

**FOR DISCUSSION PURPOSES ONLY**

**Chapter 17.10**

**MARINE ACTIVITIES PERMIT**

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**17.10.005 Findings and Purpose.**

A. Newport Harbor is a limited resource with an extensive existing and growing demand for marine and recreational use;

B. There has been an increase in the nature and intensity of commercial activities such as harbor cruises, dinner cruises, ~~boat~~ wind, electric, any type of fuel, and human powered rentals, rentals of water-related recreational equipment, human powered ~~craft~~ and water taxi services occurring on the waters of Newport Harbor;

C. Some of these vessels carry a number of passengers and some are owned or operated by persons who do not have a fixed base of operation on or near ~~the bay~~ Newport Harbor that can provide adequate boarding, parking or sanitation facilities necessary to serve their clients and customers;

D. Commercial activities on Newport Harbor require City services which may not be paid by the patrons or passengers of commercial operators on Newport Harbor;

E. Commercial activity on Newport Harbor has created an additional demand for available parking and created traffic congestion in and around the waterfront;

F. This commercial activity has sometimes created a level of noise which has interfered with the right of residents, persons who own property and visitors on or near Newport Harbor to the peaceful enjoyment of their property and public areas;

G. Commercial activity, especially the mix of large craft with limited maneuverability and restricted uplands access, has the potential to interfere with the safe navigation of boats and vessels operating on the waters of Newport Harbor;

H. The requirements of ~~the~~ this chapter are necessary to promote safety in Newport Harbor, minimize the traffic congestion, parking shortages, excessive noise, and the discharge of waste that could result from unregulated commercial activity and to ensure safe operation within the capacity and constraints of Newport Harbor;

I. The Harbor and Bay Element of the General Plan establishes an objective to preserve existing commercial uses in Newport Harbor to the extent necessary to maintain and enhance the charm and character of the harbor and to provide support services for visitors, recreational boaters and other water-dependent activities by enforcing existing ordinances and, if necessary, establish new standards for the operation of entertainment, rental, sport fishing and work boats, charter, and human powered craft.

J. In adopting this chapter, the City Council intends that the health, safety and welfare of those who use, enjoy and own property on or near Newport Harbor are not adversely affected by commercial activities conducted on those waters and that suitability and capability of the Newport Harbor infrastructure to accommodate future permit-dependent operations are adequately considered in permit application processes;

K. Fees and charges imposed on commercial users of Newport Harbor should recover City costs and contribute to major harbor maintenance projects (i.e., dredging);

L. Leases should be used where appropriate to recover the fair market value of the use of public tidelands from holders of permits for marine commercial activities on tidelands properties; and

M. To administer the use of public trust lands in a manner consistent with the tidelands trust, the California Constitution, the certified Local Coastal Pro-

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gram, and applicable laws. (Ord. 2008-2 § 1 (part), 2008)

**17.10.020 Permit for Commercial Activities in Newport Harbor Required.**

A. No person shall operate any charter on the waters of Newport Harbor without first obtaining a marine activities permit pursuant to this chapter.

B. No person shall schedule, arrange, or coordinate the operation of a bareboat charter or ~~certified~~ certified charter on the waters of Newport Harbor without first obtaining a marine activities permit pursuant to this chapter.

C. No person who owns a certified vessel (a vessel inspected by the United States Coast Guard pursuant to Title 46 of the Code of Federal Regulations) shall permit or allow the use of the vessel as a ~~certified~~ certified charter on the waters of Newport Harbor without first obtaining a marine activities permit pursuant to this chapter.

D. No person shall operate a bareboat charter or certified charter on the waters on Newport Harbor without having a valid marine activities permit on board the vessel at all times during the charter.

E. No owner of a vessel shall permit that vessel to be used as a bareboat charter on the waters of Newport Harbor unless a valid marine activities permit has been issued for the bareboat charter.

F. ~~No person, firm or corporation shall rent any type of vessel, whether human powered or powered by electric, wind or any type of fuel, on the waters of Newport Harbor unless a valid marine activities permit has been issued for the bareboat charter.~~ (Ord. 2013-11 §§ 138, 139, 2013; Ord. 2008-2 § 1 (part), 2008)

G. ~~No person, firm or corporation shall rent any type of vessel, whether human powered or powered by electric, wind or any type of fuel, on the waters of Newport Harbor unless a valid marine activities permit has been issued for the rental activity.~~

H. ~~No person~~ firm, corporation or business shall provide for the rental of any vessel or other related recreational equipment, including but not limited to stand up paddleboards and kayaks for use in the harbor without a Marine Activities Permit.

Any person using the harbor to conduct business by use of a vessel is required to have a marine activity

permit including but not limited to bottom cleaners, tow companies, pump out service providers, fuel delivery services, etc.

**17.10.025 Exemptions**

~~The requirements of this chapter are not applicable to the following:~~

~~A. Commercial fishing vessels and sports fishing charters traversing on the waters of Newport Harbor to engage in commercial fishing or other operations outside of Newport Harbor;~~

~~B.A. A person operating a single vessel as a charter for consideration with six or fewer passengers if the vessel is less than one hundred (100) tons, or twelve (12) or fewer passengers if the vessel is greater than one hundred (100) tons~~

**Commented [JC2]:** Consider requiring all businesses to have a MAP regardless of parking issues.

**Commented [JC1]:** CAO recommends moving to another section as it does not relate to getting a permit. Maybe 17.30?

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~~C. Businesses operating pursuant to a franchise or lease agreement with the City of Newport Beach;~~

~~C. D. Vessels exempted by this section shall not be used for office purposes unless such use is specifically authorized via a permit issued pursuant to this chapter;~~

E. Commercial activities operating pursuant to a permit issued by the Army Corps of Engineers, or a special event permit or commercial film permit issued by the City of Newport Beach;

F. Private marinas operating with a commercial pier permit issued by the City unless engaging in commercial activities that would otherwise require a permit pursuant to this Chapter. (Ord. 2008-2 § 1 (part), 2008)

**Commented [JC3]:** Should these businesses also require a MAP?

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**Commented [JC4]:** CAO – This is not an exemption. If we need to include, we can include in one of the other exceptions.

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**17.10.030 Application for Permit.**

An application for permit under this chapter shall be filed with the Harbormaster, upon forms provided by the City, and shall contain such information which the Harbor Commission or Harbormaster may require. (Ord. 2018-17 § 14, 2018; Ord. 2008-2 § 1 (part), 2008)

**17.10.040 Filing Fee.**

An application or renewal of an application for a marine activities permit or transfer of a permit issued pursuant to this Chapter shall be accompanied by the fee established by resolution of the City Council. (Ord. 2008-2 § 1 (part), 2008)

**Commented [JC5]:** CAO – Do we actually require a renewal application or is it automatically generated? Wondering how this relates to 17.05.120

**17.10.050 Issuance of Permit.**

Upon receipt of a complete application for a marine activities permit, the Harbormaster shall investigate the information contained in the application. The Harbormaster shall refer the application to the Community Development Department to verify that all of the applicable Zoning Code regulations or conditions have been addressed or complied with and the Public Works Department to ensure safe vehicular ingress and egress, and **where applicable**, the safe loading and unloading of passengers and supplies. The Harbormaster may also refer the application to the Harbor Commission, or other appropriate City departments, for investigation, report or recommendation. The Harbormaster may inspect, or cause to be inspected, the vessel(s), marine sanitation device(s) ~~of the vessel(s)~~, boarding facilities, parking and all upland support facilities listed in the application. The Harbormaster shall notify an applicant of his or

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her decision in writing within ninety (90) days from the date on which a completed application is received.

Except as provided in this section, the Harbormaster may issue the marine activities permit upon a determination that approval of the application will not adversely affect the health, safety or welfare of those who use, enjoy, or own property on or near Newport Harbor.

The Harbormaster shall approve the application unless:

A. The proposed commercial activity is likely to create noise which would adversely affect use or enjoyment of the waters of Newport Harbor by members of the public, or interfere with the rights of those who own property on or near the waters of Newport Harbor to the peaceful and quiet enjoyment of that property;

B. The proposed commercial activity is likely to contribute to the problem of water pollution and/or litter in the waters of Newport Harbor;

C. The vessel or craft to be used by the applicant does not satisfy the applicable standards of the United States Coast Guard, or City, County, State or Federal requirements of law;

D. The proposed commercial activity is likely, when viewed in conjunction with other anticipated rentals, charters and marine operations, to create a hazard to safe navigation, or otherwise interfere with the rights of others to use the waters of Newport Harbor;

E. The proposed commercial activity does not provide facilities to ensure adequate parking, safe vehicular ingress and egress, the safe loading and unloading of passengers and supplies for the period subject to permit. For the purpose of this section, parking shall not be considered adequate unless the number of parking spaces required by Title 20 of this Code are provided for the duration of the permit and will be available during the days and hours of operation specified by the permit and that any off-site parking arrangements have been approved by the Planning Commission or the Community Development Director;

F. The commercial activity would violate City, County, State or Federal requirements of law;

G. The applicant has misrepresented material facts in the application;

H. The proposed commercial activity, where applicable, does not provide uplands support, docking or boarding facilities sufficient to safely accommodate the size of vessel(s) or number of passengers indicated on the application;

I. The proposed commercial activity includes an upland use that requires a use permit or other approval under the City Zoning Code and such permit has not been obtained;

J. The applicant has a permit which is currently suspended or has been revoked, or a notice of revocation or suspension that is no longer subject to appeal has been issued within the past ninety (90) days. (Ord. 2018-17 § 15, 2018; Ord. 2013-11 § 140, 2013; Ord. 2008-2 § 1 (part), 2008)

**17.10.070 Power to Impose Conditions—Hold Harmless.**

A. In granting any permit pursuant to this chapter, the Harbormaster, or the Harbor Commission on appeal, may impose any additional conditions on the permit to ensure that the proposed commercial activity will be compatible with the predominantly recreational character of Newport Harbor, the rights of other persons using Newport Harbor, the interests of residents and property owners whose properties abut or are in close proximity to Newport Harbor, and the interests of the general public. Any such permit shall contain a provision stating that the permittee shall defend, indemnify and hold the City, the County of Orange, and the State of California harmless from any claim for damages, penalties or fines arising out of the exercise of the permit; or the activities of the permittee carried on under the authority of such permit including attorney's fees and other costs and expenses incurred by the City.

The Harbormaster or Harbor Commission, on approval or review, shall have the power to impose new conditions or modify existing conditions with regard to any permit issued pursuant to this chapter upon a determination that the operations by the permittee, in the absence of the new or modified conditions, may adversely impact the health, safety or welfare of those who use, enjoy or own property near or on the waters of Newport Harbor.

Recommend creating 3 or 4 separate permits, i.e. (1) charter vessels which should be defined as vessels carrying passengers; (2) rental of vessels 25' in length

**Commented [JC6]:** This section would allow the Harbormaster and HC to develop permits by business type and condition as they see fit.

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or under; and (3) human powered vessels. After each condition below we could designate which of the categories is subject to that condition. For example, a company renting paddleboards would not be subject to the parking requirements contained in condition #1. Possibly vessel service providers]

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

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1. In the sole discretion of the Harbormaster or Harbor/Planning Commission on appeal Adequate off-street parking shall be provided for all passengers or patrons of the commercial harbor activity;

provisions of Title 20. (Ord. 2018-17 § 16, 2018: Ord. 2013-11 § 141, 2013; Ord. 2008-2 § I (part), 2008)

**Commented [JC7]:** Need to discuss further who would appeal of street parking go to and under what parameters?

2. No passenger loading or unloading is to occur at any fuel dock or public dock;

**Commented [JC8]:** As we develop MAP for everyone each individual business will be evaluated to determine requirements

3. Passengers transported to or from the commercial harbor activity shall not be picked up from, or unloaded on, City streets unless specifically approved in writing by the Harbormaster;

4. All passengers and provisions shall be loaded and unloaded only from docks or piers where the abutting uplands property is commercially zoned, with proper permits, unless specifically approved in writing, in advance, by the Harbormaster;

5. Music and sound from the vessel shall be controlled so as not to disturb a person of normal sensitivity at a point one hundred (100) feet from the hull of the vessel;

6. Music, live entertainment, and all forms of amplified sound are prohibited after 10 p.m.;

7. Air horns, whistles, bells, and other noise-making equipment shall not be used, except as required by Coast Guard regulations;

8. All trash and litter generated by the activity shall be properly disposed of in a private trash receptacle;

9. All vessels in excess of twenty-five (25) feet in length shall operate within main navigational channels, as far from shore as practical, and the route of travel must be at least one hundred (100) feet from any residence;

10. All vessels equipped with marine sanitation devices shall comply with United States Coast Guard requirements in the use of approved holding tanks for raw sewage, and dye tablets shall be installed in holding tanks during the operation of the commercial harbor activity as required by the Harbormaster;

11. All Federal, State, County and City statutes, rules, ordinances, laws and regulations shall be obeyed;

12. All required insurance namimg the City of Newport Beach as an additional insured and business license shall be maintained in full force and effect for the full term of the permit;

13. Registration/documentation must be kept current and provided to the Harbormaster upon request; and-

14. All signs shall comply with the applicable

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**17.10.075 Insurance.**

Businesses operating on the harbor with a permit issued pursuant to this chapter shall maintain and provide to the City proof of insurance covering its operation, citing the City as an additional insured with such policy limits and coverage and other criteria as established by the City Risk Manager. Proof of insurance must clearly identify the activities and/or vessels covered. (Ord. 2008-2 § 1 (part), 2008)

**17.10.080 Duration of Permit.**

Unless otherwise specified, a permit issued pursuant to this chapter shall be valid for twelve (12) months from the date of issuance, unless terminated or revoked prior. The Harbormaster may issue a permit for a shorter duration, provided the applicant meets all the requirements of this chapter for the duration of the period remitted. (Ord. 2018-17 § 17, 2018: Ord. 2008-2 § 1 (part), 2008)

**17.10.085 Enforcement—Right of Entry.**

A. Enforcement. It shall be the duty of the Harbormaster to enforce each and all of the provisions of this title, and the Chief of Police or other authorized City employee shall render such assistance in its enforcement as may be required from time to time by the Harbormaster.

B. Right of Entry. The Harbormaster and any Police Officer or City employee whose job includes the enforcement of this chapter shall have the power and authority to enter, free of charge, and at any reasonable time, any place of business or vessel subject to the requirements of this chapter. (Ord. 2018-17 § 18, 2018: Ord. 2013-11 § 142, 2013: Ord. 2008-2 § 1 (part), 2008)

**17.10.86 Violations/Penalties/Revocation**

~~A.~~ <sup>A.</sup> Violations. The following conduct shall constitute a violation for which the penalties specified in subsection (B) of this section may be imposed or the permit revoked.

- ~~B.~~ <sup>B.</sup> 1. The permittee has failed to comply with conditions imposed by the Harbormaster pursuant to the provisions of Section 17.10.070 (A).
2. The permittee has failed to comply with the standard conditions specified in Section 17.10.010(B);
3. The permittee has violated any of the provisions of the Chapter; or
4. The permittee has failed to pay the passenger tax as required by Chapter 3.34 of this Code.

Penalties. The penalties for violations specified in subsection (A) of this section shall be as follows:

1. For the first violation within any twelve (12) month period, the penalty shall range from a notice of violation to a fine not to exceed two hundred and fifty dollars (\$250);
2. For a second violation within any twelve (12) month period, the penalty shall range from a fine not to exceed five hundred dollars (\$500) to revocation of the permit;
3. For a third violation within any twelve (12) month period, the penalty shall range from a fine not to exceed one thousand dollars (\$1,000) to revocation of the permit;
4. For a fourth violation within any twelve (12) month period, their permit shall be revoked in accordance with the Chapter.

**17.10.090 Suspension/Revocation.**

Any permit granted pursuant to the provisions of this chapter may be suspended or revoked by the Harbormaster, in whole or in part, upon fifteen (15) calendar days' prior written notice to the permittee, served in accordance with Section 1.05.030, directing the permittee to appear at the time, date and place specified in the notice to show cause why the permit shall not be suspended or revoked. The notice shall specify the reasons for the proposed action. A permit may be suspended or revoked on any of the following grounds:

**Commented [JC10]:** CAO to review by resolution – Also to consider higher penalties for violations based on business activity.

**Commented [JC9]:** New section – will need additional work

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A. That the permit holder has made a misrepresentation as to any material fact set forth in the application;

B. For violation of any law, rule, condition of permit or regulation of the United States, the United States Coast Guard, the State of California, the City of Newport Beach, or the County of Orange relating to the commercial activities authorized by any permit issued pursuant to this chapter;

C. That the commercial activities of permittee adversely affect the health, safety or welfare of those who use, enjoy or own upland property in Newport Harbor;

D. That the commercial activities of permittee fall within the criteria for denial of an application, as set forth in subsections (A) through (J) of Section 17.10.050;

E. The permittee has discharged or has permitted or allowed any other person on a vessel operating under the permit to discharge any human or animal excreta from any head, toilet, holding tank or similar facility, including gray water, into the waters of Newport Harbor, ~~the Marine Activities Permit shall be immediately suspended until such time as a hearing can be held;~~

Failure to continuously maintain insurance in the appropriate coverage and amounts and provide the City with a Certificate of Insurance naming the City as an additional insured. (Ord. 2018- 17 § 19, 2018; Ord. 2013-11 § 143, 2013; Ord. 2008- 2 § 1 (part), 2008)

**17.90.092 Administrative Remedies Not Exclusive**

The procedures established in this chapter for the use of administrative citations and the administrative revocation process, and the procedures established in other chapters of this Code for administrative abatement and summary abatement, as means for addressing violations of this Code, shall be in addition to criminal, civil, or other legal or equitable remedies established by law that may be pursued to address violations of this Code and the use of Chapters 1.04 and 1.05 shall be at the sole discretion of the City.

**17.10.095 Appeal.**

Appeals of any decision of the Harbormaster shall be made in accordance with ~~Chapter 17.60 or 17.65, as applicable.~~ (Ord. 2018-17 § 20, 2018; Ord. 2013-

11 § 144, 2013; Ord. 2008-2 § 1 (part), 2008)

**17.10.100 Transfer of Permit.**

No permit issued pursuant to the provisions of this chapter shall be transferable either by assignment, sale, hypothecation, and operation of law or otherwise ~~without permission of the Harbor Commission having first been obtained, which permission may be granted or withheld at the sole discretion of the Harbormaster.~~ Application for transfer of any permit shall be subject to the same terms, conditions and requirements as an application for an original permit. In approving the transfer of any existing permit, the Harbor Commission may impose such conditions as it may determine are in the public interest. (Ord. 2008-2 § 1 (part), 2008)

**Commented [JC13]:** Why does Harbor Commission approve a transfer when Harbormaster can approve the original permit?

**Commented [JC14]:** CAO comment

**Commented [CJ11]:** Needs legal review to allow city to use administrative or civil penalties to address a problem company and allow us to shut down non-compliant companies.

**Commented [JC12]:** Would eliminate the Administrative Hearing Officer and have the decision go to the Harbor Commission or the City Council



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**17.10.110 Licenses and Fees Not Exclusive.**

Fees and permits required by this chapter shall be in addition to any license, permit or fee required under any other chapter of this Code or any other provision of law. (Ord. 2008-2 § 1 (part), 2008)

**17.10.120 Application to Existing Commercial Activities.**

The commercial activities of those holding valid permits issued prior ~~to the effective date of this chapter (March 24, 2006)~~ may be continued to the extent authorized by the prior permit, provided the previously approved commercial activity shall not be increased or expanded beyond the activities conducted as of ~~March 24, 2006, the effective date of this chapter, adopted by Ordinance No. 2006-3 § 2 (part).~~ The holder of a permit issued under Chapter 17.41 ~~(repealed effective March 2006) shall apply who applied for a renewal of the permit issued under Chapter 17.41 as required by pursuant to the requirements of this chapter on or before December 1, 2008, and shall be issued a permit under this chapter allowed to continue to~~ operate under the previously approved conditions and any condition of this chapter not inconsistent with the operations and activities authorized under the previously issued permit.

All marine activities permits issued under this section shall be deemed to meet the requirements of this chapter, or any successor chapter, for renewal purposes unless or until such time as the Harbormaster or the Harbor Commission determines there is a substantial change in the commercial activity. A substantial change may include, but is not limited to, the following:

- A. An increase in or expansion of the operational characteristics of the commercial activity;
- B. Change in the vessel(s) authorized to operate under the terms of the permit, which change results in an increase in number, size or capacity of the vessel(s);
- C. Change in the maximum number of patrons or passengers authorized to participate in the commercial harbor activity on an authorized vessel;
- D. Change in the approved off-street parking agreement(s), or loss of parking provided prior to the effective date of the ordinance codified in this title;
- E. Change in the physical condition of the dock, gangway or pilings that would compromise the safety of the patrons or passengers;

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- F. Change in the location where the vessel(s) is berthed and/or loads and unloads patrons or passengers and/or provisions for the commercial activity;
- G. Change in the approved route of travel; and/or
- H. Failure to correct a violation of the standard conditions imposed pursuant to Section

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