ORDINANCE NO. 2018-17

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF NEWPORT BEACH, CALIFORNIA, AMENDING NEWPORT BEACH MUNICIPAL CODE TITLES 1 AND 17 RELATED TO THE HARBOR DEPARTMENT

WHEREAS, Section 200 of the Charter of the City of Newport Beach ("City") vests the City Council with the authority to make and enforce all laws, rules and regulations with respect to municipal affairs subject only to the restrictions and limitations contained in the Charter and the State Constitutions, and the power to exercise, or act pursuant to any and all rights, powers, and privileges, or procedures granted or prescribed by any law of the State of California;

WHEREAS, pursuant to the 1978 Beacon Bay Bill, as amended, ("Beacon Bay Bill") the City of Newport Beach ("City") acts on behalf of the State of California as the trustee of tidelands located within the City's limits, including Newport Harbor;

WHEREAS, the City adopted rules and regulations for Newport Harbor, which are contained in Newport Beach Municipal Code ("NBMC") Title 17;

WHEREAS, the City recently assumed management responsibilities from the County of Orange within Newport Harbor and created a Harbor Department to oversee these new responsibilities; and

WHEREAS, the creation of the Harbor Department and the assumption of new responsibilities in Newport Harbor necessitates amendments to NBMC Titles 1 and 17.

NOW THEREFORE, the City Council of the City of Newport Beach ordains as follows:

PROPOSED

Section 1: NBMC Subsection 1.12.020(B) is hereby amended to read as follows:

B. The Fire Chief, Public Works Director and Harbormaster, and members of the staff designated by the Fire Chief, Public Works Director and Harbormaster, shall have the power to issue citations for any violation of Titles 11 and 17 of this Code, Chapters 7.04, 7.16 and 7.20 of this Code, Sections 6.04.060, 6.04.200 and 10.06.010 of this Code, the Fish and Game Code of the State of California, Title 14 of the California Administrative Code, the provisions of the Health and Safety Code of the State of California that pertain to animals and the provisions of Chapter 5 of Division 3 of the Harbors and Navigation Code of the State of California.

Section 2: NBMC Subsection 1.12.020(G) is hereby amended to read as follows:

G. The Fire Chief, Public Works Director and Harbormaster, and members of staff designated by the Fire Chief, Public Works Director and Harbormaster, shall have the power to issue citations for any violation of Title 9 of this Code, Sections 22500.1 and 22514 of the California Vehicle Code, any provision of State or local law related to fire suppression or fire prevention and any provision of State and local laws pertaining to the handling, use, storage or disposal of hazardous materials or waste.

Section 3: NBMC Subsection 17.01.030(B)(6) is hereby amended to read as follows:

6. Reserved.

Section 4: NBMC Subsection 17.01.030(H) is hereby amended to read as follows:

1. Harbor Commission. The term "Harbor Commission" shall mean the Harbor Commission of the City of Newport Beach.

2. Harbor Department. The term "Harbor Department" shall mean the Harbor Department of the City of Newport Beach. Any provision within this Code or any uncodified ordinance or resolution referring to the Harbor Resources Division shall mean the Harbor Department.

3. Harbor Lines. The term "harbor lines" shall mean all established bulkhead, pierhead, and project lines as defined within Newport Harbor by the Federal, State, County and City Governments. The harbor lines in Lower Newport Bay have been established by an act of the U.S. Congress and can only be modified by an act of Congress.

4. Harbor Maintenance Uses, Equipment and Facilities. The terms "harbor maintenance uses, equipment and facilities" shall mean all uses and their related equipment, vessels, docking, and land storage facilities and access which provide: dredging and beach replenishment; demolition, repair and new construction of docks, piers, bulkheads, and other in-and-over-water structures; mooring maintenance and repair; waterborne debris and pollution control, collection, and removal. This category also includes environmental, survey, or scientific vessels and related equipment based, or on assignment, in Newport Harbor. All vessels under this definition may also be referred to as "work boats."

5. Harbormaster. The term "Harbormaster" shall mean the Harbormaster of the City of Newport Beach, or his or her designee.

6. Harbor Regulations. The term "harbor regulations" refers to Title 17 of the Newport Beach Municipal Code.

PROPOSED

7. Harbor Structures. The term “harbor structures” refers to any pier, float, piling, bulkhead, seawall, reef, breakwater or any other structure in, upon or over the waters of Newport Harbor or the Pacific Ocean or any other water where the tide ebbs and flows within the City of Newport Beach or adjoining waters.

8. Habitat. The term “habitat” shall mean the locality, including the physical and biological environment, in which a plant or animal lives.

9. Headwalk. The term “headwalk” shall mean that portion of a dock that serves as a primary pedestrian access to mainwalks, fingers, and slips. Fingers may be attached directly to headwalks. Headwalks are generally parallel to the bulkhead. The term “marginal walk” is synonymous with “headwalk.”

10. Houseboat. The term “houseboat” shall mean any vessel or structure on or in any waterway, floating or nonfloating, which is designed or fitted out as a place of habitation and is not principally used for transportation.

Section 5: NBMC Subsection 17.01.030(M)(11) is hereby amended to read as follows:

11. Public Works Director. The term “Public Works Director” shall mean the Public Works Director of the City of Newport Beach, or his or her designee. Any provision within this Code or any uncodified ordinance or resolution referring to the Harbor Resources Manager shall mean the Public Works Director.

Section 6: NBMC Subsection 17.01.030(O)(11)(b) is hereby amended to read as follows:

b. Sub-Permit—Short-Term. The term “short-term sub-permit” shall be defined as those mooring sub-permits issued by the City for a temporary use of a deemed vacant or noticed vacant mooring for any period of time less than thirty (30) days as determined by the Harbormaster.

Section 7: NBMC Section 17.05.040 is hereby amended to read as follows:

The responsibility for the administration of the provisions of this title is delegated to the City Manager, or officers or employees of a department or departments of the City designated by him or her; provided, however, that some or all of the duties necessary to be performed in the administration may be performed by the Harbormaster.

Section 8: Section 17.05.055 is hereby added to NBMC Chapter 17.05 to read as follows:

17.05.055 Duties of the Harbormaster

PROPOSED

It shall be the duty of the Harbormaster to:

A. Act for and assist the City Manager in administering the provisions of this title, coordinating with appropriate department directors for services falling within their respective functions as defined in Title 2 of this Code, and coordinating as required with other governmental agencies and with interested civic associations;

B. Act as the head of the Harbor Department and supervise and assist the City staff assigned to the Harbor Department to carry out the purposes of Title 17, or any successor title.

C. Administer the harbor-related policies adopted by the City Council and the Harbor Commission, and to recommend to the City Manager appropriate changes and modifications to harbor-related policies; and

D. Conduct regular inspections of both public and private facilities and structures located upon or over the waters of Newport Harbor or the Pacific Ocean or any other water where the tide ebbs and flows within the City, and to recommend action to the City Manager to ensure compliance with this title.

Section 9: NBMC Section 17.05.060 is hereby amended to read as follows:

17.05.060 Duties of the Public Works Director

It shall be the duty of the Public Works Director to:

A. Maintain files and records of all pier permits issued by the City.;

B. Perform such duties as assigned to the Public Works Director by Title 17, or any successor title; and

C. Issue approvals in concept for development located on tidelands or submerged lands that did not involve a discretionary action authorized by Title 20 or Title 21 of the Code where the authority is specifically assigned to the City Council, Planning Commission, Community Development Director, or Zoning Administrator.

Section 10: NBMC Section 17.05.070 is hereby amended to read as follows:

All channels, turning basins, anchorage areas, and pierhead and bulkhead lines in Newport Harbor shall be as established by the Federal Government or by the City Council upon recommendation of the Harbor Commission. A map thereof shall be kept on file in the offices of the City Clerk and the Harbor Department for public inspection.

Section 11: NBMC Section 17.05.110 is hereby amended to read as follows:

PROPOSED

Where uncertainty exists regarding the interpretation of any provision of this Code or its application to a specific site, the Harbormaster shall determine the intent of the provision and issue a written administrative interpretation. An interpretation by the Harbormaster may be appealed to the Harbor Commission, as provided in Chapter 17.65.

Section 12: NBMC Subsection 17.05.120(C) is hereby amended to read as follows:

C. Penalty for Failure to Pay Fees. Any owner or permit holder who fails to pay any fee required by this title after same is due shall be subject to a penalty in the amount established in Chapter 3.36 of this Code. Failure to pay the fee, plus any accrued penalty within one hundred twenty (120) days of when the fee was due shall constitute grounds for revocation of the permit by the Harbormaster.

Section 13: NBMC Subsection 17.05.120(D) is hereby amended to read as follows:

D. Administration. The Harbormaster and/or Public Works Director shall administer the provisions of this title, except for the collection of fees, which shall be the responsibility of the Finance Director.

Section 14: NBMC Section 17.10.030 is hereby amended to read as follows:

An application for permit under this chapter shall be filed with the Harbormaster, upon forms provided by the City, and shall contain such information which the Harbor Commission or Harbormaster may require.

Section 15: The introductory paragraph to NBMC Section 17.10.050 is hereby amended to read as follows:

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

PROPOSED

Except as provided in this section, the Harbormaster may issue the marine activities permit upon a determination that approval of the application will not adversely affect the health, safety or welfare of those who use, enjoy, or own property near Newport Harbor.

The Harbormaster shall approve the application unless:

Section 16: NBMC Section 17.10.070 is hereby amended to read as follows:

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

The Harbormaster or Harbor Commission, on approval or review, shall have the power to impose new conditions or modify existing conditions with regard to any permit issued pursuant to this chapter upon a determination that the operations by the permittee, in the absence of the new or modified conditions, may adversely impact the health, safety or welfare of those who use, enjoy or own property near or on the waters of Newport Harbor.

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

1. Adequate off-street parking shall be provided for all passengers or patrons of the commercial harbor activity;

2. No passenger loading or unloading is to occur at any fuel dock or public dock;

3. Passengers transported to or from the commercial harbor activity shall not be picked up from, or unloaded on, City streets unless specifically approved in writing by the Harbormaster;

4. All passengers and provisions shall be loaded and unloaded only from docks or piers where the abutting uplands property is commercially zoned, unless specifically approved in writing, in advance, by the Harbormaster;

5. Music and sound from the vessel shall be controlled so as not to disturb a person of normal sensitivity at a point one hundred (100) feet from the hull of the vessel;

PROPOSED

6. Music, live entertainment, and all forms of amplified sound are prohibited after ten p.m.;

7. Air horns, whistles, bells, and other noisemaking equipment shall not be used, except as required by Coast Guard regulations;

8. All trash and litter generated by the activity shall be properly disposed of in a private trash receptacle;

9. All vessels in excess of twenty-five (25) feet in length shall operate within main navigational channels, as far from shore as practical, and the route of travel must be at least one hundred (100) feet from any residence;

10. All vessels equipped with marine sanitation devices shall comply with United States Coast Guard requirements in the use of approved holding tanks for raw sewage, and dye tablets shall be installed in holding tanks during the operation of the commercial harbor activity as required by the Harbormaster;

11. All Federal, State, County and City statutes, rules, ordinances, laws and regulations shall be obeyed;

12. All required insurance shall be maintained in full force and effect for the full term of the permit;

13. All signs shall comply with the applicable provisions of Title 20 of this Code.

Section 17: NBMC Section 17.10.080 is hereby amended to read as follows:

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

Section 18: NBMC Section 17.10.085 is hereby amended to read as follows:

A. Enforcement. It shall be the duty of the Harbormaster to enforce each and all of the provisions of this title, and the Chief of Police shall render such assistance in its enforcement as may be required from time to time by the Harbormaster.

B. Right of Entry. The Harbormaster and any Police Officer or City employee whose job includes the enforcement of this chapter, shall have the power and authority to enter, free of charge, and at any reasonable time, any place of business or vessel subject to the requirements of this chapter.

Section 19: The introductory paragraph to NBMC Section 17.10.090 is hereby amended to read as follows:

PROPOSED

Any permit granted pursuant to the provisions of this chapter may be suspended or revoked by the Harbormaster, in whole or in part, upon fifteen (15) days' prior written notice to the permittee, served in accordance with Section 1.05.030 of the Code, directing the permittee to appear at the time, date and place specified in the notice to show cause why the permit shall not be suspended or revoked. The notice shall specify the reasons for the proposed action. A permit may be suspended or revoked on any of the following grounds:

Section 20: NBMC Section 17.10.095 is hereby amended to read as follows:

Appeals of any decision of the Harbormaster shall be made in accordance with or Chapter 17.60 or Chapter 17.65, as applicable.

Section 21: The introductory paragraph to NBMC Section 17.10.120 is hereby amended to read as follows:

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

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

Section 22: NBMC Subsection 17.20.040(C) is hereby amended to read as follows:

C. Tampering with Vessel. No person shall wilfully injure or tamper with, or break or remove any part of or from, any vessel in the City, or tamper with the lines securing any such vessel, without the consent of the owner or other person having charge thereof, except for those authorized by the Harbormaster.

Section 23: NBMC Subsection 17.20.040(D) is hereby amended to read as follows:

PROPOSED

D. Tampering with Moorings. No person shall tamper with any mooring or anchorage in the City whether or not the same is occupied by a vessel, except for those authorized by the Harbormaster for the maintenance of harbor operations.

Section 24: NBMC Section 17.20.050 is hereby amended to read as follows:

All stray, unattended or abandoned vessels, timber or any other personal property found in the water or on the shore of Newport Harbor or the Pacific Ocean, not in the lawful possession or control of some person, shall be immediately reported to the Harbormaster. Any such property shall be dealt with as provided in the appropriate provisions of Chapter 1.20 of the Newport Beach Municipal Code, or Section 510, et seq., of the California Harbors and Navigation Code, as the same now read or may hereafter be amended. Proceeds of any sale of such property shall be deposited in the general fund of the City. For purposes of this section, any vessel on the Pacific Ocean shall be deemed to be stray, unattended and abandoned if the vessel is unoccupied by a person during: any nighttime hours (dusk to dawn); any time period when a Small Craft Advisory or greater has been issued by the National Oceanic and Atmospheric Administration; or daylight hours for more than three (3) hours.

Section 25: NBMC Subsection 17.25.010(A)(2) is hereby amended to read as follows:

2. No person shall make fast any vessel to any other vessel already occupying any pier, either public or private without first obtaining a special event permit as required in Chapter 11.03 of this Code, or any successor chapter. At the Rhine Wharf, the Harbormaster shall have the authority to authorize this activity, via a Rhine Wharf permit, under either of the following conditions: (a) a commercial fishing vessel is loading or unloading, and no other mooring or berthing space is available in the harbor for this purpose; or (b) a vessel is taking refuge from inclement weather and no other mooring or berthing space is available in the harbor for this purpose. In no event shall more than one vessel be made fast to the dockside vessel and no other vessel shall be made fast to the outboard vessel. Both vessels shall have operators aboard at all times.

Section 26: The introductory paragraph to NBMC Subsection 17.25.010(C)(1) is hereby amended to read as follows:

1. Public piers and other harbor facilities may be maintained by the City for the purpose of loading and unloading passengers, supplies, and boating gear and for similar purposes. It is the policy of the City to maintain such facilities in a manner that will permit the greatest public use and avoid continuous occupancy, congestion or blocking thereof. Where necessary to achieve public use and to avoid extended occupancy, congestion or 0blocking thereof, the Harbormaster is authorized and directed to post the following dock markings or signs limiting the time during which a vessel may be tied up or secured, or supplies or gear may be placed at or on any such pier or facility. The dock markings shall have the meanings as herein set forth:

PROPOSED

Section 27: NBMC Subsection 17.25.010(C)(2) is hereby amended to read as follows:

2. The Rhine Wharf, adjacent to the Rhine Wharf public pier, shall not be used by vessels for any purpose except with a valid Rhine Wharf permit issued by the Harbormaster, and subject to the following conditions:

a. Vessels may be tied or secured to the Rhine Wharf for four hours maximum.

b. The Harbormaster shall have the authority to limit the size of vessels using the Rhine Wharf.

c. Vessels using the Rhine Wharf shall be in the actual process of loading, unloading or engaged in temporary repairs.

d. The Harbormaster may authorize an extension of the four hour period where special circumstances dictate such an extension.

Section 28: NBMC Section 17.25.020 is hereby amended to read as follows:

A. Location. No person having charge of any vessel shall berth or anchor the same in Newport Harbor except within the designated areas. Any vessel which is berthed, moored or anchored at a place not designated for such vessel shall be moved as directed by the Harbormaster. In the designation of mooring areas and anchorage areas, consideration shall be given to the needs of commerce, the utilization of turning basins, the use of channels for navigation, and the economy of space. No vessels shall be moored or anchored in any part of any turning basin or channel unless secured both fore and aft except as provided in subsection (I) of this section. Every vessel moored or anchored in any part of the harbor outside of any turning basin or channel shall be so moored or anchored as to prevent such vessel from swinging or drifting into any turning basin or channel.

1. It is unlawful and a public nuisance for any person owning, leasing, occupying or having charge or possession of any vessel to: (a) berth or anchor the same in Newport Harbor except within the designated areas; or (b) anchor a vessel at any location on the open waters of the Pacific Ocean within five hundred (500) yards of a designated protected swimming area for a cumulative period of time that exceeds seventy-two (72) hours within any thirty (30) calendar day period. The Harbormaster may authorize an extension to the seventy-two (72) hour time limit if the Harbormaster determines that given the particular circumstances an extension of time is reasonable and warranted.

2. Any vessel which is berthed, moored or anchored at a place in Newport Harbor not designated for such vessel shall be moved as directed by the Harbormaster. In the designation of mooring areas and anchorage areas in Newport Harbor, consideration shall be given to the needs of commerce, the utilization of turning basins, the use of channels for navigation, and the economy of space.

PROPOSED

B. Application of Chapter. The terms of this chapter, as they relate to moorings and buoys, shall apply to “on-shore moorings” which are moorings located landward of the pierhead line and to “offshore moorings” which are located bayward of the pierhead line, with equal force and effect.

C. Berthing.

1. Boats berthed at private or public piers shall not extend beyond the projection of the property lines of the property to which the pier is connected in accordance with Section 17.35.020, or any successor section.

2. Any boat berthed at a pier or slip shall not extend bayward a distance of more than the maximum width of its beam beyond the end of the pier, or slip. Between Bulkhead Station 256, beginning at Collins Avenue to Bulkhead Station 255, boats moored at a pier or slip shall not extend more than fifteen (15) feet bayward from the end of the pier or slip or more than the width of the beam of the boat, whichever is less.

D. Permit Required. No person shall place, erect, construct or maintain a pier mooring or buoy in the waters of Newport Harbor over City-owned or controlled tidelands without first having obtained a permit pursuant to this title.

E. Unauthorized Use of Mooring. No person shall use a mooring unless he holds a current and valid permit except with the permission of the Harbormaster for temporary use, as herein provided.

F. Chains and Fastenings.

1. No person shall erect, construct or maintain any mooring in Newport Harbor unless all chains and fastenings are of sufficient size to stand a breaking strain of at least six times the weight of the mooring.

2. All mooring lines on buoys shall be so arranged that, when dropped, they will immediately sink. With a double mooring, however, it shall be permissible to connect two mooring lines with a spreader line having floats attached thereto to keep such line afloat when the mooring is unoccupied.

G. Buoy Markings. Mooring buoys shall be painted with the number allocated thereto by the Harbormaster to the mooring, the numeral(s) of which shall be at least three inches in height.

H. Maintenance. All moorings shall be kept in good and serviceable condition in the location assigned by the Harbormaster.

I. Mooring, Anchoring and Vessel Condition Requirements.

Proposed

1. Mooring Anchoring. All vessels anchored on the open waters of the Pacific Ocean shall be anchored in such a manner so that the vessel does not come in contact with another vessel or structure. All vessels using moorings in Newport Harbor shall be firmly anchored to a mooring from bow and stern in such a manner as to prevent the vessels from swinging, turning or drifting, except in areas designated by the Harbormaster as single mooring areas. Vessels in single mooring areas shall be tied from the bow. All vessels anchored in Newport Harbor in the designated anchorage area shall be anchored in such a manner so that the vessel does not come in contact with another vessel or structure and does not extend beyond the demarcation line of the designated anchorage area.

2. Vessel Condition—Seaworthiness and Operability. Vessels assigned to a mooring by permit must be maintained in an operable and seaworthy condition. If, based upon the appearance of the vessel, inspection by the City or other facts, the Harbormaster has cause to believe a vessel is not seaworthy and operable, the Harbormaster shall give written notice in accordance with the service requirements of Section 1.05.030 of this Code, or any successor section, to the permittee requesting a demonstration that the vessel is seaworthy and operable. The permittee shall, upon written notice specifying the date and time, demonstrate to the Harbormaster that the vessel assigned to the mooring is seaworthy or operable. In the event that the Harbormaster determines that vessel is not seaworthy or operable, the permittee shall: (a) commence repairs within thirty (30) days upon service of the written notice of such determination and complete repairs within ninety (90) days of the commencement unless the Harbormaster, upon written request from the permittee specifying the reasons therefor, approves an extension of time to complete the repairs; or (b) remove the vessel within thirty (30) days of service of the written notice of such determination and request assignment of a different vessel that is seaworthy and operable to the mooring within sixty (60) days after the removal of the vessel. This section is not intended to apply to any brief period of repair common to most vessels. The Harbormaster may repeat his or her request to test operability and seaworthiness as needed.

3. It is unlawful and a public nuisance for any person owning, leasing, occupying or having charge or possession of any vessel in the City, to maintain, permit, cause or allow to exist on such vessel any of the following conditions:

a. Promotion of a fire hazard, including, but not limited to, improper open fuel storage, deficiencies in the vessel's fuel storage tanks, inoperable electrical systems, storage of combustible or other flammable material that constitutes a fire hazard to any vessel;

b. Retention of water that becomes stagnant, unsanitary, or polluted;

c. Accumulation or storage of rubbish, trash, debris, rubble, containers, and boxes that is visible aboard the vessel or stored inside the vessel in such a way to make the vessel inoperable for its intended use;

PROPOSED

d. Storage or securing a vessel in such a way that it impedes pedestrian travel on City beaches and tidelands;

e. Contribution to hazards to public safety and health, such as, but not limited to: propagation of vermin, rats, insects, unsanitary conditions from the accumulation of fecal materials;

f. Maintenance in such nonseaworthy condition that it is unsafe, unsightly or poorly maintained, including, but not limited to: broken windows, unsecured doors and hatches, excessive marine growth attached to the vessel, the vessel is inoperable for its intended use, partially destroyed or partially repaired for more than three continuous months, provides access to marine mammals, is actively seeping hazardous or toxic material into the surrounding waters, and would present a physical danger to public safety personnel during emergency access;

g. Operation of its mechanical or electrical systems creates excess noise, odors, vibrations, fumes, discharges or emissions that constitute an impact on public health or safety;

h. Violation of the terms and conditions of other use or rental permits as granted by the City of Newport Beach;

i. Allowance of repetitive, boisterous or unruly conduct by the vessel operator or occupants when that conduct: (i) is offensive to a person of ordinary sensibility, (ii) continues after a written or oral request to terminate the conduct, (iii) is offensive to a considerable number of people;

j. Anchorage in an area controlled by the City without adequate anchor(s) rope and chain appropriate for the wind and sea conditions encountered in Newport Bay;

k. Inability of a vessel on a shore mooring to be self-righting on an incoming tide without flooding the vessel;

l. Attachment to a mooring in such a way that the vessel regularly drifts and impedes safe navigation in the bay;

m. Installation of a marine sanitation device that is not connected directly to an internal holding tank at all times while in Newport Bay.

In the event that the City of Newport Beach determines that a vessel is a public nuisance, the City of Newport Beach may commence public nuisance abatement per Chapter 10.50 of the Municipal Code, or any successor chapter.

PROPOSED

4. If, based upon the appearance of the vessel, inspection by the City or Harbormaster or other facts, the Harbormaster determines that a sea lion has boarded a moored vessel, the Harbormaster shall issue and serve a notice of violation in accordance with Section 1.05.030 of the Code, or any successor section, and the permittee shall take any and all necessary action to employ and maintain appropriate measures to deter sea lions from boarding the vessel within seven (7) calendar days of the notice of violation. If the Harbormaster determines that appropriate deterrent measures have not been taken within seven (7) calendar days of the notice of violation, the Harbormaster may issue an administrative citation and the permittee shall: (a) take any and all necessary action to employ and maintain appropriate sea lion deterrent measures; or (b) remove the vessel. Appropriate deterrent measures shall be defined as the latest methodology permitted by National Marine Fisheries Service to minimize sea lion boarding of vessels assigned to a mooring.

5. With the exception of the sea lion deterrence requirements, the requirements of this section are not applicable to vessels used in marine construction or marine contracting services.

J. Specifications. Specifications for the size of chains required on moorings and weights of moorings shall be adopted by resolution of the City Council.

K. Inspection of Moorings. Each mooring shall be lifted by the owner for inspection by the Harbormaster at least once every two (2) years and shall be repaired so as to be in good condition before being replaced, provided that the Harbormaster may require any mooring to be lifted at any time when deemed necessary to assure it is in good condition. If the permittee has such lifting performed by a marine contractor, then the Harbormaster may authorize such contractor to inspect the mooring on behalf of the Harbormaster and certify the results to the Harbormaster in writing. The permittee shall pay the costs of any inspection performed by a contractor on behalf of the Harbormaster.

L. Rental Not Permitted. Except as authorized in Section 17.60.040(B)(1)(a), or any successor section, no mooring may be leased or rented by the permittee to another person except with the written permission of the Harbormaster.

M. Administration. The Harbormaster shall administer all provisions in this section dealing with moorings and buoys, except the revocation of permits by the Harbor Commission and collection of all fees hereafter.

Section 29: NBMC Section 17.25.030 is hereby amended to read as follows:

A. Vessel or Trailer Storage on Beaches Prohibited—Exceptions. No person shall store any vessel, watercraft, trailer or other similar object on any public beach in the City except as provided in subsection (A)(1) of this section. As used in this section, the term “store” shall mean to leave or permit to remain unattended for a period of two (2) hours or more and not in the possession or control of the owner or user.

PROPOSED

1. Vessels, watercraft and equipment directly related to the use of the vessel or watercraft (related equipment) may be stored on a public beach as follows:

a. Any vessel(s), watercraft and/or related equipment owned and maintained by the City or its contractors which is (are) used in conjunction with recreation programs offered by the City;

b. Any vessel(s), watercraft and/or related equipment that cannot feasibly be berthed or moored at a privately owned pier or mooring and is (are) used by a nonprofit corporation for noncommercial purposes provided a vessel storage permit has been approved by the Harbormaster. A vessel storage permit shall be approved only if there is substantial evidence that the permit would not adversely affect the health, safety or welfare of those who use, enjoy or own property near the waters of Newport Bay. Vessel storage permits are subject to the following standard conditions as well as any additional conditions imposed by the Harbormaster:

i. The permit shall not cause or permit any unreasonable noise that would adversely affect the use or enjoyment of public or private property in the vicinity of the vessel, watercraft or equipment;

ii. The permit shall not engage in, or permit, any activity that unreasonably interferes with the use of the beach or adjoining waters by the public;

iii. The permit shall not cause or permit any activity that pollutes any public or private property of the waters of Newport Bay;

iv. The permit may be revoked by the Harbormaster, without cause, at any time, upon thirty (30) days' written notice to the permittee.

c. Any vessel for which a mooring permit has been issued by the City pursuant to Section 17.60.040, or any successor section, provided the vessel remains on the beach only to the extent necessary to load or unload.

Section 30: NBMC Subsection 17.30.030(C) is hereby amended to read as follows:

C. Nonconforming Bait Receivers. Storage of live bait other than in a receiver conforming to the requirements hereof is prohibited. After three (3) calendar days' written notice, served in accordance with Section 1.05.030 of the Code, to the owner of a nonconforming receiver, it may be removed by the Harbormaster and stored at the expense of the owner.

Section 31: NBMC Subsection 17.30.030(F) is hereby amended to read as follows:

PROPOSED

F. Transfer of Live Bait. No person shall transfer live bait from one vessel to another vessel or sell the same at retail from a vessel within the limits of Newport Harbor, except when all vessels involved are moored to a pier and are within the pierhead line, except that during a period of adverse conditions of sea or beaches causing the transfer from offshore receivers to be hazardous, a location inside the harbor may be used with the approval of the Harbormaster.

Section 32: NBMC Section 17.40.030 is hereby amended to read as follows:

No person shall live-aboard any vessel assigned to an offshore mooring without first having obtained a live-aboard permit from the Harbormaster. No live-aboard permit shall be issued except to a person holding a valid mooring permit issued pursuant to Chapter 17.60 of the Newport Beach Municipal Code, or any successor chapter. No permit shall be issued to any live-aboard which is not intended to serve as the principal residence of the permittee. For purposes of this section, principal residence shall mean to live-aboard for not less than eight (8) months in any calendar year.

Section 33: The introductory sentence to NBMC Section 17.40.040 is hereby amended to read as follows:

An application for a live-aboard permit shall be filed with the Harbormaster upon forms provided by the City and shall contain the following information:

Section 34: NBMC Subsection 17.40.040(E) is hereby amended to read as follows:

E. Other information the Harbormaster reasonably believes is necessary or helpful to the efficient administration of the provisions of this chapter.

Section 35: The introductory sentence to NBMC Section 17.40.050 is hereby amended to read as follows:

Upon receipt of an application for a live-aboard permit, the Harbormaster shall investigate the information contained in the application. The Harbormaster shall deny the application if:

Section 36: NBMC Section 17.40.070 is hereby amended to read as follows:

A. The Harbormaster may impose such conditions on the permit as are reasonably necessary to insure that the activities of the permittee comply with the provisions of this chapter.

PROPOSED

B. The Harbormaster shall have the power to promulgate rules and regulations to insure that the purposes of this chapter are satisfied. Each permittee shall comply with these rules and regulations. Compliance shall be considered a condition to each live-aboard permit.

Section 37: NBMC Section 17.40.100 is hereby amended to read as follows:

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

Section 38: NBMC Subsection 17.40.110(B) is hereby amended to read as follows:

B. The Harbormaster shall establish a waiting list of persons who wish to apply for a live-aboard permit. The waiting list shall consist solely of persons who hold valid mooring permits issued pursuant to the provisions of Chapter 17.60 of the Newport Beach Municipal Code, or any successor chapter. Any person who sells or transfers the vessel, or any ownership interest in the vessel, assigned to a mooring shall be removed from the waiting list. In the event the number of live-aboard permits falls below the limit specified in subsection (A) of this section, the Harbormaster shall notify the person or persons next in order on the waiting list of the vacancy or vacancies. The notice shall specify that applications will be accepted for thirty (30) days after the date of the notice, and that failure to apply within the thirty (30) day period will result in removal of that person or persons from the waiting list. Notice shall be deemed given when deposited in the United States mail, with the first class postage prepaid, and addressed as specified by the person or persons on the waiting list. City shall not be liable for a failure to notify any person or persons on the waiting list since placement on the list does not create any property right in any person or persons on the list nor any contractual obligation on the part of the City. An application for placement on the waiting list shall be accompanied by a fee established by resolution of the City Council, but in no event shall the fee exceed the cost of administering the waiting list.

Section 39: The introductory sentence to NBMC Subsection 17.40.140(A) is hereby amended to read as follows:

A. Any permit granted pursuant to this chapter and Chapter 17.60, or any successor chapter, may be suspended or revoked by the Harbormaster upon a determination that:

Section 40: NBMC Section 17.40.150 is hereby amended to read as follows:

PROPOSED

In the event the Harbormaster determines there may be grounds for suspension or revocation of a permit issued pursuant to this chapter, the Harbormaster shall give written notice in accordance with Section 1.05.030 of the Code, or any successor section, of intent to suspend or revoke the permit and the right of the permittee to request a hearing before the Harbormaster within fifteen (15) calendar days from the date on which notice is deemed served. The notice shall state the reason for the proposed suspension or revocation and shall be accompanied by any documents in the possession of the Harbormaster that pertain to the grounds for the proposed action.

If the permittee does not request a hearing within fifteen (15) calendar days of the date the notice is deemed served, the decision of the Harbormaster shall be final and permittee shall not be entitled to an appeal.

Section 41: NBMC Subsection 17.50.010(C) is hereby amended to read as follows:

C. A separate permit will be required by the Public Works Department for dredging (see Chapter 17.55, Dredging Permits).

Section 42: NBMC Subsection 17.50.020(A) is hereby amended to read as follows:

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

Section 43: NBMC Subsection 17.50.030(A) is hereby amended to read as follows:

A. The application and plans and specifications shall be reviewed by the Public Works Director and Community Development Department to determine whether the proposed work meets all the requirements of this Code and any standards and policies adopted by the City Council or required by State or Federal regulatory agencies for such construction or work.

Section 44: NBMC Subsection 17.50.030(B)(4) is hereby amended to read as follows:

PROPOSED

4. Approval in Concept. All development in areas where the Coastal Commission retains coastal development permit authority shall require conceptual approval from the Public Works Director prior to application to the Coastal Commission. An approval in concept from the Public Works Department indicates the proposed development conforms in concept to all applicable provisions of this title only and does not provide approval for any applicable land use and property development regulation.

Section 45: NBMC Subsection 17.50.030(C) is hereby amended to read as follows:

C. Before issuing a permit for any work on oceanfront beaches or for any unusual type of harbor structure, or for a structure on which the applicant proposes a use that is not in keeping with the surrounding area, all property owners or long-term lessees within three hundred (300) feet of the proposed work shall be notified in writing by the Public Works Department of the pending application. Notice will be sent at least ten (10) calendar days prior to a decision by the Public Works Department, and after the department has rendered a decision. The permit shall not be issued until the appeal or call for review period provided in Chapter 17.65 expires.

Section 46: NBMC Subsection 17.50.040(A) is hereby amended to read as follows:

A. Approval. The City is authorized to approve and issue new permits and revisions to existing permits that conform to the design criteria and all applicable standards and policies in conjunction with plan reviews by the Public Works Department.

Section 47: NBMC Subsection 17.50.050(A) is hereby amended to read as follows:

A. In granting any such application, the Public Works Director shall issue the permit to the owner or long-term lessee of the abutting upland property and may impose conditions in the permit which are deemed necessary to protect commerce, navigation or fishing, or the use, operation or development of Newport Harbor.

Section 48: NBMC Section 17.50.070 is hereby amended to read as follows:

PROPOSED

Permits shall only be issued to and held by the owner or long-term lessee of the abutting upland property. The permittee shall not transfer a permit without prior written approval of the City and payment of fees as established by resolution of the City Council. No person who as an abutting upland owner or lessee of real property was granted a permit under the provisions of this chapter for a pier or similar structure shall retain any right of use in such pier, or similar structure after having divested himself of the ownership or leasehold interest in such real property. Upon such divesting, the ownership interest in such pier, float or similar structure shall remain with the person to whom the permit was granted, but the right of use thereof shall vest in the City until such time as a permit for such pier, float or structure is granted to another person. Except where rights of ownership or use have heretofore been judicially decreed, no person may heretofore or hereafter gain any rights of ownership or use of any such pier or similar structure by any purported transfer made without such prior written approval of the City. The Public Works Director is authorized to approve transfers of permits.

Section 49: NBMC Section 17.50.100 is hereby amended to read as follows:

If, based upon an inspection by the City or the Harbormaster or other facts, the Harbormaster determines that a sea lion has boarded a permitted structure and/or any vessel or other appurtenances attached to the structure, the Harbormaster shall issue a notice of violation and the permittee shall take any and all necessary action to employ and maintain appropriate measures to deter sea lions from boarding the structure and/or any vessel or other appurtenances attached to the structure within seven (7) calendar days of the notice of violation. If the Harbormaster determines that appropriate deterrent measures have not been taken within seven (7) calendar days of the notice of violation, the Harbormaster may issue an administrative citation and the permittee shall take any and all necessary action to employ and maintain appropriate sea lion deterrent measures. Appropriate deterrent measures shall be defined as the latest methodology permitted by National Marine Fisheries Service to minimize sea lion boarding of a permitted structure and/or any vessel or other appurtenances attached to the structure.

Section 50: NBMC Section 17.55.010 is hereby amended to read as follows:

A. Dredging bayward of residential and commercial property shall be the responsibility of the harbor permittee for the area delineated by the bayward prolongations of upland side property lines and the U.S. project line. All such dredging will require a dredging permit from the Public Works Department and other agencies with jurisdictional authority and may be subject to engineering approval by the Public Works Department.

B. Dredging outside the established harbor lines will require prior approval by the Public Works Department and the U.S. Army Corps of Engineers.

Section 51: NBMC Subsection 17.55.020(A) is hereby amended to read as follows:

PROPOSED

A. Required Forms. Applications for dredging permits shall be filed in the office of the Public Works Department in writing on forms prescribed by the Public Works Director.

Section 52: NBMC Subsection 17.55.020(B) is hereby amended to read as follows:

B. Required Materials. Applications shall be accompanied by all plans, maps, and other materials required by the prescribed forms, unless specifically waived by the Public Works Director. Applications shall include the following:

1. Eelgrass (Zostera marina) and Caulerpa taxifolia protocol surveys;

2. Grain size analysis;

3. Identification of the dredge disposal site and dredge quantities;

4. Any other materials the Public Works Director deems necessary to support the application.

Section 53: NBMC Section 17.60.010 is hereby amended to read as follows:

The State of California became the owner of tidelands on admission to the Union in 1850. The City manages those tidelands pursuant to various legislative grants from the State. The State Lands Commission, which administers tidelands, generally requires a trustee to negotiate leases on the basis of the current market value of the parcel. Failure of a trustee to receive consideration approximating the fair market value of leased tidelands could, under certain circumstances, be considered a violation of the legislatively imposed public trust. The City manages the tidelands through a series of permits, franchises and leases. The Public Works Director shall have the authority to approve, conditionally approve, or disapprove applications for the uses and activities that require a harbor permit by the individual chapters of this Code, unless the authority is specifically assigned to the City Manager, Harbormaster, Harbor Commission or the City Council.

Section 54: NBMC Subsection 17.60.020(A) is hereby amended to read as follows:

A. Required Forms. Applications for permits which pertain to the harbor under the provisions of this title shall be filed in the Public Works Department, in writing, on forms prescribed by the Public Works Director.

Section 55: NBMC Subsection 17.60.020(B) is hereby amended to read as follows:

PROPOSED

B. Required Materials. Applications shall be accompanied by all plans, maps, and other materials required by the prescribed forms, unless specifically waived by the Public Works Director. The Public Works Director may request additional materials deemed necessary to support the application.

Section 56: NBMC Subsection 17.60.030(C)(2) is hereby amended to read as follows:

2. Whenever a permittee sells the abutting residential upland property, a request shall be made to the City to transfer the permit. Forms for this purpose may be obtained from the Public Works Department. Failure to apply for a transfer within thirty (30) days from the date that the abutting upland residential property changed ownership will result in an additional fee as established by resolution of the City Council.

Section 57: NBMC Subsection 17.60.030(C)(3) is hereby amended to read as follows:

3. Along with the City Manager, the Public Works Director is authorized to approve transfers to the new owners or long-term lessee of the abutting upland residential property.

Section 58: NBMC Section 17.60.040 is hereby amended to read as follows:

A. Permit Required. No person shall place, erect, construct, maintain, use or tie to a mooring in the waters of Newport Harbor over City-owned or controlled tidelands without first having obtained a mooring permit from the Harbormaster or having otherwise complied with this section. A mooring permit is in the nature of license for the temporary use of a specific location within the Newport Harbor.

B. Issuance of Permit—Conditions. The Harbormaster, in furtherance of the tideland grants to the City, may issue a mooring permit or mooring sub-permit to allow the mooring permittee or mooring sub-permittee to temporarily use a portion of the waters of Newport Harbor for the mooring of a vessel. Upon the effective date of this chapter, a mooring permittee may hold up to two mooring permits at any time. A mooring permittee that holds more than two mooring permits prior to the effective date of this chapter may continue to hold the mooring permits until the permits are sold, revoked, or otherwise transferred under this chapter.

1. Exceptions.

PROPOSED

a. The Balboa Yacht Club and the Newport Harbor Yacht Club (collectively, "yacht clubs") currently hold permits for single point moorings placed within certain mooring area boundaries established by the City, except as noted in subsection (B)(3)(f) of this section. In addition, the Lido Isle Community Association ("LICA") has permits for onshore moorings on Lido Isle. These organizations shall hold their respective permits under the yacht club, or respective organization name, for the moorings identified by the City as under their respective control at the time of enactment of the ordinance codified in this section. The yacht clubs and LICA shall be solely responsible for managing moorings under their control and shall be permitted to assign moorings under their control to yacht club members and members of LICA, respectively. The yacht clubs and LICA shall keep accurate records of the name and address of the club members and community association members to which each mooring has been assigned. The yacht clubs and LICA may not sell or otherwise transfer the moorings under their control to a third-party that is not a member of the yacht club or LICA. Mooring records shall be provided annually to the Harbormaster on or before February 1st.

b. Mooring of a Tender. A single vessel no longer than fourteen (14) feet in overall length to serve as access to and from the assigned vessel may be secured to the assigned vessel or may be secured to the offshore mooring in the absence of the assigned vessel. Notwithstanding the single vessel restriction, permitted live-aboards may secure up to two (2) vessels no longer than fourteen (14) feet in overall length to the assigned vessel, to serve as access to and from the assigned live-aboard vessel.

c. Multiple Vessel Mooring System Program. The Harbormaster may approve a multiple vessel mooring system in the mooring areas of Newport Harbor Yacht Club and the Balboa Yacht Club. An application for a multiple vessel mooring system shall be submitted in writing to the Harbormaster, who shall evaluate the application based upon standards he or she shall have established.

2. Permit Requirements. Each mooring permit may be issued for up to two (2) natural persons ("mooring permittee(s)") who shall be individually and collectively responsible for all activities related to the mooring permit. To the satisfaction of the Harbormaster, the mooring permittee(s) shall:

a. Identify on the permit the full legal name(s), current address(es), current telephone number(s) and current e-mail address(es), if one exists, of the mooring permittee(s);

b. Agree to be responsible for permit rent, fees, maintenance and repair of mooring equipment;

c. The permit for joint ownership moorings shall provide that all parties shall have equal rights under the permit and shall be held jointly responsible for compliance with all rules, regulations, and conditions set forth in the mooring permit;

PROPOSED

d. Grant permission to the City to temporarily assign the mooring to another vessel when it is unoccupied through the issuance of a mooring sub-permit;

e. Agree to defend and indemnify the City and any other government entity with jurisdiction against any claims or losses arising out of, or related to the use of, the mooring permit except where the claim or loss arises from the sub-permittee's damage of the mooring, or out of the negligence and/or misconduct of a person assigned the mooring as a mooring sub-permittee under subsections (G) and/or (H) of this section;

f. Provide proof of insurance on a vessel as may be determined by the City's Risk Manager;

g. Provide registration or other proof of controlling possessory right in the assigned vessel, all to the satisfaction of the Harbormaster;

h. Agree to pay fair market value rent, as established by resolution of the City Council, on a rent schedule established by the Harbormaster, which shall be similar to the schedule used to collect rent from other tidelands users in Newport Harbor;

i. Agree that the mooring permit does not provide any ownership interest in the underlying tidelands, which are held in trust by the City and owned by the people of the State of California; and

j. Authorize the City, or its designee, to move the vessel on the mooring to another location when deemed necessary by the Public Works Director and/or Harbormaster.

3. Permittee/Transferee Qualifications. A mooring permit may be held by, or transferred to, only the following persons:

a. A natural person(s) holding title to an assigned vessel;

b. An executor or administrator carrying out the terms of a will or administering a probated estate that holds a mooring permit, but only for the period of time prior to distribution of the estate;

c. An inter vivos trust, family trust, or other similar type of trust estate holding a mooring permit, so long as all trustors are natural persons and the primary mooring permittee shall be the trustee of the trust;

d. An approved transferee whose vessel and/or mooring permit are subject to any of the terms and conditions stated in subsection (E) of this section;

e. A marine contractor or marine support service provider, holding a mooring permit used to provide current or ongoing harbor infrastructure and marine or fishing services (such as maintenance and dredging);

PROPOSED

f. Balboa Island Yacht Club for the purposes of youth education in boating and marine activities; Kerckhoff Marine Laboratories for the purpose of marine and oceanographic research; and American Legion Post 291 for the purpose of serving veterans and their families and supplying them with affordable access to boating and harbor activities; or similar marine educational entities;

g. The Balboa Yacht Club, Newport Harbor Yacht Club (collectively "yacht clubs") and the Lido Isle Community Association—only for those moorings assigned by the City within certain established mooring areas or locations, prior to the enactment of the amended ordinance codified in this section. These designated mooring areas may not be expanded. The boundaries of these mooring areas are graphically depicted by National Oceanographic and Atmospheric Administration ("NOAA") Chart Number 18754. Yacht clubs shall be entitled to a maximum number of moorings as can be accommodated in the mooring fields designated in NOAA Chart Number 18754 and at a minimum the current number of moorings assigned to them as of the effective date of the ordinance codified in this section.

C. Plans and Specifications Required. No mooring permit shall be issued for placing, erecting, constructing or maintaining a mooring or buoy unless such mooring or buoy is constructed:

1. In accordance with standard plans and specifications approved by the Harbormaster and at a location approved by the Harbormaster; or

2. In accordance with other plans and specifications for such mooring or buoy which have been submitted by the applicant, showing the construction of such proposed mooring or buoy together with the location thereof, and which meet the requirements established in this chapter and which have been approved by the Harbormaster.

D. Late Fees. A ten (10) percent late charge shall be added to all payments due but not received by City by the due date.

E. Transfer of Permit. No mooring permittee shall transfer a permit for a mooring or buoy granted under the provisions of this chapter, except:

1. When transferred from a natural person to another member of his or her immediate family, which shall be defined for the purposes of this section as the mooring permittee's spouse and heirs at law to the second degree of consanguinity; or

2. Except when transferred to immediate family, a mooring permit may only be transferred under this subsection up to one time in any twelve (12) month period.

F. Procedures for Transfers. Permits shall not be transferred without the prior written approval of the Harbormaster. The Harbormaster may approve the transfer of a mooring permit under the procedures set out below:

PROPOSED

1. The mooring permittee(s) (or, if the permittee is deceased or incapacitated, the transferee) shall submit to the Harbormaster:

a. A completed mooring transfer form (on the form provided by the Harbormaster); and

b. Documentation that the proposed new mooring permittee (transferee) qualifies as a mooring permittee under subsection (B)(3) of this section.

2. If transferee intends to purchase an assigned vessel but does not have title on the assigned vessel owned by the mooring permittee and transferor at the time of transfer, then:

a. Within sixty (60) days of a transfer, transferee shall submit to the Harbormaster a copy of a California Department of Motor Vehicles registration or other current registration (or, in lieu thereof, U.S. Coast Guard documentation of ownership) documenting transferee's ownership of the assigned vessel or, in the case of an onshore mooring, a photograph of the assigned vessel if it is not subject to vessel registration laws; or

b. If such documentation is not received by the Harbormaster within the sixty (60) day period, then the vessel or the mooring may be impounded, the mooring may be deemed vacant and may be assigned pursuant to subsections (G) and (H) of this section.

3. If transferee intends to moor a vessel other than the assigned vessel and does not have title to the vessel that will be moored at the time of transfer, then:

a. Within sixty (60) days of an approved transfer, the transferee shall notify the Harbormaster that the assigned vessel has been removed from the mooring and before a new vessel may be placed on the mooring shall submit to the Harbormaster a copy of a California Department of Motor Vehicles registration or other current registration (or, in lieu thereof, U.S. Coast Guard documentation of ownership) documenting transferee's ownership of the new assigned vessel, or in the case of a shore mooring, a photograph of the new assigned vessel if it is not subject to vessel registration laws; or

b. If the documentation is not received within sixty (60) days of a transfer, the mooring may be deemed vacant by the Harbormaster and the mooring may be assigned pursuant to subsections (G) and (H) of this section. The mooring may remain vacant until such time the permittee notifies the Harbormaster of their intent to assign their vessel to the mooring.

4. The transfer request shall be denied unless mooring permit rent, including late payment fees, is paid current; required mooring inspections are current; required maintenance and repairs are complete and there are no derelict or unauthorized vessel(s) on the mooring.

PROPOSED

5. The mooring permittee and transferee shall provide a written agreement to defend and indemnify the City of Newport Beach in any dispute with a third party over transferee's right to be the mooring permittee or in any dispute with a third party over the mooring permittee's right to transfer the permit.

6. Transfer Approval. Upon confirmation of compliance with this subsection, the Harbormaster must find all of the following conditions to approve the transfer of a mooring permit:

a. The mooring permittee no longer owns the assigned vessel or has retained ownership of the assigned vessel and has permanently vacated the mooring;

b. The transferee has met all the qualifications and conditions for issuance of a permit in subsection (B) of this section;

c. The transferor or transferee has reported to the Harbormaster the price paid for the mooring permit, and has paid to the City the required transfer rental charge; and

d. The transferor represents that he/she/it did not discriminate against any transferee or prospective transferee because of race, religious creed, color, national origin, ancestry, physical handicap, medical condition, marital status, sex, sexual orientation, age or any other impermissible basis under law.

7. The Harbormaster may approve a one-for-one exchange of moorings between two mooring permittees, subject to compliance with this subsection without any transfer rental advance charge imposed by the City.

8. The Harbormaster may approve the changing of an assigned vessel on the permit, subject to the requirements of subsection (B) of this section, without any transfer rental advance charge imposed by the City.

9. Following an approved transfer, the Harbormaster shall list the transfer price of the mooring permit on a publicly available website hosted by the City, or on a third-party's website under contract with the City to host information regarding mooring permit transfers.

G. City's Authority to Assign Moorings through Use of Sub-Permits. With the exception of the Balboa Yacht Club, the Newport Harbor Yacht Club, and the Lido Isle Community Association's designated moorings, mooring permittee may not rent, assign, or transfer the use of the mooring to any other person. With the exception of moorings issued to mooring permittees described in subsection (B)(3)(e) of this section, City shall have the authority to assign vacant moorings to sub-permittees pursuant to the following provisions:

PROPOSED

1. Deemed Vacant Moorings. City may assign deemed vacant moorings through the issuance of sub-permits at its own discretion. Sub-permits may be renewed upon availability. The mooring permittee may reclaim its mooring upon three days' prior written notice to City of its intent to return the assigned vessel to the mooring.

A "deemed vacant mooring" shall be defined as a mooring upon which:

a. An assigned vessel has not been attached for thirty (30) consecutive days or more; or

b. A vessel, other than an assigned vessel, has been attached for thirty (30) days or more; or

c. Required documentation for an assigned vessel has not been provided for a transfer request pursuant to subsection (E) of this section.

2. Noticed Vacant Moorings. City may assign noticed vacant moorings at its own discretion through the issuance of a mooring sub-permit for any period of time, up to the reoccupation date on mooring permittee's written notice, or the twenty-four (24) hour written notice per subsection (G)(2)(b) of this section. If the mooring continues to be vacant for thirty (30) days past the reoccupation date indicated on mooring permittee's notice, and there is no further written notice from mooring permittee, the mooring shall become a deemed vacant mooring.

a. Mooring permittee may provide written notice to City of its intent to vacate its mooring for fifteen (15) days or more. These moorings shall be "noticed vacant moorings." Written notice shall include the date the mooring permittee intends to vacate his/her mooring, and the date he/she intends to reoccupy the mooring with the assigned vessel.

b. If mooring permittee provides written notice, the mooring permittee may reclaim the assigned mooring on the reoccupation date indicated in his/her written notice or, if the mooring permittee returns prior to or after the reoccupation date, upon twenty-four (24) hours' written notice to the City.

H. Procedures for Mooring Sub-Permit Issuance. Any natural person wishing to use a mooring pursuant to the issuance of a sub-permit must enter into a written mooring sub-permit agreement with the City that includes the following:

1. A written representation of the current vessel length which shall be satisfactory to the Harbormaster.

PROPOSED

2. An agreement to be responsible for any damage to mooring equipment; to defend and indemnify the City of Newport Beach and the mooring permittee against any claims or losses arising out of, or related to, the mooring rental; to require the mooring sub-permittee provide proof of insurance as may be determined by the City's Risk Manager; to require registration or other proof of ownership; to require an equipment damage deposit, all to the satisfaction of the Harbormaster; and authorize the City, or its designee, to move the vessel on the mooring to another location when deemed necessary by the Public Works Director and/or Harbormaster.

3. The repair of any damage to the mooring equipment shall be paid by the mooring sub-permittee. If the mooring is damaged by a vessel assigned by the City, or the City's agent, the City will arrange for the repair of the mooring with a qualified vendor and provide notice to the permittee of the occurrence and the arranged repair date. Should the sub-permittee fail to pay for the damage for any reason, the City will pay for the required repairs to the mooring, and then seek reimbursement from the sub-permittee. Also, the City will make available a mooring without charge for the returning vessel of the mooring permittee until such time as their permitted mooring is repaired.

4. Mooring sub-permittees shall provide approved mooring lines which shall be removed at the end of the rental period.

5. A mooring sub-permit agreement may be up to fifteen (15) days and may terminate at any time for any reason, and may be renewed based on availability. Upon return of the assigned vessel to the mooring, the Harbormaster will attempt to reassign the sub-permittee to another mooring. Mooring sub-permittees have no right of renewal or substitute moorings upon return of the assigned vessel, or upon termination of a mooring sub-permit agreement for any reason. Mooring sub-permittees accept an indefinite term at their own risk.

6. The mooring sub-permit rent will be based on a rate established by the Newport Beach City Council.

7. Live-aboards may be temporarily permitted as sub-permittees pending vessel inspection, for a period not to exceed fifteen (15) days in any twelve (12) month period.

8. Mooring sub-permits shall be offered to the public on a first-come, first-served basis.

9. Subject to the Harbormaster's approval, a mooring may be loaned free of charge by the mooring permittee to a vessel other than the assigned vessel for no more than thirty (30) consecutive days; provided, that:

a. The mooring permittee provides the Harbormaster with written notice identifying the vessel that will use the mooring;

PROPOSED

b. The mooring permittee has not loaned the mooring for more than sixty (60) days in the twelve (12) month period that immediately precedes the commencement of the current mooring loan;

c. The vessel owner requesting a loan has not previously been the recipient of loans for more than ninety (90) days in the previous twelve (12) months; and

d. The vessel owner authorizes the City, or its designee, to move the vessel on the mooring to another location when deemed necessary by the Harbormaster.

I. Mooring Permit Transfer Nonrefundable Rental Charge. The City shall charge the mooring permittee for the right to transfer a mooring permit under subsection (E) of this section in an amount equal to seventy-five (75) percent of the annual mooring rent as established by City Council resolution. This transfer charge represents a one-time nonrefundable rental advance for the use of a mooring. A mooring permit transfer charge shall not be required if:

1. The transfer is from the mooring permittee to the same mooring permittee as trustor of an inter vivos trust, living trust or other similar estate planning tool;

2. The transfer is made under subsections (F)(7) and (8) of this section; or

3. The transfer is made pursuant to Subsection (E)(1) of this section.

J. Surrendered Mooring Equipment. If the mooring permittee sells, transfers, or otherwise no longer owns the assigned vessel and does not intend to apply for, or does not receive, approval to transfer the permit to another, the permittee may provide written notice to the Harbormaster of his or her intent to surrender the mooring permit; otherwise the provisions of subsection (G) of this section regarding a vacant mooring shall apply.

Once a mooring permit is surrendered, the mooring permittee shall remove the assigned vessel and/or the mooring equipment thirty (30) days after written notice of surrender of the permit, or, upon failure to remove the mooring equipment, title shall vest in the City and the City shall compensate mooring permittee the fair value for the mooring equipment, less rent or fees owed, as provided in subsection (L) of this section.

K. Revocation of Permit.

1. Grounds for Revocation. A mooring permit or sub-permit may be revoked upon any of the following grounds set forth in Section 17.70.020, or any successor section, or for any of the following:

a. The moored vessel or the mooring equipment has been determined to violate the applicable mooring regulations in Section 17.25.020, or any successor section, and the mooring permittee or sub-permittee has not made the necessary corrections or repairs within the time required;

PROPOSED

b. The mooring permittee or sub-permittee has failed or refused to allow an inspection of the vessel to determine if it is seaworthy and operable, a public nuisance or in compliance with applicable marine sanitation device requirements;

c. Living aboard a vessel assigned to a mooring without a live-aboard permit unless otherwise noted in subsection (G) of this section;

d. When the mooring permittee or sub-permittee fails to pay any mooring rent or fee when due and is in arrears for a period of sixty (60) days or more; or

e. When the mooring permittee has sublet their mooring in violation of this title.

2. Notice and Hearing. In the event the Harbormaster determines there are grounds to revoke a permit issued pursuant to this chapter, the Harbormaster shall proceed in the manner described by Section 17.70.020, or any successor section.

3. Upon revocation, it shall be the duty of the mooring permittee to immediately remove the mooring equipment and any moored vessel. If not removed within thirty (30) days of revocation of the permit, the mooring equipment shall vest in the City and may be auctioned by the City to another person or may be removed by the Harbormaster and the cost of mooring equipment removal shall be paid by the mooring permittee. Any moored vessel or equipment not removed within thirty (30) days may be impounded by the City and disposed of in the manner provided by law. City incurred costs of removal of mooring equipment or any vessel moored thereto may be charged against the permittee and collected in any court of competent jurisdiction or recovered by the City from the proceeds of sale of the vessel or mooring equipment.

4. During any revocation proceeding under this subsection (K), if the mooring is unoccupied, it may be temporarily assigned as a mooring for guest vessels by the Harbormaster.

L. Moorings Reverting Back to City. Should a mooring revert back to the City for any reason, whether through abandonment, surrender, failure to provide documents pursuant to subsection (F) of this section, or for any other reason, the following shall apply:

1. The mooring permittee shall be entitled to recover all of mooring permittee’s mooring equipment within thirty (30) days of reversion.

2. If mooring permittee does not recover his or her mooring equipment, mooring permittee shall be entitled to payment from the City of the fair value of the mooring equipment as depreciated by use in an amount to be determined by the Harbormaster and as set in the City’s master fee resolution, after any and all past due rent and fees, if applicable, have been satisfied.

PROPOSED

3. The mooring may be publicly auctioned by the City, or the City's designated representative, or the mooring may be used for other City purposes.

Section 59: NBMC Subsection 17.60.080(B) is hereby amended to read as follows:

B. Initiation. Appeals shall be made in writing to the City Clerk and shall be accompanied by a fee established by resolution of the City Council. The appeal fee shall be refunded to the appellant if he or she is successful in their appeal under this section (e.g., decision being appealed is reversed).

Section 60: NBMC Subsection 17.60.080(D) is hereby amended to read as follows:

D. Hearing Date. Appeals shall be scheduled by the Public Works Director and/or Harbormaster, as applicable, for a hearing before an independent hearing officer within thirty (30) days of the filing of the appeal unless both appellant and City consent to a later date.

Section 61: NBMC Subsection 17.60.080(G) is hereby amended to read as follows:

G. Decision and Notice. After the hearing, the hearing officer shall affirm, modify or reverse the original decision. When a decision is modified or reversed, the hearing officer shall state the specific reasons for modification or reversal. Decisions on appeals shall be rendered within thirty (30) calendar days of the close of the hearing. The Public Works Director and/or Harbormaster, as applicable, shall mail notice of the hearing officer's decision. Such notice shall be mailed within five (5) working days after the date of the decision to the applicant and the appellant. The decision of the hearing officer shall be final.

Section 62: NBMC Subsection 17.65.010(A) is hereby amended to read as follows:

A. Decisions of the Public Works Director and/or Harbormaster resulting from his or her administration of this Code may be appealed to the Harbor Commission by any interested person.

Section 63: NBMC Subsection 17.65.010(C) is hereby amended to read as follows:

C. A member of the Harbor Commission, acting in their official capacity, may call for review, to the Harbor Commission, decisions of the Public Works Director and/or Harbormaster resulting from the Manager's administration of this Code.

PROPOSED

Section 64: NBMC Subsection 17.65.030(A) is hereby amended to read as follows:

A. Filing of Appeals and Calls for Review. Appeals or calls for review of decisions of the Public Works Director and/or Harbormaster shall be made in writing to the City Clerk on forms provided by the Public Works Director and/or Harbormaster. Appeals or calls for review of decisions of the Harbor Commission shall be made in writing to the City Clerk on forms provided by the City Clerk. The appeal shall state the facts and basis for the appeal. A call for review initiated by a member of the Harbor Commission or City Council, in their official capacity, shall be for the purpose of bringing the matter in front of the entire body for review.

Section 65: NBMC Subsection 17.65.040(F) is hereby amended to read as follows:

F. Decision and Notice. After the hearing, the appellate (or reviewing) body shall affirm, modify or reverse the original decision. When a decision is modified or reversed, the appellate (or reviewing) body shall state the specific reasons for modification or reversal. Decisions on appeals shall be rendered within thirty (30) days of the close of the hearing. The Public Works Director and/or Harbormaster, as applicable, shall mail notice of a Harbor Commission decision and the City Clerk shall mail a notice of a City Council decision. Such notice shall be mailed within five (5) working days after the date of the decision to the applicant and the appellant, if any.

Section 66: Except as specifically amended in this ordinance, all other sentences, paragraphs, subsections, sections, chapters, and titles of the NBMC shall remain unchanged and in effect.

Section 67: The recitals provided in this ordinance are true and correct and are incorporated into the substantive portion of this ordinance.

Section 68: If any section, subsection, sentence, clause or phrase of this ordinance is, for any reason, held to be invalid or unconstitutional, such decision shall not affect the validity or constitutionality of the remaining portions of this ordinance. The City Council hereby declares that it would have passed this ordinance, and each section, subsection, sentence, clause or phrase hereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared invalid or unconstitutional.

PROPOSED

Section 69: The City Council finds the approval of this ordinance is not subject to the California Environmental Quality Act ("CEQA") pursuant to Sections 15060(c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment) and 15060(c)(3) (the activity is not a project as defined in Section 15378) of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, because it has no potential for resulting in physical change to the environment, directly or indirectly. Alternatively, the City Council finds the approval of this ordinance is not a project under CEQA Regulation Section 15061(b)(3) because it has no potential for causing a significant effect on the environment.

Section 70: The Mayor shall sign and the City Clerk shall attest to the passage of this ordinance. The City Clerk shall cause this ordinance, or a summary thereof, to be published pursuant to Charter Section 414.

///

///

///

///

///

///

///

///

///

///

///

PROPOSED

This ordinance was introduced at a regular meeting of the City Council of the City of Newport Beach, held on the 9th day of October, 2018, and adopted on the 243rd day of October, 2018, by the following vote, to wit:

AYES, COUNCILMEMBERS _____

_____

NOES, COUNCILMEMBERS_____

_____

ABSENT COUNCILMEMBERS _____

_____

_____
MARSHAL "DUFFY" DUFFIELD, MAYOR

PROPOSED

ATTEST:

_____
LEILANI I. BROWN, CITY CLERK

APPROVED AS TO FORM:
THE CITY ATTORNEY'S OFFICE

_____
AARON C. HARP, CITY ATTORNEY