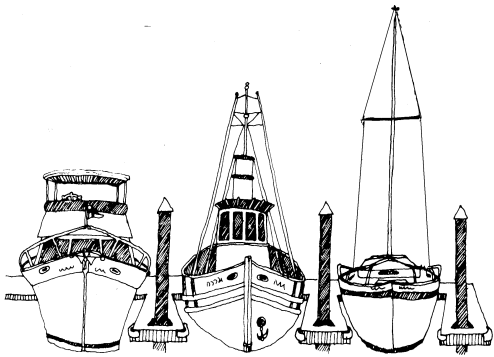


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# *Santa Cruz Harbor*

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## **PARTNERSHIPS AND LIMITED LIABILITY COMPANIES**



### *Gateway to the Monterey Bay National Marine Sanctuary*

Santa Cruz Port District  
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## **PARTNERSHIPS AND LIMITED LIABILITY COMPANIES:**

The Port District Commission has often expressed the desire that the harbor be made available to as many people as possible and that boat use be maximized. The Commission and harbor staff encourage authentic boat partnerships as a healthy way to increase the use of this facility, as they allow people direct access to the harbor who would otherwise have to wait 2-15 years for sole boat and slip license rights.

The emphasis of the Commission and purpose of Ordinance Section 302(h) is to assure the District that partnerships and limited liability companies are, in fact, authentic. The ordinance clarifies and strengthens the Port District's relationship with the licensee. Partnerships and limited liability companies are acceptable as long as the original slip licensee remains financially involved, and personally active in the vessel. Partnerships and limited liability companies have been used as a method of surreptitiously transferring all the benefits of the slip to the new owner without the licensee retaining involvement. The Port District Commission, concerned about these illegal activities and their effects on the integrity of the waiting list system, has responded with an ordinance governing the formation of partnerships and limited liability companies.

**This ordinance essentially magnifies the Port District's original requirements that slip licensees maintain, and can demonstrate an equal financial interest in, and continue to use, the vessel involved in a partnership or limited liability company.**

Ordinance Section 302(h) is much more specific about what types of financial record keeping are needed and gives the District the authority to audit these records to be assured that the original financial provisions of the partnership / limited liability company have not changed. A minimum number of "uses" per year is also specified, and the District's right to request check-ins by the licensee to verify boat use is affirmed.

A partnership agreement signed by both parties is also required. You may write your own, have your attorney prepare one, or use the sample agreement prepared by the Port District. Whatever agreement is used should spell out the terms of the partnership

including how the benefits and liabilities of boat ownership will be divided. The distribution of each partner's share of expenses, such as berthing, financing, maintenance, insurance and taxes, and any income benefits from the sale or commercial use of the boat should be listed.

A "pre-partnership" meeting with a Senior Harbormaster is strongly recommended. This meeting, held ideally before money is exchanged, will assist prospective partners in understanding the ordinance, the Port District's position, and will enable the basic dynamics of the agreement to be reviewed while there is still time to modify them, if necessary. Feel free to call anytime to make an appointment for this initial review.

Many members of the Port District Commission are boat owners themselves. As such, they are sensitive to the fact that the harbor is essentially a recreational facility -- a place where people go to get away from the complexities of modern life. The decision to regulate partnerships, adding one more complexity to life, was not taken lightly. A response to the problem of illegal slip transferences was necessary. The ordinance governing partnerships and limited liability companies, as formidable as it may appear, should not present any problem to those in, or considering, authentic partnerships.

The following ordinance gives the Port District the authority to increase a person's waiting time on the slip waiting list if that person is involved in a sham partnership or limited liability company in which the slip license is revoked by the Port District Commission.

## **ORDINANCE SECTION 302(h) – PARTNERSHIPS AND LIMITED LIABILITY COMPANIES:**

No licensee may permit any other person(s) to use his/her slip through formation of a partnership or limited liability company in a boat (either by selling an interest in the licensee's boat which occupies the slip or buying an interest in another boat and moving it into the slip) unless use of the slip by the partnership or limited liability company is approved by the Harbormaster. In the event a partnership or limited liability company is formed which is not approved by the Harbormaster in accordance with this Section 302(h), the use of a boat slip by members of the partnership or limited liability company other than the

licensee shall be grounds for suspension or revocation of the slip license in accordance with Section 201 above.

1) In order to obtain the approval of the Harbormaster of use of the slip by the partnership or limited liability company, as the case may be, the licensee who forms such partnership or limited liability company in a boat (either by selling an interest in his/her boat or by buying an interest in another boat) must show that s/he has kept or obtained an interest in the profits, losses, and liabilities of the partnership or limited liability company which shall own the boat to occupy the slip. Said interest shall be greater than, or equal to, that of each of the other partners or limited liability company members, but in no event less than 25 percent of the total interest in the partnership or limited liability company. There shall not be more than four partners in any such partnership or limited liability company. The requisite share of such partnership or limited liability company shall be shown by presenting the following documents to the District when the formation of the partnership or limited liability company is completed.

A) A notarized bill of sale and/or notarized contract of sale for each share of a partnership or limited liability company in a boat which sets forth the sale price paid or to be paid, and the terms of the payment. No portion of the sale price paid for any such share may be attributable to the value of the slip license to be used by the partnership or limited liability company. For example, if the sale price paid by any licensee for his/her share of the partnership or limited liability company in a boat is substantially less than the fair market value of the share in the boat as reasonably determined by the Harbormaster, or if the sale price paid by any non-licensee partner or limited liability company member for his/her partnership share in a boat is substantially less than the fair market value of the share in the boat as reasonably determined by the Harbormaster, or if the sale price paid by any non-licensee partner or limited liability company member for his/her share in a boat is substantially more than the fair market value of the share of the boat as reasonably determined by the Harbormaster, the use of the slip by the partnership or limited liability company will not be approved by the Harbormaster. The Harbormaster shall not be obligated to obtain a professional appraisal of the fair market value of said share in the boat, but may use such evidence as is reasonably available without additional cost to the District. Notwithstanding the preceding sentence, where the Harbormaster determines that the fair market value of said share is different from that claimed by the licensee, the licensee shall be entitled to obtain, at his/her sole expense, a professional appraisal of the fair market value of the relevant share in the boat,

and upon submission of the same to the Harbormaster, the Harbormaster shall weigh such appraisal as evidence of said fair market value in conjunction with all other evidence obtained by the Harbormaster.

B) A fully executed and notarized written partnership agreement or limited liability company operating agreement which provides for joint use of the boat by the partners or limited liability company members and sets forth (a) the share of each partner or member of liability for expenses, such as berthing, financing, maintenance, insurance and taxes, incurred with respect to the boat, and (b) the share of each partner or member of the profits and income upon sale, rental, or other income-generating use of the boat.

C) A receipt from the California State Board of Equalization which documents that the state sales tax has been paid on that portion of the boat that has been sold. For sales of interests in boats exempt from the state sales tax pursuant to Revenue and Taxation Code SS et seq., a cancelled check or other evidence of payment of the purchase price shall be presented to the District; and

D) A new California DMV registration or Coast Guard Document that reflects ownership of the boat by each and all of the partners and limited liability company members; and

E) A Partnership and Limited Liability Company Disclosure Statement completed by the licensee and his/her partner(s). The Harbormaster will review proposed partnership and limited liability company arrangements in boats and advise any licensee who desires to form a partnership in a boat of the licensee's compliance with this section under the proposed arrangement, but such preliminary review and determination of compliance shall not bind the Harbormaster or District. If upon completion of the formation of a partnership or limited liability company respecting a boat the licensee fails to show s/he has kept or obtained the partnership share or limited liability company share in the boat to occupy the slip required herein, use of the slip by the partnership or limited liability company will not be approved by the Harbormaster, and the slip licensee shall have the right to appeal the decision of the Harbormaster to the Port District Commission pursuant to Section 107 of these ordinances.

2) A licensee who forms a partnership or limited liability company in a boat which shall occupy the slip to which the license pertains must show the District within 30 days after written request by the Harbormaster, that s/he has maintained the partnership share or limited

liability company share in the boat required in Paragraph 1 above for the year (or portion thereof if the partnership or limited liability company has not yet had District permission to use the slip for an entire year) immediately preceding such request. The licensee's partnership share or limited liability company share in the boat for such year, or portion thereof, shall be shown by presenting the following documents to the District:

A) The books and records of the partnership or limited liability company reflecting the expense of berthing, maintaining, using, insuring (if insurance is obtained), and paying taxes on the boat and the allocation of those expenses among the partners or limited liability company members; and

B) Receipts, cancelled checks or other evidence of documenting which partners or limited liability company members paid the expenses outlined in subparagraph (A) above and how the partners or limited liability company members settled accounts between or among themselves, as necessary.

If the foregoing documents do not substantiate the licensee's maintenance of the requisite partnership share or limited liability company share in the boat during the preceding year, or portion thereof, at the discretion of the Harbormaster, the licensee and his/her partners or limited liability company members may, at their option, present copies of federal and state income tax returns for the partnership or limited liability company, and/or for the partners or limited liability company members, which reflect the allocation of any income earned through use of the boat and deductions available with respect to the boat, such as personal property taxes paid on the boat and interest paid on loans secured by the boat, among partners or limited liability company members. Failure of the licensee to demonstrate s/he maintains the requisite partnership share or limited liability company share in the boat will result in revocation of the slip license. Upon receipt of notice or revocation of his/her slip license, the licensee shall have the right to appeal the Harbormaster's decision to the Port District Commission pursuant to Section 107 of these ordinances.

3) All personal financial information received by the District will be used only for the purpose of enforcing these ordinances and will be kept confidential. The District will not disclose any personal financial information without the prior written consent of the individual to whom the information pertains except as otherwise required or authorized by law. Consent for use of such personal financial information in any hearing before the Port District Commission shall be implied from the appeal by the licensee made pursuant to Section 107,

but such consent shall be implied with regard to only those matters relevant to the determination of those issues before the Port District Commission. The District shall return all personal financial information received by the District under Paragraphs (1) and (2) above to the licensee and his/her partners or limited liability company members upon the earlier of (a) dissolution and termination of the partnership or limited liability company, or (b) termination of the slip license by revocation, voluntary surrender, or otherwise.

4) In addition to submitting the documentation required by Paragraphs (1) and (2) above, a licensee who forms a partnership or limited liability company in a boat (either by selling an interest in the licensee's boat or buying an interest in another boat and moving it into the slip) must demonstrate to the reasonable satisfaction of the Harbormaster his/her continued use of the boat on a regular basis. For purposes of this paragraph, "continued use upon a regular basis" is defined to mean taking the boat out of the slip and harbor at least one time for any length of time on at least ten separate days during any twelve-month period. Notwithstanding the preceding sentence, extended cruises or other lengthy absences from the harbor will be considered on a case-by-case basis by the Harbormaster as evidence of the licensee's continued use of the boat on a regular basis. Where it appears to the Harbormaster that any particular licensee is not continuing to use his/her boat on a regular basis, the Harbormaster may request that the licensee call ahead or check in at the harbor office prior to using the boat. Failure to take advantage of this procedure to substantiate use of the boat shall be considered as strong evidence of the licensee's failure to continue use of the boat on a regular basis. In the event the Harbormaster shall determine a licensee has failed to continue use of the boat on a regular basis in accordance with this Section 302(h), the slip license for the boat shall be subject to suspension or revocation.

5) The original licensee must remain as agent for the partnership or limited liability company, receiving all billings and signing all agreements. The District will negotiate only with the licensee on all matters pertaining to the slip license.

6) If a partnership shall have been approved by the Harbormaster of the Port District prior to January 1, 1981, the licensee of said partnership shall not be required to obtain at least 25 percent interest in said partnership if his/her interest on said date shall be less than 25 percent, and said partnership shall be more than four partners on such date. However, said licensee and partnership shall be required to comply with all other aspects of this

revised Section 302(h), including but not limited to the financial disclosure and minimum use provisions.

7) In the event a person (A) shall acquire an interest, either individually or as a member of a joint ownership entity, in a partnership or limited liability company which owns a boat berthed in the harbor and which partnership or limited liability company is not approved, or is originally approved and then later disapproved by the Harbormaster, and (B) such individual is also a member of the waiting list for berthing slips, then the waiting list sign-up date for said individual shall be advanced to a date which is later than the original sign-up date by a period of time equal to that during which such partnership or limited liability company berthed said boat in the harbor, or the period during which such individual was a member of said partnership or limited liability company, to legitimately lease a slip from the Port District for those individuals involved in either an authorized or a sham partnership or sham limited liability company which prematurely allowed such individuals the benefits of use of a slip.

*Approved by Commission Action of June 25, 2002.*