

NEWPORT BEACH HARBOR COMMISSION REGULAR MEETING MINUTES
City Council Chambers – 100 Civic Center Drive/Teleconference Location Pursuant to GC§54953(B): 9
Beach Club Dr., Business Ctr., Stateline, NV 89449
Wednesday, June 14, 2023
5 p.m.

1) CALL MEETING TO ORDER

The meeting was called to order at 5 p.m.

2) ROLL CALL

Commissioners: Steve Scully, Chair
Ira Beer, Vice Chair
Don Yahn, Secretary
Scott Cunningham, Commissioner
Marie Marston, Commissioner
Rudy Svrcek, Commissioner
Gary Williams, Commissioner (Participated Remotely)

Staff Members: Paul Blank, Harbormaster
Jeremy Jung, Deputy City Attorney
Jennifer Biddle, Administrative Support Specialist

3) PLEDGE OF ALLEGIANCE – Secretary Yahn

4) PUBLIC COMMENTS

Chair Scully outlined the meeting rules of decorum. There were no members of the public who elected to make public comments.

5) APPROVAL OF MINUTES

1. Draft Minutes of the May 10, 2023 Harbor Commission Regular Meeting

Chair Scully opened the floor to public comments. Noting there were no individuals who elected to speak, Chair Scully closed the floor to public comments.

Vice Chair Beer moved to approve the minutes of the May 10, 2023, as amended. Commissioner Svrcek seconded the motion. The motion carried (7 – 0) by the following roll call vote:

Ayes: Cunningham, Marston, Svrcek, Yahn, Williams, Beer, Scully
Nays: None
Abstain: None
Absent: None

6) CURRENT BUSINESS

1. Discussion of New Permit, Sub-Permit, or License Type for Use of City-owned Moorings

There are currently thirteen mooring permits assigned to the City of Newport Beach. There is demand for longer-term use of moorings than a sub-permit allows. Some of that demand comes from mariners who wish not to go through the mooring permit transfer process. The Harbor Commission will discuss opportunities and operational characteristics of a new arrangement that will allow mariners to make use of City -owned moorings without having to acquire an existing permit or participate in the sub -permit process. Any recommendation resulting from this discussion will be forwarded to the City Council for consideration.

Recommendation:

- 1) 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
- 2) Direct Staff to return with a formal recommendation on a new arrangement for the use of City-owned moorings.

Vice Chair Beer provided a summary of the agenda report provided in the publicly noticed agenda packet. A PowerPoint presentation was displayed.

Harbormaster Blank noted a correction to the information provided in the agenda report, confirming there are currently 10 offshore and 4 onshore moorings held in the City's name, for a total of 14.

Discussion ensued among the Commissioners and staff regarding proposed new arrangements for the use of City-owned moorings. Discussion items included the pilot program for the mooring initiative, the potential conduct of a public lottery system, public outreach, deadlines for submission of applications, creation of a waiting list, projected revenues, the availability of short-term rentals, revocations and appeals, slip rate comparisons, conduct of an analysis on the cost of tackle and maintenance, length of license agreements, revisiting the 25% cost estimate, the costs to conduct a third-party estimate to support any recommendation the Harbor Commission refers to the City Council for their consideration, and consideration of a product and model similar to that utilized by the Balboa Yacht Basin.

Vice Chair Beer requested input from the Commissioners concerning the costs related to the conduct of an appraisal. There was general Commission consensus to proceed with gathering information and costs related to the conduct of an appraisal.

Chair Scully opened the public comment period.

George Hylkema expressed concerns with the terminology associated with the proposed program and the potential negative impacts on permit holders from new programs which would appear to disturb the existing market. He expressed concern regarding the impact an appraisal utilizing the incorrect factors could have on existing permit holders.

Jock Marlow inquired whether the Commission would consider a residency requirement to be able to participate if this item does proceed and whether the permittee is limited to an individual or could other legal entities be entitled, such as LLC's.

Jim Mosher requested clarification regarding the Harbormaster's written permission process as related to rental or lease of offshore permits, the length of time a permit holder can retain the mooring, and the waiting list process. He suggested a fair and equitable rate charge based upon the established rate for water per foot of boat and adding the actual costs for the City to provide tackle and maintenance. He agreed with the terminology used by Vice Chair Beer as related to the mooring rental agreements.

Seeing no others who wanted to provide comment, Chair Scully closed the public comment period.

Harbormaster Blank confirmed he has not encountered a similar situation personally, however he was aware that a predecessor did allow a permittee to occupy an otherwise unoccupied mooring. He was unaware of the financial arrangement.

Commissioner Cunningham requested staff return at next month's meeting with guidelines related to the conduct of the appraisal, including the proposed fair market rate charge amounts.

Secretary Yahn inquired as to the source of the funding for the appraisal and the method for requesting same. Harbormaster Blank responded the funding for the appraisal could fit within the Department's professional services line item for the maintenance of the moorings and a request for additional funding was not required.

Commissioner Marston thanked the members of the public for their feedback on this item.

Chair Scully requested clarity on the terminology which will be used for the new mooring program. He inquired whether the Commission should entertain a motion to direct staff to put together the appraisal plan or just provide direction to staff. Harbormaster Blank confirmed direction to staff would be the appropriate method.

Vice Chair Beer inquired of the Deputy City Attorney as to his thoughts regarding Mr. Moser's comments on fair market value versus covering costs as related to rates. He inquired whether the moorings could be rented or licensed at fair market value based upon an independent appraisal. Deputy City Attorney Jung responded the proper fees could be established via an appraisal.

Vice Chair Beer inquired whether the new licenses could be made available exclusively to Newport Beach residents. Deputy City Attorney Jung stated he would have to ensure there are no legal prohibitions to restricting the program to residents only. The current program does not have such restrictions.

Vice Chair Beer confirmed new terminology would need to be established for the new product, as it is completely different from the historic product.

Secretary Yahn inquired whether there are rules requiring expiration dates on the duration of leases for City property. Deputy City Attorney Jung responded the Beacon Bay Bill refers to real property which is identified in the Bill. With respect to leases, it does have a maximum 50 year lease, but nothing specific to permits, and there is a difference between permits and leases. The City's municipal code states that permittees do not have possessory interest in land, just a limited ability to use something. The new mooring product would not be named a lease, and would have different terminology established for it. This item was concluded and a request of staff to move forward with the appraisal was made.

2. Discuss Potential Harbor Commission Objectives for 2024

The Harbor Commission periodically conducts a review and updates its Objectives. This year they decided to continue working on the 2022 Objectives instead of creating new ones for 2023, as there was still much work to be done and it would allow the new City Council Members to settle in and learn about the Harbor Commission. The Harbor Commission will begin discussing a plan to develop Harbor Commission Objectives for 2024.

Recommendation:

- 1) Find this action exempt from 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; and
- 2) Provide input on the creation of the 2024 Harbor Commission Objectives and/or create an Ad Hoc Committee to develop Objectives for each functional area and return to the Harbor Commission with recommendations for 2024 Objectives.

Chair Scully confirmed the need for the Commission to agree upon their 2024 objectives, memorialize them, and then forward them to the City Council for approval. He requested Commissioner input on the 2024 objectives.

Commissioner Cunningham confirmed that many of the objectives take a couple of years to complete and that the new Harbor Department has also made progress on and advanced many of the objectives previously identified by the Commission.

Secretary Yahn stated the memorialized objectives are approved by the City Council and provide legitimacy to the regular work of the Harbor Commission. He commented that many of the objectives spill over into multiple functional areas and suggested grouping them into general categories with various ad hoc committee assignments.

Vice Chair Beer expressed support for the work completed on the various objectives and also suggested further narrowing of the list. He does like the consolidated format of the list and suggested the Commission continue to narrow it down.

Commissioner Marston suggested prioritizing the remaining objectives and establishing a timeline or schedule for each. The longer term objectives could also be broken up into sub-tasks with shorter term goals.

Commissioner Williams suggested going with Secretary Yahn's approach to establish more of a master list with assignments given to various Commission subcommittees.

Chair Scully stated the Harbor Commission as a whole somewhat serves as an ad hoc subcommittee for each of the objectives as they are reviewed at every meeting. The new Harbor Department has also advanced and made progress on many of the previously established objectives. He likes the format of the list, however he is open to the reformatting suggestions made by some of the Commissioners. He also would prefer that each Commissioner be responsible for guiding at least one or two of the objectives.

Commissioner Cunningham suggested keeping the City staff's workload in mind when establishing objectives and looked forward to feedback from the Harbormaster as to the various objectives. He suggested the Commission come back next month with a short list of items they feel are important to include as objectives for further discussion.

Chair Scully opened the public comment period. Seeing none, Chair Scully closed the public comment period.

Chair Scully suggested each Commissioner come to the next meeting with two or more objectives for 2024 and beyond for review and discussion.

There was no further action taken on this item.

3. Ad Hoc Committee Updates

Several ad hoc committees have been established to address short term projects outside of the Harbor Commission objectives. This is the time the ad hoc committees will provide an update on their projects.

Recommendation:

- 1) Find this action exempt from 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, Division 6, Chapter 3, because it has no potential for resulting in physical change to the environment, directly or indirectly; and
- 2) Receive and file.

Chair Scully commented that the Balboa Ferry ad hoc committee work included preliminary conversations with the Beek's regarding migration of their diesel powered vessels to zero emissions and the potential for seeking grant funds for same.

Harbormaster Blank reported a meeting was held with the ferry proprietor, their various staff, and an engineering organization that provides electric propulsion systems. Discussion was held on initial proposals and costs for converting the ferry equipment. Discussions were also held on various grant opportunities available to fund the conversion from organizations such as UCI. Harbormaster Blank will introduce the various funding organizations to the Balboa Ferry owners and it appeared initially that funding opportunities could potentially cover the entire cost of conversion.

Secretary Yahn stated the Balboa Ferry owners relayed their interest in placing the operation in the name of a municipal entity versus pursuing grant opportunities through private ownership. He reaffirmed the subcommittee is not offering advice on the matter, but rather just relaying information back to the Harbor Commission. Discussion ensued regarding the potential for the City to be involved with assisting with grant writing opportunities or relaying related items for review and consideration to the City Council.

Chair Scully opened the floor to public comments. Seeing none, Chair Scully closed the floor to public comments.

There was no further action taken on this item.

4. Harbor Commission 2022 Objectives Update

At the February 8, 2023, Harbor Commission meeting the decision was made by the Commission to continue the 2022 Objectives instead of creating new ones for 2023. The Commission felt there was still much work to be done on the 2022 Objectives and it would allow the new City Council Members to get settled and learn about the Harbor Commission. Each ad hoc committee studying their respective Functional Area within the Commission's 2022 Objectives, will provide a progress update.

Recommendation:

- 1) Find this action exempt from 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, Division 6, Chapter 3, because it has no potential for resulting in physical change to the environment, directly or indirectly; and
- 2) Receive and file.

Functional Area 1: Harbor Operations (Yahn)		
Matters pertaining to the Management, Policies, Codes, Regulations and Enforcement		
Objective		Report
1.1	Conduct an annual review of Title 17 and recommend updates to the City Council where necessary (Yahn)	Secretary Yahn noted that there are no recommended updates to Title 17 at this time. Harbormaster Blank noted that a handful of revisions had been sent.
1.2	Conduct an annual review of the Marine Activities Permits and recommend updates thereto as necessary.	No report.
1.3	Work with City Staff to bring all onshore and offshore Mooring Permitees permit forms current and properly on file. (Beer,	To-do list for permits is almost complete;

	Cunningham)	Commissioner Cunningham inquired about the process for updating permits. A request to for a staff presentation outlining all that has been done to update the permits was made.
1.4	Evaluate current Harbor Department Operations to determine if the department is structured properly to meet all responsibilities of the Harbor on a daily basis.	No report.
Functional Area 2: Harbor Viability (Beer) Matters pertaining to Assets, Amenities, and Access		
Objective		Report
2.1	Study and provide recommendations to the transfer permit policy for onshore and offshore moorings. (Beer, Cunningham)	No report.
2.2	Work with City Staff on an update of the market rent to be charged for onshore and offshore moorings. (Beer, Cunningham)	No report.
2.3	Evaluate the current mooring fields and provide a recommendation for new guidelines that better define rows and fairways to improve navigation, safety, and optimization of space within the mooring fields. (Beer)	This item was reviewed by the City Council and is moving forward.
2.4	Review the On-shore mooring vessel specifications providing a long-term plan with the goal of insuring adequate spacing between moorings, residential docks, and street ends. (Cunningham, Scully)	No report.
2.5	Evaluate options for additional City Moorings and/or Multi Vessel Mooring Systems (MVMS) for temporary use by visiting mariners or long-term mooring permittees. (Williams)	No report.
2.6	Complete evaluation for establishing day moorings off Big Corona beach and harbor moorings. (Williams)	No report.
Functional Area 3: Harbor Infrastructure (Cunningham) Matters pertaining to Sea Walls, Sea Level Rise, Dredging, Docks, and Beaches		
Objective		Report
3.1	Support staff on the rehabilitation of the current public floats and gangways including areas of the harbor that could benefit with additional public access.	Dredging is being delayed and reported on the Coast Keepers lawsuit; is optimistic that the issues can be resolved.
3.2	Evaluate and identify the responsibilities and obligations of the city for additional safety vessels/equipment that may be added to the Harbor in the future.	No report.
Functional Area 4: Harbor Stakeholders (Scully) Matters pertaining to Residential, Recreational, and Commercial Users		
Objective		Report
4.1	Evaluate enhancements and/or services to City amenities which will improve the operation and enjoyment of the Harbor. Additionally, identify new revenue generating offerings that would be administered through the Harbor Department. (Scully)	Irvine Co. has started work on the Balboa Marina public dock and surrounding area.
4.2	Evaluate and make recommendations for Lower Castaways. (Marston)	No report.

4.3	Continue the dialogue with representatives of the Harbor Charter Fleet industry, commercial vessel operators and rental concessionaires to: (1) promote best practices for all charter and commercial boat operations in Newport Harbor with particular attention to safety, operational support, speed, noise and pollution control/compliance and (2) evaluate (a) total number of vessels for hire on the harbor, (b) maximum passenger capacity for each vessel and in total, and (c) overall height of the superstructure of vessels for charter within the Harbor. (Williams)	4.3.1 is complete; 4.3.2 Safety Committee meeting had great participation, including OC Sheriffs and Matt Cosylyon.
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Harbormaster Blank confirmed the list will be renamed to “current objectives.”

Chair Scully opened the floor to public comments. Seeing none, Chair Scully closed the floor to public comments.

The item was received and filed.

5. Harbormaster Update – May 2023 Activities

The Harbormaster oversees the City Harbor Department and is responsible for the management of the City’s mooring fields, enforcement of the municipal code, events permitting, safety and rescue operations, the Marina Park Guest Marina, marine sanitation pump out equipment and public pier maintenance, impound and disposition of abandoned and unclaimed vessels and public relations and information dissemination on and about Newport Harbor. This report will update the Harbor Commission on the Harbor Department’s recent activities.

Recommendation:

- 1) 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
- 2) Receive and file.

Harbormaster Paul Blank provided a summary of the agenda report provided in the publicly noticed agenda packet. A PowerPoint presentation was displayed.

Harbormaster Blank confirmed the City Council ordinance on the open water initiative passed upon second reading and the Fiscal Year 2023-24 budget was adopted. As such, the budget included funding for Harbor Department enhancements including making Matt Cosylyon the Deputy Harbormaster and extended hours for most of the summer.

Vice Chair Beer commented that the distancing of the buoys may require analysis as related to the new mooring process.

Harbormaster Blank reported he met with the Dudek consultant on the next steps for the open water initiative in terms of agency permitting. The contract is authorized for the next phase and it is all funded. He also stated the timeline for the Coastal Development Permit is approximately 90 days or more.

Discussion ensued regarding the China Cove event which occurred over Memorial Day weekend.

In response to an inquiry from Commissioner Svrcek, Harbormaster Blank reported the Clean Earth Rover has both an autonomous and manual route feature. General discussed ensued on the equipment and its functionality.

Chair Scully opened the floor to public comments. Seeing none, Chair Scully closed the floor to public comments.

There was no further action taken on this item.

7. MOTION FOR RECONSIDERATION

None.

8. COMMISSIONER ANNOUNCEMENTS (NON-DISCUSSION ITEMS)

Commissioner Svrcek reported on his attendance at the Water Quality and Coastal Tidelands Committee meeting. He was impressed with the presentation on the City's efforts related to beach sand replenishment and suggested they consider making a video for historic presentation purposes.

Secretary Yahn reported the City Council voted unanimously to fund a \$50,000 grant for the Newport Beach Christmas Boat Parade which was a success for the Chamber and for the Boat Parade.

9. MATTERS WHICH COMMISSIONERS WOULD LIKE PLACED ON A FUTURE AGENDA FOR DISCUSSION, ACTION, OR REPORT (NON-DISCUSSION ITEM)

It was determined the naming of the new mooring product could be ready for the next agenda, however the information related to the related appraisal may not be ready.

Vice Chair Beer requested City staff compile and provide data related to the outreach to permittees, including number of notices, response rates and deadlines, along with various other metrics.

10. DATE AND TIME FOR NEXT MEETING: Wednesday, July 12, 2023 at 5 p.m.

Location change for July 12, 2023, 5 p.m. meeting: Marina Park, 1600 W. Balboa Boulevard.

11. ADJOURNMENT

There being no further business to come before the Harbor Commission, the meeting was adjourned at 7:02 p.m.