

Attachment B

Ordinance-Redline Version

Section 10.06.010 (Human Waste) of Chapter 10.06 (Human Waste) of the NBMC is hereby amended to read as follows:

Section 10.06.010 Human Waste.

No person shall urinate or defecate on private property in an area exposed to the public view, in or on Newport Harbor (as defined in Section 17.01.030), or on any public street, sidewalk, alley, park, beach, or other public place, except in a public or private restroom.

Section 11.20.050 (Cleaning of Fish or Mussel) of Chapter 11.20 (Fishing Regulations) of the NBMC is hereby amended to read as follows:

Section 11.20.050 Cleaning of Fish or Mussel.

No person shall place, cut or clean any fish, mussel, bait or other marine animal upon any bench or seat placed upon any ocean pier, public dock, or upon the floor or railings of such piers or docks.

Subsection (B) (Notice of Public Hearing) of Section 17.05.140 (Public Hearings) of Chapter 17.05 (General Provisions) of the NBMC is hereby amended to read as follows:

B. Notice of Public Hearing.

1. Content of Notice. Notice of a public hearing shall include the following applicable information:

a. Hearing Information.

i. The date, time, and place of the hearing and the name of the review authority;

ii. A brief description of the City's general procedure concerning the conduct of hearings and decisions;

iii. The phone number, street address, and website of the City, where an interested person can call or visit to obtain additional information;

iv. A statement that an interested person or authorized agent may appear and be heard at the public hearing and the procedures for appeal; and

v. A statement that if a person challenges the subject development in court, that person may be limited to raising only those issues that the person, or someone else speaking on their behalf, raised at the public hearing (described in the notice) or in written correspondence delivered to the City at, or before, the public hearing.

b. Project Information.

i. The name of the applicant;

ii. The City's file number(s) assigned to the application;

iii. A general explanation of the matter to be considered; and

iv. A general description, in text and/or by diagram, of the location of the property or mooring that is the subject of the hearing.

2. Method of Notice Distribution. Notice of a public hearing required by this title shall be given as specified below.

a. Mailing. Notice shall be mailed or delivered at least ten (10) calendar days before the scheduled hearing to all the following:

i. Project Site Owners, Applicant and Appellant. The owners of the property being considered in the application, or the owners' agent, the applicant or the applicant's agent, and the appellant, if any;

ii. Nearby Property Owners. All owners of real property located within a three hundred (300) foot radius, ~~excluding intervening rights-of-way and waterways~~, of the exterior boundaries of the location of the subject matter of the application, as shown on the last equalized assessment roll. It shall be the responsibility of the applicant to obtain and provide to the review authority a list of the names and addresses of all owners who are to be provided notice under this subsection; and

iii. Persons Requesting Notice. A person who has made a written request for notice with the City Clerk.

b. Posting of a Sign and Notice. Notice shall be posted at a conspicuous place, easily readable by the public and placed as close as possible to the site of the proposed development at least ten (10) calendar days before the scheduled public hearing in the following manner:

- i. One or more signs shall be posted as determined by the City;
 - ii. The size and location of the sign(s) shall be determined by the City to ensure that it will be easily readable by the public;
 - iii. The project applicant, or in the case of an appeal, the appellant shall be responsible for maintaining the sign(s) in a satisfactory condition; and
 - iv. The project applicant shall remove the sign(s) after the date specified for the public hearing.
- c. Failure to Receive Notice. The failure of any person or entity to receive notice given in compliance with this section shall not invalidate the actions of the applicable review authority.

Section 17.10.020 (Permit for Commercial Activities in Newport Harbor Required) of Chapter 17.10 (Marine Activities Permit) is hereby amended to read as follows:

Section 17.10.020 Permit for Commercial Activities in Newport Harbor Required.

A. No person shall engage in any commercial activity including, but not limited to, advertising, brokering, scheduling, arranging, providing, operating or renting any bareboat or certified charter, vessel or equipment, on the waters of Newport Harbor without first obtaining a valid marine activities permit pursuant to this chapter.

B. No person shall use a vessel to conduct a business or service including, but not limited to, pumpout, towing, bottom cleaning, fuel delivery, and/or maintenance or repair services, on the waters of Newport Harbor without first obtaining a valid marine activities permit pursuant to this chapter.

C. Any person engaging in commercial activity that advertises, lists, or offers a vessel for rent or charter in the City, including on any charter or boat rental hosting platform, or social media platform, shall prominently display the valid City issued marine activities permit number within the body of every such advertisement, marketing materials, or listing.

The table of contents for Chapter 17.10 (Marine Activities Permit) of the NBMC is hereby amended to read as follows:

**Chapter 17.10
MARINE ACTIVITIES PERMIT**

Sections:

- 17.10.010 Findings and Purpose.
- 17.10.020 Permit for Commercial Activities in Newport Harbor Required.
- 17.10.022 Issuance of Administrative Subpoenas.**
- 17.10.025 Exemptions.
- 17.10.030 Application for Permit.
- 17.10.040 Filing Fee.
- 17.10.050 Issuance of Permit.
- 17.10.060 Power to Impose Conditions—Hold Harmless.
- 17.10.070 Insurance.
- 17.10.080 Duration of Permit.
- 17.10.090 Enforcement—Right of Entry.
- 17.10.100 Transfer of Permit.
- 17.10.110 Licenses and Fees Not Exclusive.
- 17.10.120 Application to Existing Commercial Activities.

Section 17.10.022 (Issuance of Administrative Subpoena) of Chapter 17.10 (Marine Activities Permit) is hereby added to read as follows:

Section 17.10.022 Issuance of Administrative Subpoena.

The Harbormaster shall have the authority to issue and serve administrative subpoenas to the operator and agent of a vessel, charter or boat rental hosting platform, social media platform, or any person facilitating vessel charters or rentals, as necessary, to obtain specific information regarding charter listings located in the City, including, but not limited to, the names of the persons responsible for each such listing, the address and contact information associated with such listing, and such other information necessary to determine whether the listing complies with this chapter. Any subpoena issued pursuant to this section shall not require the production of information sooner than thirty (30) days from the date of service. A person that has been served with an administrative subpoena may seek judicial review during that thirty (30) day period. Failure to respond to an administrative subpoena in accordance with the terms set forth herein shall constitute a violation of this section. In addition to any other remedies provided in this Code, the City may file a judicial action to compel compliance with the subpoena.

Subsection (H) (Mooring, Anchoring and Vessel Condition Requirements) of Section 17.25.020 (Anchorage, Berthing, and Mooring Regulations) of Chapter 17.25 (Berthing, Mooring and Storage) of the NBMC is hereby amended to read as follows:

- H. Mooring, Anchoring and Vessel Condition Requirements.

1. Anchoring and Mooring. All vessels anchored on the open waters of the Pacific Ocean or in the designated anchorage area in Newport Harbor shall be anchored in such a manner so that the vessel does not come in contact with another vessel or structure. Vessels anchored in the designated anchorage area in Newport Harbor shall also not extend beyond the demarcation line of the designated anchorage area. 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 vessel from swinging, turning or drifting in a way that interferes with or impedes safe navigation around the moored vessel, except in areas designated by the Harbormaster as single mooring areas. Vessels in single mooring areas shall be tied from the bow. Double or two-point moorings that are equipped with two mooring buoys for mooring to both bow and stern are required to have at all times (a) a vessel properly tied to both mooring buoys or (b) a spreader line secured and connected to both buoys. The spreader line shall be kept clean of algae and other marine growth to ensure it remains easily visible. The maximum permitted mooring lengths shall not exceed the established length of their mooring rows. No portion of a moored vessel or any object attached to the vessel may extend into the mooring field fairways.

2. Vessel Condition. Safety, Seaworthiness and Operability. Vessels assigned to a mooring by permit must be maintained in a safe, seaworthy and operable 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 safe, seaworthy and operable, the Harbormaster shall give written notice to the permittee, in accordance with the service requirements of Section 1.05.030, requesting a demonstration that the vessel is safe, 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 safe, seaworthy or operable. In the event that the Harbormaster determines that vessel is not safe, 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 safe, 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. Vessel Condition—Public Nuisance. No person owning, leasing, occupying or having charge or possession of any vessel in Newport Harbor shall 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, or boxes that are visible aboard the vessel or stored inside the vessel in such a way as to make the vessel inoperable for its intended use;

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 or health, such as, but not limited to: propagation of vermin, rats, insects, or unsanitary conditions from the accumulation of fecal materials;

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

g. Operation of its mechanical or electrical systems creates excessive 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;

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, and
 - ii. Continues after a written or oral request to terminate the conduct, or
 - iii. Is offensive to a considerable number of people.
- j. Anchorage in an area controlled by the City without adequate anchor(s) rope or 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 or impedes safe navigation in Newport 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. Failing to connect a portable or permanently installed marine sanitation system, if any, to an internal holding tank while operating, anchoring, mooring, docking, or otherwise maintaining a vessel in Newport Harbor;~~
- n. ~~Failing to have an operable portable marine sanitation device or a permanently installed marine sanitation system for any vessel on which a person may stay aboard overnight pursuant to a mooring permit, mooring sub-permit, mooring license, or as otherwise authorized, or while located in one of the public anchorages; or~~
- o. ~~The use of improvised waste containment methods for human or animal excreta.~~
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 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 days of the notice of violation. If the Harbormaster determines that appropriate deterrent measures have not been taken within seven days of the notice of violation, the Harbormaster may issue an administrative citation or take any other

enforcement action authorized by this Code. In the event the Harbormaster issues an administrative citation, the permittee shall:

- a. Take any and all necessary action to employ and maintain appropriate sea lion deterrent measures; or
- b. Remove the vessel from Newport Harbor.

“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. If the City is unable to reach the permittee within the seven days, the Harbormaster may install temporary deterrent measures as needed and recover the City’s cost of compliance.

Subsection (A) (Waste and Refuse) of Section 17.45.030 (Waste and Refuse) of Chapter 17.45 (Sanitation) of the NBMC is hereby amended to read as follows:

A. Discharge of Treated or Untreated Human or Animal Excreta. No person shall discharge, permit or allow any other person on a vessel under his or her control or command to discharge any treated or untreated human or animal excreta from any marine sanitation device ~~or by other means on a vessel~~ into the waters of Newport Harbor or the Pacific Ocean. The provisions of this section do not apply to the cleaning of vessels for the purpose of removing accumulated animal excreta from nondomesticated animals, including sea lions and migratory waterfowl. In accordance with California Harbors and Navigation Code Section 782 or any successor statute, any vessel in the waters of Newport Harbor or on the waters of the Pacific Ocean within the jurisdiction of the City, with a marine sanitation device, is subject, at any time, to boarding by the Harbormaster to inspect the operation and condition of the same and shall be subject to the use of a dye tablet to determine whether or not the marine sanitation system is discharging overboard. Violations are subject to all available remedies, including immediate removal from Newport Harbor.