

CITY OF NEWPORT BEACH

HARBOR COMMISSION STAFF REPORT

Agenda Item No. 4
February 10, 2010

TO: HARBOR COMMISSION

FROM: Harbor Resources Division (City Manager's Office)
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SUBJECT: Sea Lion Time Limits for Compliance

ISSUE

Should the Harbor Commission recommend the current time limits for sea lion deterrent measures in Title 17 (§17.25.020.I.4 and §17.50.100) be tightened from (10) ten day and (7) seven day written notices to a more stringent deadline? Also, should the Harbor Commission recommend the subsection of this code excepting Marine Contractors from compliance of the mooring provisions be changed or eliminated?

RECOMMENDATION

If desired, the Harbor Commission may consider any of the following options:

1. Advise staff to tighten the deadline schedule for a single warning for sea lion deterrence to (7) seven days in §17.25.020.I.4 (Anchorage, Berthing and Mooring Regulations) and §17.50.100 (Securing of Structures), and eliminate subsection §17.25.020.I.5 (Exceptions) or;
2. Advise staff to tighten the deadline schedule for a single warning to an alternate time schedule as determined by the Commission, and maintain current regulations for marine contractors or;
3. Advise staff to maintain the time schedule currently in place in §17.25.020.I.4 and §17.50.100, and eliminate subsection §17.25.020.I.5 (Exceptions) or;
4. Advise staff to make no changes to the Municipal Code.

BACKGROUND

In an effort to confront the sea lion issue in January 2006, the City Council passed an Ordinance that specifically described both the mooring and pier permittee's responsibility to keep their vessels / piers free from sea lions. This method included a written thirty (30) day warning letter, then a second (7) day final warning letter that threatened issuance of Administrative Citations (\$100, \$200, & \$500 daily increments) for non-compliance.

In November 2008, the City council passed a revision to these ordinances tightening the time frame for the mooring and pier permittee's responsibility to keep vessels / piers free from sea lions. This method included a first notice of ten (10) days and a second notice of seven (7) days.

§17.25.020.1.4 – Mooring, Anchoring and Vessel Condition Requirements

If, based upon the appearance of the vessel, inspection by the City or Orange County Harbor Patrol or other facts, the Harbor Resources Manager determines that a sea lion has boarded a moored vessel, the Harbor Resources Manager shall provide the permittee with a notice of determination 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 ten (10) calendar days of the mailing of the notice of determination. If the Harbor Resources Manager determines that appropriate deterrent measures have not been taken within ten (10) calendar days of the mailing of the notice of determination, the Harbor Resources Manager shall provide the permittee with a second notice of determination and the permittee shall: (1) take any and all necessary action to employ and maintain appropriate sea lion deterrent measures within seven (7) days of the mailing of the second notice of determination; or (2) remove the vessel within seven (7) days of the mailing of the second notice of determination. 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.

§17.50.100 – Securing of Structures

If, based upon an inspection by the City or Orange County Harbor Patrol or other facts, the Harbor Resources Manager determines that a sea lion has boarded a permitted structure and/or any vessel or other appurtenances attached to the structure, the Harbor Resources Manager shall provide the permittee with a notice of determination and the permittee shall take any and all necessary action to employ and maintain appropriate measures to deter sea lions from boarding the structure and/or any vessel or other appurtenances attached to the structure within ten (10) calendar days of the mailing of the notice of determination. If the Harbor Resources Manager determines that appropriate deterrent measures have not been taken within ten (10) calendar days of the mailing of the notice of determination, the Harbor Resources Manager shall provide the permittee with a second notice of determination and the permittee shall take any and all necessary action to employ and maintain appropriate sea lion deterrent measures within seven (7) days of the mailing of the second notice of determination. Appropriate deterrent measures shall be defined as the latest methodology permitted by National Marine Fisheries Service to minimize sea lion boarding of a permitted structure and/or any vessel or other appurtenances attached to the structure. (Ord. 2008-2 § 1 (part), 2008) (Ord. No. 2009-1, § 2, 1-27-2009)

When there are issues, staff attempts to reach the permittee via the phone to gain compliance; then, if unsuccessful, the first warning letter is sent. To date, Harbor Resources has not issued citations.

However, 2009 was challenging particularly between Via Lido Soud and the peninsula. Unfortunately, the H and J mooring areas have several vessels and barges that provide ample room for many sea lions, creating competition for space and dominance for position resulting in endless hours of barking during the evening.

In response, the City has followed the same protocol described above. However, the local community is discouraged with the lengthy and duplicative time frame for the two warning notices. These ten (10) and seven (7) day periods were designed to allow for mailing and to give the permittee ample time to devise a plan to deter the sea lions.

Staff feels that because of the awareness of the seasonal problem via City outreach, the local media coverage and the damage to docks and vessels, the permittees are more receptive to the issue and that seventeen (17) days is too long to wait for compliance. Several residents have strongly encouraged staff to re-evaluate this time period.

Section 17.25.020.I.5 currently indicates that marine contractor vessels in Newport Harbor are exempt from the mooring, anchoring and vessel condition requirements of this section.

§17.25.020.I.5 – Exceptions

The requirements of this section are not applicable to vessels used in marine construction or marine contracting services.

Staff feels that the marine contractors in Newport Harbor are well versed in the requirements of Section 17.25.020, and that the mooring rules should be applied to everyone. In addition, during the summer of 2009, several barges were overtaken by sea lions.

PROPOSAL

Staff proposes to tighten the time frame to one warning letter with a seven (7) day response time. This shortened time frame still allows plenty of time for the permittee to react to the problem even when taking the three day mail delivery process into account. The proposed language reads:

§17.25.020.I.4 – Mooring, Anchoring and Vessel Condition Requirements

If, based upon the appearance of the vessel, inspection by the City or Orange County Harbor Patrol or other facts, the Harbor Resources Manager determines that a sea lion has boarded a moored vessel, the Harbor Resources Manager shall issue a Notice of Violation 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 (7) calendar days of the Notice of Violation. If the Harbor Resources Manager determines that appropriate deterrent measures have not been taken within seven (7) calendar days of the Notice of Violation, the Harbor Resources Manager shall provide the permittee with an Administrative Citation directing the permittee to immediately: (1) take any and all necessary action to employ and maintain appropriate sea lion deterrent measures; or (2) remove the vessel. 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.

§17.50.100 Securing of Structures

If, based upon an inspection by the City or Orange County Harbor Patrol or other facts, the Harbor Resources Manager determines that a sea lion has boarded a permitted structure and/or any vessel or other appurtenances attached to the structure, the Harbor Resources Manager shall provide the permittee with a Notice of Violation and the permittee shall take any and all necessary action to employ and maintain appropriate measures to deter sea lions from boarding the structure and/or any vessel or other appurtenances attached to the structure within seven (7) calendar days of the Notice of Violation. If the Harbor Resources Manager determines that appropriate deterrent measures have not been taken within seven (7) calendar days of the Notice of Violation, the Harbor Resources Manager shall issue an Administrative Citation directing the permittee to immediately take any and all necessary action to employ and maintain appropriate sea lion deterrent measures. Appropriate deterrent measures shall be defined as the latest methodology permitted by National Marine Fisheries Service to minimize sea lion boarding of a permitted structure and/or any vessel or other appurtenances attached to the structure. (Ord. 2008-2 § 1 (part), 2008) (Ord. No. 2009-1, § 2, 1-27-2009)

Combined, the permittees will have a total of seven (7) days to resolve their problems, not including the one or two days of phone calls before the warning letter. The Harbor Commission may consider other time frames to recommend to the Council.

The second proposed change is to delete **§17.25.020.1.5** Anchorage, Berthing and Mooring Regulations, Exceptions. The ordinance describes the permittee's duty to maintain the mooring and vessel condition, outlaw a public nuisance and keep vessels free of sea lions.

ENVIRONMENTAL REVIEW

The Harbor Commission's approval of this item does not require environmental review.

PUBLIC NOTICE

This agenda item has been noticed according to the Ralph M. Brown Act (72 hours in advance of the public meetings at which the Harbor Commission considers the item). It was posted at City Hall and on the City's website.

Prepared by:

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