aptos, California. He participated in many informative sessions, including:

1. A legislative update from the Association's Sacramento advocate;
2. The latest news on copper-free anti-fouling hull paints;
3. Adapting to sea level rise; and
4. Rebuilding a marina after a tsunami (Santa Cruz)

The conference provided valuable information and contacts that staff can use for different issues and projects moving forward. At the awards ceremony, the Association honored a four-man team from Pillar Point Harbor/San Mateo Harbor District for a lifesaving rescue of a man trapped in a sea cave. The Association also honored the Port of San Francisco for its contribution the 2013 America's Cup race, characterized by a remarkable comeback by the Oracle Team U.S.A., which won the Cup by a 9-8 margin.

Finally, the coveted State Harbor Master of the Year award went to Brad Gross, Dana Point Harbor Director, who brought training opportunities from an internationally recognized marina management organization to the West Coast for the first time.

Definition of "Vessel"

Over time, Department staff has recognized a growing interest in the placement of floating homes in Santa Barbara Harbor. Currently, four such homes that never leave the dock are assigned slips in Santa Barbara Harbor. Their owners have found ways to comply with the Department's "operability" requirement that a vessel demonstrate its ability to maneuver safely under its own power from to the open waters of the Pacific and back to its point of origin.

This "workaround," however, has left open a loophole for persons who wish to berth floating homes in Santa Barbara Harbor, contrary to Coastal Act Section 30224Z: "*Increased recreational boating use of coastal waters shall be encouraged,*" and Section 30234: "*Existing commercial fishing and recreational boating harbor space shall not be reduced unless the demand for those facilities no longer exists or adequate substitute*

space has been provided. Furthermore, the Harbor Master Plan states, “*The Harbor shall be a working harbor with priority given to ocean dependent uses, such as commercial fishing and recreational boating.*” Finally, using slips for floating homes that don’t go to sea does not serve the needs of the 33 persons on the Department’s Master Slip Waiting List, some of whom have been on the list since the mid 1970s.

Earlier this year, the Supreme Court took up the floating-home issue (from a lower-court case in Florida), ultimately ruling that every home that floats is not a vessel. The Court said, “*A floating residence is not a vessel, unless a reasonable observer, looking to the home’s physical characteristics and activities, would consider it to be designed to any practical degree for carrying people or things on water.*”

This case provides important guidance for the Waterfront Department, and staff has discussed its significance with two prominent maritime attorneys—one from Rhode Island and one from San Diego. Both said this finding could be utilized to help prevent the berthing of floating homes in municipal marinas. Working with the City Attorney’s Office, staff is drafting a definition of “Vessel” to be included in Title 17 of the City’s Municipal Code (MC 17) that reflects, in language tailored for a local Ordinance, the Supreme Court’s finding.

This issue will return to the Harbor Commission next spring, as part of an overall discussion of proposed amendments to MC 17 and the Department’s Rate and Fee Schedule. In addition, staff will draft an article about this subject in the winter issue of *Docklines*, alerting the boating community to the proposed change.

As of the date of this report, with the definition of “Vessel” under consideration, the Department does not intend to assign slips to floating homes that do not meet the Supreme Court standard. Per the pending Ordinance, floating homes already assigned Harbor slips would be “grandfathered in” and not required to meet the new standard.

Fisheries Report—Squid Fishery Reaches Quota Early

On October 18th, the California Department of Fish and Wildlife (CDFW) closed the state’s commercial squid fishery, which reached its 118,000-ton quota early for the fourth straight year (the season runs from April through March unless the quota is met). It was the earliest closure since 2005, when the fishery began operating under a quota.

The difference this year was twofold. First, nobody can remember a year when there was so much squid available at the Channel Islands and on the Southern California coast. Second, CDFW collaborated with the squid industry on day-to-day management, including the closure date. With assistance from squid fishermen and seafood processors, CDFW tracked daily catches in anticipation of reaching the harvest limit, which was established to ensure a sustainable fishery.

The harvest limit is one of many provisions governing the squid fishery, which has been managed under the state’s Market Squid Fishery Management Plan (MSFMP),

developed under provisions of California's Marine Life Management Act, (1999). The MLMA created state policies, goals and objectives to govern the conservation, sustainable use and restoration of several California fisheries.

Parade of Lights December 8th

On Sunday, December 8th, boats will decorate to the theme of Rockin', Rollin' Holidays during the 28th annual Parade of Lights. Activities begin at 3:00 p.m. with Santa's Village on the City Pier, where Santa Claus and his elves will treat kids to goody bags, a 10-ton snowfield and a visit with the bearded one. The parade begins at 5:30 p.m., followed by a five-minute fireworks show provided by Bay Fireworks and a lively awards party at the Maritime Museum. Slip permittees received sign-up forms in their November billing statements. Forms are also available at the Waterfront Office and Harbor Market. Best views of the Parade are from Stearns Wharf and the breakwater.

Prepared by: Mick Kronman, Harbor Operations Manager

CITY OF SANTA BARBARA WATERFRONT DEPARTMENT

MEMORANDUM

Date: September 25, 2014
To: Harbor Commission
From: Scott Riedman, Waterfront Director
Subject: **Definition of “Vessel”**

RECOMMENDATION: That Harbor Commission:

- A. Receive a report on draft policy recommendations related to the definition of “Vessel”; and
- B. Conceptually approve proposed definition of “Vessel”; and
- C. Conceptually approve draft policy recommendations related to the definition of “Vessel.”

BACKGROUND:

On November 21, 2013, staff addressed the Commission regarding a proposed definition of “Vessel,” intended to prevent further slip assignments to floating homes and help ensure the Harbor remains a “Working Harbor” as described in the Local Coastal Plan and Harbor Master Plan, with priority uses for commercial fishing and recreational boating. That report is included as Attachment 1.

Based on a recent Supreme Court case related to this subject, staff proposed incorporating the intent of the Court’s ruling into the Santa Barbara Municipal Code. The Court had said, “A floating residence is not a vessel unless a reasonable observer, looking to the home’s physical characteristics and activities, would consider it to be designed to any practical degree for carrying people or things on water.”

As a follow-up to the November, 2013 discussion, staff wrote an article for the December, 2013 issue of *Docklines* on this issue, explaining staff’s intentions and the adoption process moving forward (Attachment 2).;

DISCUSSION:

Since the November, 2013 Commission meeting, staff has:

1. Refined the proposed definition of “Vessel” to: ***“A self-propelled, floating craft whose physical characteristics indicate that it was designed and constructed for the purpose of carrying people or goods over water”;***

2. Identified four floating homes currently occupying slips in Santa Barbara Harbor that would not meet the proposed definition of “Vessel”;
3. Developed proposed policies related to “grandfathering” these four floating homes; and
4. Met with owners of the four floating homes that would be affected by the proposed definition of “Vessel” to discuss policy implications of this addition to the City of Santa Barbara’s Municipal Code.

Policy parameters drafted by staff and conceptually agreed to by all four slip permittees who currently own floating homes in Santa Barbara Harbor include:

1. No requirement to meet proposed definition of “Vessel”;
2. The right to conduct a “straight transfer,” by which another party buys the floating home and transfers into its slip;
3. The right to add slip partners (for a transfer fee);
4. The right to swap slips with a similarly sized vessel or grandfathered floating home in Santa Barbara Harbor, per specifications outlined in existing Waterfront policies;
5. Waiver of “Operability” requirements;
6. No length or beam modifications to grandfathered floating homes; and
7. Existing liveaboard policies remain unaffected.

CONCLUSION:

With conceptual approval of the proposed “Vessel” definition and associated policy elements, staff will work internally and with the City Attorney’s Office on amendments to the Municipal Code and relevant City Council-adopted Resolutions to accurately reflect these changes. Staff will return to the Commission for discussion/approval of these proposed amendments in early 2015 before forwarding to City Council’s Ordinance Committee, and, ultimately to City Council for final adoption.

Attachments:

1. November 21, 2013 Harbor Operations Report—Definition of Vessel
2. *Docklines* article, December, 2013—Definition of Vessel

Five-Year Review of Uses in the Harbor Commercial Zone
July 17, 2014
Page 3

September 17, 2015
Report #8

Prepared by: Mick Kronman, Harbor Operations Manager

Attachment #2

TITLE 17

HARBOR

Chapter: 17.04 Definitions
Chapter: 17.06 Board of Harbor Commissioners
Chapter: 17.08 Waterfront Director
Chapter: 17.12 Regulations for Use of Harbor
Chapter: 17.13 Stearns Wharf
Chapter: 17.16 Sanitation and Contamination of Harbor Waters
Chapter: 17.18 Live-Aboards
Chapter: 17.20 Slip and Mooring Regulations and Charges

Chapter: 17.24 Wharfage and Dockage Rates
Chapter: 17.28 Business Activity and Advertising in Harbor
Chapter: 17.32 Petroleum Products in Harbor District
Chapter: 17.36 Waterfront Parking
Chapter: 17.40 Reserve for Harbor Preservation

Chapter 17.04

DEFINITIONS

Sections:

17.04.010 Definitions.

17.04.010 Definitions.

The following words and phrases shall have the meaning indicated, unless the context or usage clearly requires a different meaning:

A. ANCHOR. A heavy metal device, fastened to chain or line, designed to help hold a vessel in position. (Ord. 5386, 2006.)

B. ANCHORING EQUIPMENT. An Anchor, line or chain and associated gear that is retrievable, stowable, non-permanent ground tackle designed to engage the seafloor and through its resistance to drag maintain a vessel within a given radius. (Ord. 5386, 2006.)

C. BERTH. A water surface area, delineated by either floating or fixed dock structures, intended for the purposes of embarking, disembarking and the wet storage of boats. A Berth is also known as a "Slip." (Ord. 5386, 2006.)

D. CITY-APPROVED MOORING INSPECTOR. An individual who, by satisfactorily demonstrating appropriate qualifications, has been included on a City-approved list of inspectors eligible to install, inspect and repair ground tackle for Mooring Permittees in the Santa Barbara Mooring Area. (Ord. 5386, 2006.)

E. CITY PIER. -The City Pier is located adjacent to the Breakwater at the Southeastern end of Harbor Way in the Santa Barbara Harbor formerly known as the "Navy Pier." (Ord. 5386, 2006; Ord. 4757, 1992.)

F. DINGHY. A small boat used as a tender to a larger vessel. A Dinghy is also known as a "Skiff." (Ord. 5386, 2006.)

G. DISCHARGE. To spill, leak, pump, pour, emit, empty, dump, deposit, or throw. (Ord. 5386, 2006; Ord. 5282, 2003.)

H. DOCK. A platform, either floating or fixed, provided in a marina for the wet storage of a boat and pedestrian access to and from the boat. (Ord. 5386, 2006.)

I. DOCKAGE. The daily rate assessed a vessel which ties up to any wharf or pier in the Harbor. (Ord. 5386, 2006; Ord. 4757, 1992.)

J. FLOAT. A wharf, pier, quay or landing. (Ord. 5386, 2006; Prior Code §24.1.)

K. GROUND TACKLE. All equipment used for Mooring or anchoring a vessel securely to the seafloor. (Ord. 5386, 2006.)

L. HARBOR. The area depicted on Exhibit "A" attached to Chapter 17.20 generally bounded by and including Stearns Wharf on the east, the Breakwater on the south, the seawall abutting Harbor Way and the Harbor commercial area on the west, the concrete walkway and seawall along currently-designated Marinas 2, 3 and 4 and including the area commonly known as West Beach on the north. (Ord. 5386, 2006; Ord. 4757, 1992; Prior Code §24.1.)

M. HARBOR DISTRICT. The entire Waterfront of the City, including all navigable waters and all tidelands and submerged lands, whether filled or unfilled, situated below the line of mean high tide, bounded by the limits of the City as now fixed or hereafter may be extended. (Ord. 5386, 2006; Ord. 4757, 1992; Prior Code §24.1.)

N. HARBORMASTER. The person designated by the Waterfront Director as the division Operations Division of the Waterfront Department. (Ord. 5386, 2006; Ord. 4757, 1992.)

O. HARBOR PATROL SUPERVISOR. The person designated by the Waterfront Director as the supervisor of the Harbor Patrol Officers in the Operations Division of the Waterfront Department. (Ord. 5386, 2006; Ord. 4757, 1992.)

P. LIVE-ABOARD. The use or occupancy of a vessel for habitation on any four (4) nights during a seven (7) day period. The term does not include the vacation use of a vessel, as defined in Section 17.18.090, by its registered owner and the owner's guests. (Ord. 5386, 2006; Ord. 4757, 1992; Ord. 4387, 1986.)

Q. MARINA. A connected system of slips in the Harbor. (Ord. 5386, 2006; Ord. 4757, 1992.)

R. MARINE SANITATION DEVICE. Equipment on board a vessel that is designed to receive, retain, treat, process, or discharge sewage. (Ord. 5386, 2006; Ord. 5282, 2003.)

S. MINIMUM GROUND TACKLE SPECIFICATIONS. The specifications for Ground Tackle used to moor a vessel, attached as Attachment "A" to the Resolution of the Council of the City of Santa Barbara Establishing Minimum Ground Tackle Specifications and Procedures for Installing, Inspecting and Repairing Moorings in the Santa Barbara Mooring Area, as may be amended from time to time by the Harbor Commission, with which all vessels intending to moor in the City of Santa Barbara Mooring Area must comply. (Ord. 5386, 2006.)

T. MOORING. An Anchor, chain, buoy, pendant, snubber, chafing gear and associated equipment, not typically stowed or carried aboard a vessel when underway, used to engage the seafloor and through its resistance to drag maintain a vessel within a given radius. (Ord. 5386, 2006; Ord. 4757, 1992; Prior Code §24.1.)

U. MOORING INSPECTION REPORT. A City form on which a City-Approved Mooring Inspector provides the results and recommendations of a Mooring Inspection. (Ord. 5386, 2006.)

V. MOORING PERMIT. An annual non-transferable Mooring Site rental agreement issued by the Waterfront Director to a Mooring Permittee to place a Mooring and vessel in a Mooring Site in the Santa Barbara Mooring Area. (Ord. 5386, 2006.)

W. MOORING SITE. A designated location within the Santa Barbara Mooring Area assigned by the Waterfront Director through a Mooring Permit to a Mooring Permittee for purposes of Mooring a vessel. (Ord. 5386, 2006.)

X. OPERABLE. A vessel's ability to maneuver safely under its own power from any place in the Harbor District to the open waters of the Pacific Ocean and back to its point of origin. (Ord. 5386, 2006.)

Y. RODE. All gear, collectively, that lies between a boat and its Anchor. (Ord. 5386, 2006.)

Z. SANTA BARBARA MOORING AREA. The area located in the City of Santa Barbara tidal waters east of Stearns Wharf as depicted on the reference map attached as Exhibit "A" to Chapter 17.20. (Ord. 5386, 2006.)

AA. SEASONAL ANCHORAGE. The area depicted on the reference map attached as Exhibit "A" to Chapter 17.20. (Ord. 5386, 2006.)

BB. SEWAGE. Human body wastes and the wastes from toilets and other receptacles intended to receive or retain body waste. (Ord. 5386, 2006; Ord. 5282, 2003.)

CC. SLIP. A docking space for a vessel within the Harbor. (Ord. 5386, 2006; Ord. 4757, 1992.)

DD. SLIP FEE. The monthly license fee paid by a slip permittee for berthing privileges in the Harbor, including the monthly fees paid for live-aboard privileges if applicable. (Ord. 5420, 2007.)

EE. SLIP PERMIT. A slip rental agreement issued by the Waterfront Director to a Slip Permittee to berth a vessel in a slip in the Santa Barbara Harbor. (Ord. 5386, 2006; Ord. 4757, 1992.)

FF. SPECIAL ACTIVITY MOORING PERMIT. A Mooring Permit issued by the Waterfront Director to individuals, organizations and governmental entities found to be operating research, scientific, clean-up or other functions necessary to the long-term health and operation of the Harbor District and marine environment, or critical to the safety, welfare and protection of persons and assets within the Harbor District. (Ord. 5386, 2006.)

GG. STEARNS WHARF. The wharf structure and all of its improvements located at the foot of State Street. (Ord. 5386, 2006; Ord. 4757, 1992; Ord. 4272, 1984.)

HH. TRANSFER FEE. The fee charged to transfer a Slip Permit. (Ord. 5420, 2007; Ord. 5386, 2006; Ord. 4757, 1992.)

II. VESSEL. A self-propelled craft whose physical characteristics indicate that it was designed and constructed for the purpose of carrying people or goods over water.

HJJ. WATERFRONT. The Harbor, Stearns Wharf, West Beach and all City-owned or -operated parking lots and related structures and facilities along Cabrillo Boulevard or Shoreline Drive within the City of Santa Barbara. (Ord. 5386, 2006; Ord. 4757, 1992; Ord. 4272, 1984.)

JJK. WHARFAGE. The hourly rate assessed any vessel which uses or is tied up to any structure in the Harbor for the loading or unloading of merchandise, excluding the products of commercial fishing. (Ord. 5386, 2006; Ord. 4757, 1992.)

KKLL. YEAR-ROUND ANCHORAGE. The area depicted on the reference map attached as Exhibit "A" to Chapter 17.20. (Ord. 5386, 2006.)

Chapter 17.12

REGULATIONS FOR USE OF HARBOR

Sections:

- 17.12.010 Vessels Berthed, Moored or Anchored in the Harbor District
- ~~17.12.030~~ Disposition, Etc., of Sunken Vessels, Derelicts, Flotsam, Etc.
- 17.12.~~020~~040 Notice of Departure from Harbor.
- 17.12.~~030~~050 Launching and Removing Vessels - Procedure.
- 17.12.~~040~~060 Public Launching Ramp Fees.
- 17.12.~~060~~070 Damage to Harbor Equipment.
- 17.12.~~070~~080 Information to be Furnished Waterfront Director.
- 17.12.~~090~~100 Assumption of Risk by Vessel Owner.
- 17.12.~~100~~110 Permission to Leave Vessel by Wharf, Pier, Etc.

- 17.12.120 Obstructing Access to and Use of Landings, Piers, Fairways, Etc.
- 17.12.130 Certain Craft Requiring Permit to Cross Main Channel.
- 17.12.135 Sailboarding Restricted.
- 17.12.150 Operation of Vessels in Harbor.
- 17.12.170 Power Driven Vessels and Sail Vessels in Swim Areas.
- 17.12.180 Places Where Swimming Prohibited.

17.12.010 Vessels Berthed, Moored or Anchored in the Harbor District

After December 1, 2015, only watercraft meeting the definition of Vessel set forth in subsection 17.14.010 II shall be berthed, moored or anchored in the Harbor District. Watercraft that are existing and berthed, moored or anchored in the Harbor District as of December 1, 2015 and do not meet the definition of Vessel set forth in subsection 17.04.010 II, shall be allowed to continue to berth, moor or anchor in the Harbor District and shall not be required to meet the definition of Vessel. All other requirements of Title 17 of the City of Santa Barbara Municipal Code shall apply to these watercraft, with the following exceptions:

1. Waiver of operability requirements described in 17.005 K (1)
2. No length or beam variations after December 1, 2015

17.12.01030 Disposition, Etc., of Sunken Vessels, Derelicts, Flotsam, Etc.

The Waterfront Director shall take custody of all property found within the Harbor district not in the lawful possession or control of any person. The lawful owners may claim such property by showing proof of ownership and paying all expenses incurred by the Waterfront Director in connection therewith, including charges for raising, keeping and storing the same. If any property is not claimed, and all charges are not paid, within sixty (60) days after the Waterfront Director has taken custody of it, the Waterfront Director is authorized to sell the same as abandoned property in accordance with the terms of existing law. (Ord. 4757, 1992; Prior Code §24.4.)

17.12.02040 Notice of Departure from Harbor.

Prior to departure from the Harbor, all boat owners or operators shall report to the Waterfront Director if a slip is to be released, vacated or unoccupied for five (5) or more days. (Ord. 5386, 2006; Ord. 4757, 1992; Prior Code §24.6.)

17.12.03050 Launching and Removing Vessels - Procedure.

Vessel launching or removal from the Harbor is unlawful, except at public or commercial locations designated for such purpose, without first obtaining permission from the Waterfront Director. (Ord. 4757, 1992; Ord. 4200, 1983; Ord. 2973 §1, 1964; Ord. 2915 §1, 1963; Ord. 2882 §1, 1962; prior Code §24.7.)

17.12.04060 Public Launching Ramp Fees.

Fees for the privilege to enter and use the public launching ramp for launching a boat shall be established by City Council resolution. (Ord. 4757, 1992; Ord. 3932 §1, 1977; Ord. 3333, 1968; Ord. 2973, 1964; prior Code §24.7(a).)