



CITY OF

NEWPORT BEACH

City Council Staff Report

October 27, 2020
Agenda Item No. 14

TO: HONORABLE MAYOR AND MEMBERS OF THE CITY COUNCIL

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TITLE: Ordinance No. 2020-27: Amending Chapter 17.40 (Live-Aboards) of Title 17 (Harbor Code) of the Newport Beach Municipal Code and Other Related Provisions

ABSTRACT:

Over the last year, the Harbor Commission has reviewed and recommended changes to Title 17, the Harbor Code, to the City Council. On January 28, 2020, the City Council adopted the proposed changes to Title 17 as recommended. City Council requested the Harbor Commission return to the City Council with additional recommendations to the requirements for live-aboards in commercial marinas. In addition, staff is requesting consideration of a time limit clarification for the anchorage to enforce a three-day (72 hour) time limit (Attachment A).

RECOMMENDATION:

- a) Determine this action is exempt from the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(2) and 15060(c)(3) of the CEQA Guidelines because this action will not result in a physical change to the environment, directly or indirectly; and
- b) Waive full reading, read by title only, introduce Ordinance 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) and Other Related Provisions*, and pass to second reading on November 10, 2020.

FUNDING REQUIREMENTS:

There is no fiscal impact related to this item.

DISCUSSION:

As part of the update to Title 17, the City Council requested that the Harbor Commission review the language relating to live-aboards in commercial marinas. As part of this review, the Harbor subcommittee, consisting of Chair Kenney and Commissioner Yahn, held a public meeting on this issue on August 26, 2020. Letters were sent to all commercial marina operators in the City (Attachment C). The Commission received two letters (Attachment D) and eight individuals attended the virtual meeting.

During the review of this issue, staff identified several inconsistencies between the definition of a Live-Aboard and its impact on commercial marinas. The proposed language would resolve the inconsistencies.

The current definition of a Live-Aboard is:

17.01.030 Definition of Terms.

2. Live-Aboard. The term “live-aboard” shall mean the use or occupancy of a vessel as a domicile or for human habitation while at its dock, berth, or mooring for a period exceeding seventy-two (72) hours in any thirty (30) day consecutive period.

There is currently an inconsistency between this definition and the implementation of the program as described in section 17.40. The proposed changes as shown on Attachment A will provide for live-aboards in commercial marinas when a live-aboard is at the marina for more than 180 days in any 365-day period.

The proposed revisions to 17.40 include:

- Adding language to expand live-aboards in commercial marinas under certain circumstances.
- Ensuring all vessels are capable of operating from their berthing place.
- Clarifying only offshore moorings are subject to a 7% limitation; commercial marinas would not be subject to limitations on the number of live-aboards allowed.

The excerpt from the Harbor Commission meeting minutes from September 9, 2020 is shown in Attachment E. During the meeting, three speakers from the public spoke on the issue. A question was raised regarding the possibility of live-aboards being counted toward the City’s housing numbers, and it has been determined that unless a vessel is hooked up to utilities, it cannot be counted. The only marina operator at the meeting supported the proposed changes.

In addition to the proposed revisions to 17.40, staff is requesting clarification regarding Section 17.25.020 – Anchorage, Berthing and Mooring Regulations

- Anchoring a vessel is only allowed in designated anchorages, and the vessel must be attended to at all times.

The Harbormaster believes this clarification will provide additional tools to manage the public anchorage more effectively. This language will allow staff to enforce the 72-hour rule within any 30-day period. After discussions with the Orange County Sheriffs’ Department, they felt the language was not clear in the City’s Municipal Code. This language clearly states that vessels are only allowed in designated public anchorages for 72 hours.

The Harbor Commission voted 7-0 to approve the proposed changes as recommended.

ENVIRONMENTAL REVIEW:

Staff recommends the City Council find this action 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.

NOTICING:

The agenda item has been noticed according to the Brown Act (72 hours in advance of the meeting at which the City Council considers the item).

ATTACHMENTS:

- Attachment A – Ordinance No. 2020-27
- Attachment B – Ordinance Redline
- Attachment C – Letter to Marina Operators
- Attachment D – Correspondence
- Attachment E – Excerpt from Harbor Commission Meeting Minutes