



== CITY OF ==  
**NEWPORT BEACH**

**City Council Staff Report**

Agenda Item No. 3  
December 10, 2013

**TO:** HONORABLE MAYOR AND MEMBERS OF THE CITY COUNCIL

**FROM:** Public Works Department  
David A. Webb, Public Works Director  
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**PREPARED BY:** Chris Miller, Harbor Resources Manager  
949-644-3043, cmiller@newportbeachca.gov

**APPROVED:** 

**TITLE:** Adoption of Ordinance 2013-27 Amending Chapter 17.60 and Subsection 17.35.020(B)(2) of the NBMC Regarding Residential and Commercial Piers Located Upon Tidelands

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**ABSTRACT:**

After an extensive outreach effort of public review, input, and refinement, the City Council adopted Resolution 2013-88 at its regular meeting on November 26, 2013 adjusting the residential pier rental calculation and approving a revised model permit template for residential piers located upon tidelands as well as reclassifying certain homeowner's association slips from commercial to residential. City Council also introduced Ordinance 2013-27 at this November 26<sup>th</sup> meeting amending Chapter 17.60 and subsection 17.35.020(B)(2) of the NBMC regarding residential and commercial piers.

**RECOMMENDATION:**

Conduct a second reading and adopt Ordinance No. 2013-27 amending Chapter 17.60 and subsection 17.35.020(B)(2) of the NBMC regarding residential and commercial piers located upon tidelands.

**DISCUSSION:**

The attached ordinance includes clean up language designed to clarify and provide consistency regarding commercial piers that encroach in front of adjacent properties, and expand the persons authorized to use noncommercial (residential) piers to include guests and lessees of the abutting residential property (this change is reflective of the recent allowance of renting residential piers to third parties). Under NBMC Section 17.05.110, the Harbor Resources Manager is empowered to determine the intent of a provision within Title 17 and issue a written administrative interpretation. The proposed revision to NBMC Subsection 17.60.060(E) is intended to codify the Harbor Resources

Manager's interpretation of the subsection, as reflective of the current state of the law. Specifically, the inclusion of the additional language regarding the meaning of NBMC Subsection 17.60.060(E) codifies the existing exemption from compliance with sections such as 17.50.070 and 17.35.020(A)(1), which require permits to be held by the owner or long-term lessee of the abutting upland property. NBMC Subsection 17.60.060(E) does not, and was not intended to, exempt a person from compliance with NBMC Subsection 17.35.020(F), which requires a new permit for piers that encroach in front of abutting upland property upon a change in certain conditions (e.g., any change of existing ownership of the abutting upland property owned by the permittee or upon the death of the permittee). Because this clarification of the existing subsection is confirmation of its existing meaning, this interpretation is retroactive to the original adoption of NBMC Subsection 17.60.060(E).

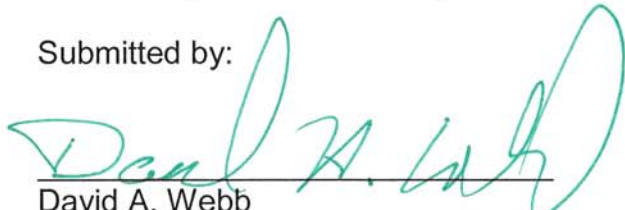
**ENVIRONMENTAL REVIEW:**

The City Council finds the adoption of the attached 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) 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. Alternatively, the City Council finds the adoption of the attached ordinance is entitled to a Class 1 Categorical Exemption pursuant to CEQA Regulation Section 15301 because the ordinance contemplates the continued use of existing facilities, with no expansion of the proposed use. Lastly, the City Council finds the adoption of the attached ordinance is not a project under CEQA Regulation Section 15061(b)(3) because it has no potential for causing a significant effect on the environment.

**NOTICING:**

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

Submitted by:



David A. Webb  
Public Works Director

Attachment:           A. Ordinance No. 2013-27

ORDINANCE NO. 2013-\_\_\_

**AN ORDINANCE OF THE CITY COUNCIL OF  
THE CITY OF NEWPORT BEACH,  
CALIFORNIA, AMENDING CHAPTER 17.60  
AND SUBSECTION 17.35.020(B)(2) OF THE  
NEWPORT BEACH MUNICIPAL CODE  
REGARDING RESIDENTIAL AND  
COMMERCIAL PIERS LOCATED UPON  
TIDELANDS**

**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**, Section 1(b) of the Beacon Bay Bill and Title 17 of the Newport Beach Municipal Code (“NBMC”) allow the City to authorize third parties to use tidelands for commercial and noncommercial purposes for a term not to exceed fifty (50) years;

**WHEREAS**, the City allows persons to operate and maintain commercial and noncommercial piers upon the tidelands under City issued permits or leases;

**WHEREAS**, the City recently completed a comprehensive review of the fair market value rents charged for private commercial and noncommercial uses of the tidelands;

**WHEREAS**, the City Council made a commitment to review the tidelands rent implementation process in its entirety to ensure consistency, gather feedback and to allow for improvement in the process;

**WHEREAS**, City staff hosted two look back meetings with tidelands users on August 15, 2013 and August 21, 2013, to review consistency, gather feedback on the recent tidelands rent implementation process and to listen to ideas for improvements going forward;

**WHEREAS**, on November 12, 2013, at its regularly scheduled study session, the City Council considered the feedback and ideas gathered during the look back meetings and directed staff to bring back certain amendments contained in this ordinance;

**WHEREAS**, the City Council has considered all documents and comments in the record in connection with this ordinance;

**WHEREAS**, the City desires to extend the length of a residential pier permit from one (1) year to a maximum of ten (10) years to provide greater assurances to the tidelands users and to clarify the persons authorized to use residential piers; and

**WHEREAS**, the City desires to clarify existing code language regarding commercial piers authorized to encroach in front of adjacent property by codifying the Harbor Resources Manager's interpretation of Subsection 17.60.060(E), which allows commercial piers to encroach in front of adjacent property but does not relieve a person from compliance with Subsection 17.35.020(F), this interpretation and codification is consistent with the City Council's original intent in enacting Subsection 17.60.060(E) and this interpretation shall be applied retroactively.

**NOW THEREFORE**, the City Council of the City of Newport Beach ordains as follows:

**Section 1:** Subsection "(M)(5)(b)" of Section 17.01.030 of the Newport Beach Municipal Code is amended to read as follows:

Noncommercial Pier. The term "noncommercial pier" shall mean a pier used for private recreational purposes by the owner(s), occupant(s), guest(s) or lessee(s) of the abutting residentially zoned upland property.

**Section 2:** Subsection "(B)(2)" of Section 17.35.020 of the Newport Beach Municipal Code is amended to read as follows:

With the prior approval of City, piers and slips for commercial properties may extend past the prolongation of the property line.

**Section 3:** Section 17.60.030 of the Newport Beach Municipal Code is amended to read as follows:

**17.60.030 Pier Permits for Noncommercial Piers.**

- A. Pier Permits. Permits for piers and other structures used for noncommercial purposes in Newport Harbor located upon public tidelands shall be renewed upon expiration.
- B. Rental Fees.

1. Rental Fee Required. Every owner or permit holder who maintains a pier used for noncommercial purposes, any part of which extends into public tidelands, shall pay to the City the applicable pier permit rental fee for such portions of the pier that extend into public tidelands, as established by City Council resolution.

C. Transfer of Noncommercial Pier Permits.

1. Permits for harbor structures are issued subject to the condition that any improvements constructed shall not be sold in whole or part, leased, or transferred, without the written consent of the City.

2. Whenever a permittee sells the abutting residential upland property, a request shall be made to the City to transfer the permit. Forms for this purpose may be obtained from the Harbor Resources Division. Failure to apply for a transfer within thirty (30) days from the date that the abutting upland residential property changed ownership will result in an additional fee as established by resolution of the City Council.

3. Along with the City Manager, the Harbor Resources Division is authorized to approve transfers to the new owners or long-term lessee of the abutting upland residential property.

4. Prior to the transfer of a pier permit, all harbor structures shall be inspected for compliance with the City's minimum plumbing, electrical and structural requirements, and the conditions of the existing permit. All structural deficiencies must be corrected prior to the transfer of the permit.

5. Noncommercial piers may be rented/leased by the owner(s) or occupant(s) of the abutting property to a third party. Such rental/lease shall not be deemed a transfer under this section.

**Section 4:** Subsection “A” of Section 17.60.060 of the Newport Beach Municipal Code is amended to read as follows:

A. Leases/Permits. In the event public trust lands are used by an entity other than the City, then that entity shall enter into a lease or permit with the City.

1. Leases shall provide lessees with a leasehold interest in the property for a period of at least five (5) years, not to exceed a period of time as limited by the City Charter or applicable State law.

2. Permits shall provide permittees with an interest in the property for a period of ten (10) years or less, to be determined in the sole and absolute discretion of the City.

**Section 5:** Subsection “E” of Section 17.60.060 of the Newport Beach Municipal Code is amended to read as follows:

Commercial uses provided under this Title 17 are exempt from any provision requiring involvement of the owner or long-term lessee of an abutting upland property. This Subsection’s sole purpose is to allow a person to apply for a commercial pier permit or lease in front of or encroaching upon abutting upland property not owned or leased by the person applying for the permit.

**Section 6:** The recitals provided in this ordinance are true and correct and are incorporated into the substantive portion of this ordinance. Except as expressly modified herein, all other provisions, terms, and covenants set forth in the Newport Beach Municipal Code shall remain unchanged and shall be in full force and effect.

**Section 7:** 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, clause or phrase hereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses and phrases be declared invalid or unconstitutional.

**Section 8:** The City Council finds the introduction and adoption 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) 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. Alternatively, the City Council finds the introduction and adoption of this ordinance is not a project under CEQA Regulation Section 15061(b)(3) because it has no potential for causing a significant effect on the environment.

**Section 9:** 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 was introduced at a regular meeting of the City Council of the City of Newport Beach, held on the 26<sup>th</sup> day of November, 2013, and adopted on the 10<sup>th</sup> day of December, 2013, by the following vote, to wit:

AYES, COUNCILMEMBERS \_\_\_\_\_


NOES, COUNCILMEMBERS \_\_\_\_\_

ABSENT COUNCILMEMBERS \_\_\_\_\_

\_\_\_\_\_  
KEITH D. CURRY, MAYOR

**APPROVED AS TO FORM:**

THE CITY ATTORNEY'S OFFICE

 \_\_\_\_\_ (for)  
AARON C. HARP, CITY ATTORNEY

**ATTEST:**

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LEILANI I. BROWN, CITY CLERK