

ATTACHMENT A

ORDINANCE NO. 2022-9

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF NEWPORT BEACH, CALIFORNIA, AMENDING SECTIONS 1.12.020, 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 LIVE-ABOARDS, ON-SHORE MOORINGS, AND MISCELLANEOUS 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 Constitution, 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 has adopted rules and regulations for Newport Harbor, which are contained in Title 17 (Harbor Code) ("Title 17") of the Newport Beach Municipal Code ("Code" or "NBMC");

WHEREAS, the Harbor Commission recommends amending Title 17 to provide visiting boaters an alternative to searching for accommodations while on vacation, provide for additional regulation of certain activity within Newport Harbor and to clarify existing provisions;

WHEREAS, amendments to the City's general code enforcement provisions contained in Title 1 (General Provisions) of the Code will permit Harbor Department staff to enforce provisions of the Code outside of Title 17 that are applicable to Newport Harbor; 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 ordain as follows:

Section 1: Subsection (E) of Section 1.12.020 (NBMC Authority of Public Officers or Employees to Issue Citations) of Chapter 1.12 (Citations and Warrants) of Title 1 of the Code is hereby amended to add the Harbormaster, to read as follows:

E. The Community Development Director, Public Works Director, Harbormaster and code enforcement staff within said departments, as designated by the Directors, shall have the power to issue citations for any violation of this Code.

Section 2: Subsection (B) of Section 17.10.060 (Power to Impose Conditions—Hold Harmless) of Chapter 17.10 (Marine Activities Permit) of Title 17 of the Code is amended to revise paragraph (5) and add new paragraph (16), to read as follows:

B. All permits issued pursuant to this chapter are subject to the following standard conditions:

5. Music and sound from the vessel shall not be loud and unreasonable and shall comply with the standards and requirements of Chapters 10.28 and 10.32.

16. All vessels shall obey the speed limit of Section 17.20.020(A) and operate safely at all times while on the waters of Newport Harbor.

Section 3: Subparagraph (b) of Paragraph (1) of Subsection (C) (Time Limits and Rules) of Section 17.25.010 (Docking Regulations) of Chapter 17.25 (Berthing, Mooring and Storage) of Title 17 of the Code is amended to read as follows:

C. Time Limits and Rules.

1. [Unchanged.]

b. Green markings shall mean vessels may be tied up or secured for three (3) hours maximum.

Section 4: Subsection (E) of Section 17.25.010 (Docking Regulations) of Chapter 17.25 (Berthing, Mooring and Storage) of Title 17 of the Code is amended to read as follows:

E. Direct Fueling Prohibited. No person shall fuel any vessel with any petroleum product directly from a tank, wagon or truck except by a certified vessel designed for such purpose and with a conditional use permit or marine activities permit.

Section 5: Section 17.40.030 (Permits Required) of Chapter 17.40 (Live-Aboards) of Title 17 of the Code is amended to read as follows:

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 eighty (180) days in any three hundred sixty-five (365) day period. Notwithstanding the foregoing, a sub-permittee of an off-shore mooring under Section 17.60.040 who is in good standing may live aboard, subject to and upon compliance with the requirements set forth Section 17.40.070(A). The ability of a sub-permittee to live aboard may be revoked at the discretion of the Harbormaster. The decision of the Harbormaster shall be final and non-appealable.

Section 6: Subsection (A) of Section 17.45.020 (Required Pump-Out Facilities) of Chapter 17.45 (Sanitation) of Title 17 of the Code is amended to read as follows:

A. All sailing clubs and marinas with a capacity of fifty (50) or more vessels shall install a vessel waste pump-out system solely for the use of vessels associated with that activity. The pump-out facility shall be installed on dock space under the control of the club or marina with convenient access to all vessels owned, leased or chartered by the club or marina. The pump-out facility shall have a capacity commensurate with the capacity of the holding tanks of the vessel or vessels of the club or marina.

Section 7: Subsection (H) (Procedures for Mooring Sub-Permit Issuance) of Section 17.60.040 (Mooring Permits) of Chapter 17.60 (Harbor Permits and Leases) of Title 17 of the Code is amended to read as follows:

H. Procedures for Mooring Sub-Permit Issuance. Issuance of a mooring sub-permit shall be subject to the following conditions:

1. Provision of a written representation of the mooring sub-permittee's vessel length which shall be satisfactory to the Harbormaster;

2. The mooring sub-permittee agrees to be responsible for any damage to mooring equipment; to defend and indemnify the City of Newport Beach and the mooring permittee against any claims or losses arising out of, or related to, the mooring rental; to provide proof of insurance as may be determined by the City's Risk Manager; to provide registration or other proof of ownership; to provide an equipment damage deposit, all to the satisfaction of the Harbormaster; and authorize the City, or its designee, to move the vessel on the mooring to another location when deemed necessary by the Public Works Director and/or Harbormaster;

3. The repair of any damage to the mooring equipment shall be paid by the mooring sub-permittee. If the mooring is damaged by a vessel assigned by the City, or the City's agent, the City shall arrange for the repair of the mooring with a qualified vendor and provide notice to the permittee of the occurrence and the arranged repair date. Should the sub-permittee fail to pay for the damage for any reason, the City will pay for the required repairs to the mooring, and then seek reimbursement from the sub-permittee. Also, the City shall make available a mooring without charge for the returning vessel of the mooring permittee until such time as their permitted mooring is repaired;

4. The mooring sub-permittee shall provide approved mooring lines which shall be removed at the end of the rental period;

5. A mooring sub-permit may be up to fifteen (15) days and may terminate at any time for any reason, and may be renewed based on availability. Upon return of the assigned vessel to the mooring, the Harbormaster will attempt to reassign the sub-permittee to another mooring. Mooring sub-permittees have no right of renewal or substitute moorings upon return of the assigned vessel, or upon termination of a mooring sub-permit for any reason. Mooring sub-permittees accept an indefinite term at their own risk. The decision by the Harbormaster to terminate a sub-permit shall be final and non-appealable;

6. The mooring sub-permit rent will be based on a rate established by resolution of the City Council; and

7. Mooring sub-permits are offered to the public on a first-come, first-served basis. City owned and operated moorings may be reserved in advance.

Section 8: Paragraph (1) of Subsection (K) (Revocation of Permit) of Section 17.60.040 (Mooring Permits) of Chapter 17.60 (Harbor Permits and Leases) of Title 17 of the Code is amended to read as follows:

1. The grounds and procedure for revocation of a mooring permit are set forth in Section 17.70.020.

Section 9: Subsections (A) and (C) of Section 17.65.010 (Authorization) of Chapter 17.65 (Appeals or Calls for Review) of Title 17 of the Code are amended to read as follows:

17.65.010 Authorization.

The purpose of this chapter is to provide procedures for the appeal or call for review of the decisions of the Public Works Director, the Community Development Director, Risk Manager, Harbormaster and Harbor Commission under this title.

A. Decisions of the Public Works Director, Community Development Director, Risk Manager, and/or Harbormaster resulting from his or her administration of this title may be appealed to the Harbor Commission by any interested person, except as otherwise provided herein.

C. A member of the Harbor Commission, acting in their official capacity, may call for review, to the Harbor Commission, decisions resulting from the Public Works Director, Community Development Director and/or Harbormaster's administration of this title, except as otherwise provided herein. The purpose of the call for review is to bring the matter in front of the entire body for review.

Section 10: Section 17.70.050 (Other Remedies) of Chapter 17.70 (Enforcement) of Title 17 of the Code is amended to read as follows:

17.70.050 Citations; Other Remedies.

A. The owner of a vessel deemed abandoned under Section 17.70.040 may be issued an administrative citation and assessed an administrative fine of \$1,000.

B. Notwithstanding the specific enforcement remedies referenced herein, the City may undertake other enforcement action as provided in the Code, State or Federal law to enforce the provisions of this title.

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 introduction and adoption of this ordinance is not subject to the California Environmental Quality Act ("CEQA") pursuant to Section 15301 (Existing Facilities) of the CEQA Guidelines, California Code of Regulations, Title 14, Division 6, Chapter 3 because the ordinance will result in negligible or no expansion of existing use.

Section 14: Except as expressly modified in this ordinance, all other sections, subsections, terms, clauses and phrases set forth in the Newport Beach Municipal Code shall remain unchanged and shall be in full force and effect.

Section 15: The Mayor shall sign and the City Clerk shall attest to the passage of this ordinance. The City Clerk shall cause the ordinance, or a summary thereof, to be published pursuant to City Charter Section 414. This ordinance shall be in full force and effect thirty (30) days after its adoption by a majority vote of the City Council.

This ordinance was introduced at a regular meeting of the City Council of the City of Newport Beach held on 26th day of April, 2022, and adopted on the 10th day of May, 2022, by the following vote, to-wit:

AYES: _____

NAYS: _____

ABSENT: _____

RECUSED: _____

ATTEST:

KEVIN MULDOON, MAYOR

LEILANI I. BROWN, CITY CLERK

APPROVED AS TO FORM:
CITY ATTORNEY'S OFFICE



AARON C. HARP, CITY ATTORNEY