



NEWPORT BEACH

City Council Staff Report

April 12, 2022
Agenda Item No. 11

TO: HONORABLE MAYOR AND MEMBERS OF THE CITY COUNCIL

FROM: Paul Blank, Harbormaster, (949) 270-8158
pblank@newportbeachca.gov

PREPARED BY: Paul Blank, Harbormaster,
pblank@newportbeachca.gov

PHONE: 949-270-8158

TITLE: Ordinance No. 2022-9: Amending the Newport Beach Municipal Code Pertaining to Raft-Ups, Live-Aboards, On-Shore Moorings, and Other Miscellaneous Provisions

ABSTRACT:

As one of its annual objectives, the Harbor Commission tasked itself with reviewing and recommending revisions to Title 17 of the Newport Beach Municipal Code (NBMC). During the review, other sections of the NBMC were also considered for revision. The recommend changes are intended to assist staff and the Harbor Commission when considering operations, permitting and code enforcement in Newport Harbor. City Council approval is requested for the recommended revisions, which were approved by the Harbor Commission at its February 9, 2022 meeting.

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, direct the City Clerk to read by title only, introduce Ordinance No. 2022-9, *An Ordinance of the City Council of Newport Beach, California, Amending Sections 1.05.020, 1.12.020, 17.01.030, 17.10.060, 17.25.010, 17.25.020, 17.40.030, 17.45.020, 17.60.040, 17.65.010 and 17.70.050 of the Newport Beach Municipal Code Pertaining to Raft-Ups, Live-Aboards, On-Shore Moorings, and Miscellaneous Provisions*, and pass to second reading on April 26, 2022.

DISCUSSION:

In accordance with the Harbor Commission's charge under Section 713 of the Newport Beach City Charter to advise the City Council on matters relating to the use, control, operation and regulation of Newport Harbor, a subcommittee of the Harbor Commission (Commission) worked on recommendations for improvements to Title 17 of the NBMC. The subcommittee responsible for Harbor Commission Objective 1.1 solicited suggestions from other Commissioners, community members and Harbor Department staff. Those suggestions were collected and compiled into the attached "CNB MC Amendments 2022-01 – various" documents.

The recommended revisions to the NBMC include amending the provisions for anchoring, mooring, and live-aboards; amending the regulations regarding noise, speed limits, pier use, and fueling; and amending the City of Newport Beach's (City's) ability to enforce the provisions of Title 17, including establishing fines for specific infractions related to abandoning vessels in Newport Harbor.

The subcommittee responsible for Harbor Commission Objective 1.1 reported progress at the following public meetings, all of which provided the public with an opportunity to comment:

- September 8, 2021 Harbor Commission Meeting
- October 13, 2021 Harbor Commission Meeting
- November 10, 2021 Harbor Commission Meeting
- December 6, 2021 Harbor Commission Meeting
- January 12, 2022 Harbor Commission Meeting

Presented by the Harbor Commission subcommittee, the proposed changes had a full, robust and complete public hearing at the February 9, 2022 Harbor Commission Meeting. The vote to approve the recommendations and send them to the City Council was unanimously affirmative. These proposed changes represent the Harbor Commission's best guidance on how to ensure a clean, safe and well-enjoyed experience for all harbor users

Raft-Up Permits

Prior to the establishment of the Harbor Department, raft-up permits were written by the Orange County Sheriff Department's Harbor Patrol as part of its agreement with the City. With the establishment of the City's Harbor Department, responsibility for events permitting in the harbor transitioned to the City. Establishing these guidelines in the Harbor Code (NBMC Title 17) makes clear the responsibility of the Harbor Department for permitting and managing these events. The recommended revisions also make clear the expectations and rationale supporting conditions of such permits, while simplifying the process for those who enjoy participating in such activities.

NBMC Title 17 does not effectively define or regulate "raft-ups," which have proliferated and become challenging to manage in recent years. Adding the requirement to obtain a permit for and more clearly define raft-ups specifically in NBMC Title 17 will allow the City to regulate and better manage them and thereby improve safety and the enjoyment of the Harbor for users and adjacent residents.

The necessity to permit raft-ups is a requirement of the City Fire Code. NBMC Section 9.04.350 Amendments to Section 3603.6 Berthing and Storage includes:

3603.6.2 Permitted multiple berthing. A permit may be issued for multiple berthing under the following conditions:

2. The multiple berthing is necessary for a special event or other extenuating circumstances and will occur for a limited period of time, which shall be approved by the fire code official and per City’s Guidelines and Standards A.10 Multiple Berthing and/or Rafting at Special Events.

The City’s Guidelines and Standards A.10 Multiple Berthing and/or Rafting at Special Events includes the following definition:

RAFTING: To moor with more than one boat tied together, usually using only one boat’s anchor and line

The difficulty of fighting a fire or providing life-saving services in the event of an emergency increases proportionately with the number of vessels involved in a raft-up. Vessels of differing heights, freeboards and positions for boarding all complicate efforts to move quickly and safely from one vessel to another within raft-ups. Carrying life-saving or fire-fighting equipment makes movement from one vessel to another that much more challenging and dangerous.

Since the City Harbor Department took responsibility for permitting of such raft-ups in 2017, there have been 23 calls for service logged related to noise coming from raft-ups or unpermitted raft-ups. The call breakdown is provided in this table:

Raft-up Related Calls For Service by Year				
Calendar Year	Noise Reported By		Unpermitted	Total
	Residents	Other Vessels	Raft-up	
2018	2	1	1	4
2019	1		1	2
2020	2	2	8	12
2021	2		3	5
			Total	23

In most cases, Harbor Services Workers gained cooperation and compliance from those violating the NBMC or conditions of their permit after a short investigation. In two cases, non-compliance led to the issuance of four citations. Three of those four citations were upheld by a hearing officer upon appeal.

The timeline recommended for review of raft-up applications is consistent with that for Level 1 Special Events Permits reviewed and granted by the Recreation and Senior Services Department. Guidelines for Level 1 Special Events Permits include:

- The process must begin 1 – 2 months before event
- Less than 1,000 people in attendance
- A late fee applies to applications received less than 20 calendar days before event

In the interest of providing superior customer service, the Harbor Department expects and will make every effort to review and respond to applications faster than the 30-day timeframe specified. It is, however, thought to be in the best interest of all concerned that, when resources are limited, as has been the case for most of the last 12 months, expectations for applicants on speed of a decision are appropriately and reasonably set.

Mooring Sub-Permits

The recommended revisions related to mooring sub-permits will make Newport Harbor a more attractive short-term destination for vessels transiting north and south along the Pacific Coast. Mariners can better make use of local services and purchase supplies for the next leg of their voyage with some relaxed restrictions on how long they can stay aboard their vessels in the harbor.

Enforcement

It was felt by the Harbor Commission and City Attorney that both raft-up and mooring sub-permits should be made immediately revocable in the presence of unsafe or nuisance conditions. So that unsafe or nuisance conditions can be abated swiftly, the revocation of one of these permits should not be appealable. Making these revocations non-appealable provides for immediate resolution to adverse conditions and eliminates the need to wait through an appeal process. Including this provision in the code sections specific to these permits provides efficiency and clarity when citing the code. When the permits are issued and include the NBMC reference for emphasis, it is helpful for the permittees to see and understand that the permits can be revoked immediately and without an appeal process. Citations or fines resulting from any violation of raft-up or mooring sub-permits remain appealable.

Miscellaneous Amendments

The Marine Activities Permit (MAP) program was updated in 2021 with the introduction of new, codified MAP conditions and practices. The Harbor Commission and staff felt it wise to make language within the NBMC more consistent with that in the permits with respect to noise and speed when operating in the harbor. Further, the recommended changes reflect a wider variety of ways for permittees to comply with the NBMC as it relates to use of marine sanitation and pump-out systems appropriate to their operations.

Fueling via vessels specifically designed and permitted for that purpose is a great convenience to many mariners. The recommended revision will allow the practice to continue subject to approval from various City departments and outside agencies.

The recommended revisions also allow the Harbormaster and Code Enforcement officials to apply NBMC sections outside Title 17, but related to harbor uses such as those for nuisances, building permits and water quality. The recommended revisions will bring the City into compliance with California law associated with grant funds used to destroy abandoned or surrendered vessels for which the City takes responsibility.

The recommended revisions and the associated rationale for proposing them are included in Attachment A. A clean version of the proposed revisions is also provided as Attachment B.

FISCAL IMPACT:

There is no fiscal impact associated with the adoption of this ordinance.

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 – CNB MC Amendments 2022-01 – various (strikeout)

Attachment B – CNB MC Amendments 2022-01 – various (clean)

Attachment C – Ordinance No. 2022-9