

ATTACHMENT A

ORDINANCE NO. 2020-27

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF NEWPORT BEACH, CALIFORNIA, AMENDING CHAPTER 17.40 (LIVE-ABOARDS) OF TITLE 17 (HARBOR CODE) OF THE NEWPORT BEACH MUNICIPAL CODE AND OTHER RELATED PROVISIONS

WHEREAS, Section 200 of the Charter of the City of Newport Beach (“Charter”) 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 Title 17 (Harbor Code) (“Title 17”) of the Newport Beach Municipal Code (“NBMC”);

WHEREAS, in 2017, the City assumed mooring management responsibilities from the County of Orange Sheriff’s Department over Newport Harbor and created a Harbor Department to oversee these new responsibilities and, as a result, the City Council adopted Ordinance No. 2018-17 amending Title 17 to reflect this reorganization;

WHEREAS, on January 28, 2020, the City Council adopted comprehensive revisions to Title 17 (Harbor Code), and directed the Harbor Commission to further analyze revisions to Chapter 17.40 (Live-Aboards);

WHEREAS, at the September 9, 2020 meeting, the Harbor Commission recommended City Council approve revisions to Chapter 17.40 (Live-Aboards) and other related revisions;

WHEREAS, updates to other related provisions of the NBMC are necessary in order to create consistency throughout the NBMC; and

WHEREAS, the City shall file 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: The definition of “Live-Aboard” in Subsection (l)(2) of Section 17.01.030 (Definitions: L.) of Chapter 17.01 (Definitions) of Title 17 (Harbor Code) of the Newport Beach Municipal Code is hereby amended to read as follows:

2. Live-Aboard. The term “live-aboard” shall mean the use or occupancy of a vessel for human habitation a) while at its mooring for a period exceeding seventy-two (72) hours in any thirty (30) day consecutive period; or b) at its dock or berth in a commercial marina for a period exceeding one hundred eighty (180) days or more, in any three hundred sixty-five (365) day period.

Section 2: Subsection (E) of Section 17.20.020 (Vessel Operation) of Chapter 17.20 (Vessel Launching and Operation) of Title 17 (Harbor Code) is hereby amended to read as follows:

E. Anchoring. In addition to the requirements set forth in Section 17.25.020(A)(1)(b), no person owning, leasing, occupying or having charge or possession of any vessel shall anchor such vessel in any of Newport Harbor’s designated public anchorage areas or on the Pacific Ocean unless the vessel is continuously occupied by a person during:

1. Any nighttime hours (sunset to sunrise);
2. Any time period when a Small Craft Advisory or greater has been issued by the National Oceanic and Atmospheric Administration; and
3. During daylight hours, except for one shore excursion per day for no more than three hours.

Section 3: Subsection (A) of Section 17.25.020 (Anchorage, Berthing and Mooring Regulations) of Chapter 17.25 (Berthing, Mooring and Storage) of Title 17 (Harbor Code) 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 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 (H) 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. No person owning, leasing, occupying or having charge or possession of any vessel shall:

a. Berth or anchor the same in Newport Harbor except within the designated areas; or

b. Anchor a vessel in any of Newport Harbor's designated public anchorage areas or 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, in writing, 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.

Section 4: Section 17.40.010 (Purpose) of Chapter 17.40 (Live-Aboards) of Title 17 (Harbor Code) of the Newport Beach Municipal Code is hereby amended in its entirety to read as follows:

Section 17.40.010 Purpose.

The City Council of the City of Newport Beach finds and declares as follows:

This chapter will promote the public health, safety and welfare by regulating the number of persons living aboard vessels on offshore moorings and ensuring, to the extent possible, that the residential use of a vessel in Newport Harbor does not result in the discharge of human waste or other waste; activities that are disruptive or impede other parties' use and/or enjoyment of Newport Harbor; or otherwise adversely impact the health, safety and welfare of Newport Harbor and those that visit, work around, or live on or near, the bay.

Section 5: Section 17.40.020 (Live-Aboards Prohibited) of Chapter 17.40 (Live-Aboards) of Title 17 (Harbor Code) of the Newport Beach Municipal Code is hereby amended in its entirety to read as follows:

Section 17.40.020 Live-Aboards Prohibited.

Live-boards shall not be permitted at piers that are bayward of residentially zoned areas. No person shall live aboard any vessel on an onshore mooring.

Section 6: Section 17.40.030 (Permits Required) of Chapter 17.40 (Live-Aboards) of Title 17 (Harbor Code) of the Newport Beach Municipal Code is hereby amended in its entirety to read as follows:

Section 17.40.030 Permits Required.

No person shall live-aboard any vessel in Newport Harbor 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 or a valid rental agreement from a commercial marina. 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: a) with respect to a mooring permittee, to live-aboard for not less than two hundred forty-three (243) days in any calendar year; or b) with respect to the tenant of a commercial marina with a valid rental agreement, to live-aboard for a period not less than one hundred eight (180) days in any three hundred sixty-five (365) day period.

Section 7: Section 17.40.050 (Issuance of Permit) of Chapter 17.40 (Live-Aboards) of Title 17 (Harbor Code) of the Newport Beach Municipal Code is hereby amended in its entirety to read as follows:

Section 17.40.050 Issuance of Permit.

Upon receipt of an application for a live-aboard permit, the Harbormaster shall investigate the information contained in the application along with other information on record available to the City. The Harbormaster shall deny the application if:

- A. The vessel which will serve as the principal residence is not equipped with a fully operational marine sanitation device and holding tank with a capacity of no less than ten (10) gallons which is necessary to ensure no discharge of human waste into Newport Harbor;
- B. Approval of the application would result in live-aboard permits in excess of the limitations provided by this chapter;
- C. The applicant does not have a valid mooring permit as required by Section 17.60.040 or a valid rental agreement from a commercial marina.

- D. Issuance of the permit, given the specific circumstances of the application, would significantly impact persons residing, working or visiting Newport Harbor;
- E. The vessel is incapable of safely maneuvering under its own power, whether by sail or engine, from its mooring, dock or berthing place, to the open waters of the Pacific Ocean and back to the mooring, dock or berthing place; or
- F. In the case of a renewal, the applicant was in violation of this title during the prior permit term.

Section 8: Section 17.40.060 (Term/Renewal) of Chapter 17.40 (Live-Aboards) of Title 17 (Harbor Code) of the Newport Beach Municipal Code is hereby amended in its entirety to read as follows:

Section 17.40.060 Term/Renewal.

- A. Permits issued pursuant to this chapter shall be valid for a term of twelve (12) months. Applications for the renewal of any permit shall be submitted at least sixty (60) calendar days before expiration of the permit, on forms supplied by the City, shall include the fee established by resolution of the City Council and shall specify any changes to the information provided on the original application for a permit.
- B. The application for renewal shall be denied if the permittee does not comply with any of the requirements specified in Section 17.40.050; the permittee has failed to comply with any provision of this title during the term of the previously issued permit; or the permittee has failed to use the vessel as permittee's principal residence during the previous term of the permit.
- C. The issuance of a live-aboard permit to a mooring permittee is not transferrable and does not create any tenancy between the City and the permittee or other persons living aboard, nor does it create any property right to the mooring site.

Section 9: Section 17.40.110 (Limitation on Number of Permits) of Chapter 17.40 (Live-Aboards) of Title 17 (Harbor Code) of the Newport Beach Municipal Code is hereby amended in its entirety to read as follows:

Section 17.40.110 Limitation on Number of Permits.

The number of live-aboard permits issued to permittees holding valid offshore mooring permits shall not exceed seven percent of the number of offshore mooring permits issued by the City pursuant to Chapter 17.60.

Section 10: Except as specifically amended by this ordinance, all other sentences, paragraphs, subsections, sections, chapters, and titles of the NBMC shall remain unchanged and in effect.

Section 11: The recitals provided in this ordinance are true and correct and are incorporated into the substantive portion of this ordinance.

Section 12: 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 13: 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), 15060(c)(3) (the activity is not a project as defined in Section 15378), 15320 (changes in organization by local agencies), and 15321 (enforcement actions by regulatory agencies) of the CEQA Guidelines, California Code of Regulations, Title 14, Division 6, Chapter 3, because the revisions to Title 17 set forth herein have no potential for resulting in physical change to the environment, directly or indirectly.

Section 14: 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 shall be effective thirty (30) calendar days after its adoption.

This ordinance was introduced at a regular meeting of the City Council of the City of Newport Beach, held on the 27th day of October, 2020, and adopted on the 10th day of November, 2020, by the following vote, to wit:

AYES: _____

NAYS: _____

ABSENT: _____

RECUSED: _____

WILL O'NEILL, MAYOR

ATTEST:

LEILANI I. BROWN, CITY CLERK

APPROVED AS TO FORM:
THE CITY ATTORNEY'S OFFICE

for  _____
AARON C. HARP, CITY ATTORNEY