

ORDINANCE NO. 2018-18

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF NEWPORT BEACH, CALIFORNIA, AMENDING NEWPORT BEACH MUNICIPAL CODE TITLE 17, PERTAINING TO VESSEL SPEED LIMITS

WHEREAS, the City of Newport Beach ("City") is a premier destination that provides for a diversity of recreational uses including a visitor friendly harbor, recreational boating, fishing, water sports, and ecological enrichment;

WHEREAS, the City has a very active boating community that enjoys a long history of nautical racing and competition that includes sailboat racing, human powered boat racing, and the associated training and practice activities that generally accompany such events;

WHEREAS, the City's adopted vessel speed limits do not allow for nautical races that exceed the posted speed limit of five (5) nautical miles per hour;

WHEREAS, the City desires to provide flexibility and consistency to vessel speed limits to be reflective of current practices, while ensuring a balanced approach to other uses in Newport Harbor;

WHEREAS, Ordinance No. 2018-18 was introduced at a regular meeting of the City Council of the City of Newport Beach (the "City Council") held on October 9, 2018 and adopted by the City Council at a regular meeting held on October 23, 2018 by a vote of 4-0 (with Mayor Marshall "Duffy" Duffield and Council Member Scott Peotter recusing themselves and Mayor Pro Tem Will O'Neill being absent);

WHEREAS, at a regular meeting held on November 13, 2018, by motion duly made by Council Member Brad Avery and seconded by Council Member Kevin Muldoon, this City Council voted to reconsider Ordinance No. 2018-18, which motion was passed by a vote of 5-0 (with Mayor Marshall "Duffy" Duffield and Council Member Scott Peotter recusing themselves); and

WHEREAS, the City filed a copy of this ordinance with the California Department of Boating and Waterways prior to its adoption and at least thirty (30) days prior to its effective date, as required by California Harbor and Navigations Code Section 660(a).

NOW, THEREFORE, the City Council of the City of Newport Beach does hereby ordain, as follows:

Section 1: Subsection 17.01.030(R)(1) of Chapter 17.01 is hereby amended to read as follows:

1. Vessel. The term “vessel” shall mean and include every description of watercraft used or capable of being used as a means of transportation on water. This includes all vessels of any size home-ported, launched/retrieved, or visiting in Newport Harbor, arriving by water or land, and registered or unregistered under State or Federal requirements, except a seaplane on the water. “Vessel” shall also mean and include human powered vessels and wind powered vessels.

a. Human Powered Vessel. The term “human powered vessel” shall mean a vessel that is being propelled by the human body through the use of oars, paddles, or the like and without the use of wind, a motor, or other machinery.

b. Wind Powered Vessel. The term “wind powered vessel” shall mean a vessel that is being propelled by the wind through the use of sails and without the use of a motor or other machinery.

Section 2: Subsection 17.20.020(A) of Chapter 17.20 is hereby amended to read as follows:

A. Speed Limit. No owner, operator or person in command of any vessel, except a public officer or employee in the performance of his or her duty, shall operate the same or permit the same to be operated in any portion of Newport Harbor or the water in the present or prior channel of the Santa Ana River within the City at a rate of speed in excess of five nautical miles per hour, or at any speed which creates a wake that may cause damage to moorings of vessels or floating structures, except as hereinafter provided.

Section 3: Section 17.20.070 is added to Chapter 17.20 to read as follows:

17.20.070 Vessel Races.

A. The Harbormaster may issue a permit to a person, as defined in Code Chapter 17.01, or any successor chapter, that would allow individuals operating a human powered vessel, wind powered vessel, or vessel providing support services to a human or wind powered vessel as part of the person’s special event (e.g., race) or organized practice to exceed the speed limit provided in Code Subsection 17.20.020(A), or any successor subsection. Notwithstanding the foregoing, no person shall operate any vessel in an unsafe, uncontrolled, or un-seamanlike manner, and in no event at a speed that endangers the safety of persons or property.

B. The Harbormaster has discretion to determine if a permit shall be associated with a single event or multiple events; however, no permit shall be valid for more than six (6) months from the date of issuance.

C. Permits issued under this section are non-transferrable and shall be in addition to any license, permit or fee required under this Code or any other provision of law.

D. The Harbormaster may impose conditions on a permit to protect persons and property and to assure that the activity allowed under the permit will not create a nuisance or interfere with the reasonable use of Newport Harbor by other vessels or persons. At a minimum, every permit issued under this section shall be conditioned to require permittees to: (1) obtain, provide, and maintain at their own expense, for the full period of time for which the permit is granted, policies of insurance with such limits and coverage as established by the City Risk Manager that clearly identify the activity and vessel(s) covered; (2) indemnify, defend and hold harmless the City, County of Orange, and the State of California for all liability, injury or damage that relates to or arises from permittee's event/activity; and (3) otherwise comply with this Code, California Harbors and Navigation Code, and the Federal Inland Navigation Rules.

E. Any permit issued under this section may be immediately revoked at any time, without notice, by the Harbormaster, if: (1) the permittee fails to comply with the conditions contained within the permit; (2) an individual participating in the permittee's special event or organized practice operates a vessel in an unsafe, uncontrolled, or un-seamanlike manner or at a speed that endangers persons or property; or (3) an individual participating in the permittee's special event or organized practice fails to comply with the lawful instructions of the Harbormaster, or any other person authorized by the City to enforce rules and regulations within Newport Harbor.

F. Any decision of the Harbormaster under this section may be appealed pursuant to Code Chapter 17.65, or any successor chapter.

Section 4: 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 5: The recitals provided in this ordinance are true and correct and are incorporated into the substantive portion of this ordinance.

Section 6: 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.

Section 7: 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 8: 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.

This ordinance was introduced at a regular meeting of the City Council of the City of Newport Beach, held on the 27th day of November, 2018, and adopted on the 11th day of December, 2018, by the following vote, to wit:

AYES: COUNCILMEMBERS _____

NAYS: COUNCILMEMBERS _____

RECUSED: COUNCILMEMBERS _____

ABSENT: COUNCILMEMBERS _____

MARSHALL "DUFFY" DUFFIELD, MAYOR

ATTEST:

LEILANI I. BROWN, CITY CLERK

APPROVED AS TO FORM:
THE CITY ATTORNEY'S OFFICE

AARON C. HARP, CITY ATTORNEY

PROPOSED