

NEWPORT BEACH HARBOR COMMISSION REGULAR MEETING MINUTES  
City Council Chamber – 100 Civic Center Drive, Newport Beach, CA  
Wednesday, September 13, 2023  
5 p.m.

**1. CALL MEETING TO ORDER**

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

**2. ROLL CALL**

PRESENT: Steve Scully, Chair  
Marie Marston, Secretary  
Scott Cunningham, Commissioner  
Rudy Svrcek, Commissioner  
Gary Williams, Commissioner

ABSENT: Ira Beer, Vice Chair (excused)  
Don Yahn, Commissioner (excused)

Staff Members: Paul Blank, Harbormaster  
Jennifer Biddle, Administrative Assistant  
Chris Miller, Administrative Manager/Public Works

**3. PLEDGE OF ALLEGIANCE – Commissioner Svrcek**

**4. PUBLIC COMMENTS**

Chair Scully outlined the meeting rules of decorum.

Pete Swift commented expressing concerns regarding the potential for waste and pollution related to the Balboa Yacht Basin marina replacement.

Jim Mosher commented on an agenda item relating to a restaurant along Mariner's Mile that was reviewed at the recent Planning Commission meeting and inquired whether the Harbor Commission should be reviewing the restaurant owner's use of a slip reserved for restaurant patrons.

Chuck South expressing concerns regarding the amount of non-recyclable materials and related environmental issues related to the demolition of docks when they go out of service.

There were no other members of the public who elected to make public comments on non-agenda items.

**5. APPROVAL OF MINUTES**

**1. Draft Minutes of the August 9, 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.

Commissioner Svrcek moved to approve the minutes of the August 9, 2023, as amended. Commissioner Williams seconded the motion. The motion carried by the following roll call vote:

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

## 6. PUBLIC HEARING

### 1. Variance Request: Vessel Berthing at 700 W. Bay Avenue

Jim Warmington ("Applicant"), property owner of 700 W. Bay Avenue, requests a variance to modify the Special Conditions associated with his dock that prohibit the berthing of boats on the east side of the easterly finger ("Variance"). In support of the Variance, Applicant has offered to remove and surrender back to the City his onshore mooring P -70 located in the street end adjacent to his property and the only onshore mooring at this street end.

#### **Recommendation:**

- 1) Conduct a public hearing;
- 2) Find the Project exempt from the California Environmental Quality Act ("CEQA") pursuant to Section 15060(c)(2) (Preliminary Review) and Section 15301 (Existing Facilities) of the CEQA Guidelines, California Code of Regulations, Title 14, Division 6, Chapter 3; and
- 3) Adopt Resolution HC2023-010 of the Harbor Commission of the City of Newport Beach, California approving variance No. HCVAR2023-001 to allow the berthing of vessels on the east side of the easterly finger of the dock located at 700 W. Bay Avenue.

Public Works Administrative Manager Chris Miller provided a summary of the publicly noticed agenda report. A PowerPoint presentation was displayed.

Discussion ensued including comments on historical references relating to applicable restrictions on the subject site relating to onshore moorings and improving navigation, available clearance when the larger vessel is in the U-shaped dock, applicable property line provisions, and there will be no onshore mooring on the street end as there was in 2017.

Chair Scully opened the public hearing and public comments.

Jim Warmington, applicant, expressed support for his request for a variance, noting the historical changes in the subject site.

Discussion ensued including comments noting the fingers of the dock are not located within the property lines, previous lot line adjustments, the allowable lengths of boats which could be docked at the float, and clarifying the applicant would be in accordance with the 14-foot beam restriction.

Jim Mosher commented requesting clarification regarding the 300-foot noticing requirements for this agenda item, stated his perspective regarding alignment of the property lines and potential inconsistency with the permit, and expressing concern regarding visible extensions of the permitted dock in the photographs included in the report.

Seeing no others who wanted to speak, Chair Scully closed public comments and the public hearing.

Discussion ensued including comments regarding crowding in the Harbor and elimination of the shore mooring which will upgrade the beach and access.

Commissioner Cunningham moved to approve the variance as recommended. Commissioner Williams seconded the motion. The motion carried by the following roll call vote:

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

## 7. CURRENT BUSINESS

**1. Council Policy H-1 to Newport Beach Municipal Code**

Council Policy H-1 ("H-1") describes the distance that piers and floats may extend channelward throughout the harbor. In 2022, the Harbor Commission formed a subcommittee to evaluate the Policy on an area-by-area approach versus the current broad-based, harbor wide approach. Revisions to H-1 were approved by the Harbor Commission in April 2023. Upon further review and consideration after the Commissioner's approval, staff determined that the entirety of H-1 would be better positioned within the Newport Beach Municipal Code (NBMC) therefore effectively eliminating H-1. As a result, staff is returning to the Harbor Commission for approval of this new format with subsequent revisions and recommends that it be forwarded to the City Council for final approval.

**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) Approve changes to NBMC and recommend it be forwarded to the City Council for final approval.

Public Works Administrative Manager Chris Miller provided a summary of the publicly noticed agenda report. A PowerPoint presentation was displayed.

Discussion ensued and included comments regarding various language provisions, properties straddling bulkhead stations, pierhead line / bulkhead extension provisions including language about defaulting to exactly where a street ends when the bulkhead station does not fall on the property lines, and expressing support for the improvements to Policy H1.

Chair Scully opened the public comment period.

Jim Mosher commented expressing support for the consolidation of disconnected policies and suggested negotiating pierhead line markers. He offered suggestions on page 92 regarding negative impacts to adjacent property owners' Harbor views and including language regarding impacts to public navigation and dredging. The use of the word "and" between these concerns should be changed to "or". He also requested review of the document to ensure no part of the Harbor was inadvertently excluded and suggested a catch-all or ambiguity statement.

Seeing no others who wanted to speak, Chair Scully closed the floor to public comments.

Discussion ensued and included comments regarding inclusion of a "catch all" provision to ensure all areas of the Harbor are addressed.

Chair Scully moved to approve as recommended, with the amendments to include the discussed "catch all" provision, and also adding a phrase that navigation would not be affected in sections "A", "B", & "C", and determining the item except from CEQA. Commissioner Cunningham seconded the motion. The motion carried by the following roll call vote:

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

Direction was provided to follow up on the process for legal noticing related to similar items.

**2. 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.

Balboa Ferry ad hoc committee report:

No update at this time.

2024 Objectives ad hoc committee report:

Chair Scully distributed a document for the Commission's review related to proposed 2024 objectives and recommended the item be placed on the next meeting agenda for final approval.

General Plan Vision Statement ad hoc committee report

No update at this time.

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.

**3. Harbor Commission Current 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.

<b>Functional Area 1: Harbor Operations (Yahn)</b> <b>Matters pertaining to the Management, Policies, Codes, Regulations and Enforcement</b>		
<b>Objective</b>		<b>Report</b>
1.1	Conduct an annual review of Title 17 and recommend updates to the City Council where necessary (Yahn)	No report.
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 Permittees permit forms current and properly on file. (Beer, Cunningham)	No report.
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.

  

<b>Functional Area 2: Harbor Viability (Beer)</b> <b>Matters pertaining to Assets, Amenities, and Access</b>
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<b>Objective</b>		<b>Report</b>
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)	No report.
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**

<b>Objective</b>		<b>Report</b>
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.	No report.
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**

<b>Objective</b>		<b>Report</b>
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)	No report.
4.2	Evaluate and make recommendations for Lower Castaways. (Marston)	Chair Scully and Secretary Marston met with two of the PBR members; PBR would like Council direction; Would like to involve PBR, Planning Commission, and Harbor Commission to develop recommendations; Matter will likely be reviewed by Harbor Commission with recommendations forwarded to the City Council.
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	Safety Committee meeting was held; Billy Whitford (NAC)

	<p>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)</p>	<p>suggested involving the rowing community to understand scheduling of all related water activities, timing, and safety impacts; suggested meeting with sailing schools, as well; will coordinate a larger meeting with all groups; will schedule one more safety subcommittee meeting before end of year</p>
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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 and it was received and filed.

#### **4. Harbormaster Update – August 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.

Discussion ensued including comments related to an incident with a boat which dragged a mooring and the associated permittees, the process for following up on recreational boaters who are overdue to return, the impacts of bridge jumping and the staffing of lifeguards at related locations, fishing licenses, lights on the channel markers, the process of informing the rowing community of other scheduled activities in the Harbor, and restrictions on non-staff access to certain buoy data.

Chair Scully opened the floor to public comments.

Jim Mosher inquired whether there were any unusual wind events or related incidents in the main Harbor due to Tropic Storm Hilary.

Brief discussion ensued regarding wind-related events in the Harbor.

Seeing no others who wished to speak, Chair Scully closed the floor to public comments.

There was no further action taken on this item.

**8. MOTION FOR RECONSIDERATION**

None.

**9. COMMISSIONER ANNOUNCEMENTS (NON-DISCUSSION ITEMS)**

Chair Scully and Commissioner Svrcek attended the recent Water Quality and Coastal Tidelands Committee meeting.

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

The following items were discussed as matters to be placed on a future agenda:

1. 2024 Goals report
2. Lower Castaways report scheduled for the October meeting.

**11. DATE AND TIME FOR NEXT MEETING: Wednesday, October 11, 2023 at 5 p.m.**

The next meeting was scheduled for Wednesday, October 11, 2023 at 5 p.m.

**12. ADJOURNMENT**

There being no further business to come before the Harbor Commission, the meeting was adjourned at 7:05 p.m.

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