

NEWPORT BEACH HARBOR COMMISSION REGULAR MEETING MINUTES
City Council Chambers – 100 Civic Center Drive/Teleconference Location Pursuant to GC§54953(B):
3570 Las Vegas Blvd. S, LV, NV (Nobu Bus. Lounge, Fl. 72)
Wednesday, July 10, 2024
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
Ira Beer, Vice Chair
Marie Marston, Secretary
Scott Cunningham, Commissioner
Rudy Svrcek, Commissioner
Gary Williams, Commissioner (via teleconference)
Don Yahn, Commissioner

ABSENT: None

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

3. PLEDGE OF ALLEGIANCE – Led by Commissioner Svrcek

4. PUBLIC COMMENTS (NON-AGENDA ITEMS)

This item was heard out of order after consideration of Item 5.

Adam Leverenz expressed concern regarding mooring permit fee information submitted to the City Council in a related agenda report. He expressed concern with the leadership of Vice Chair Beer as related to the mooring permit issue.

Jim Mosher requested clarification concerning subsection M related to mooring lengths in the ordinance presented to the City Council the previous evening during their consideration of mooring permit fees. He stated there is no explanation in Title 17 of the established length.

Vice Chair Beer inquired of Mr. Mosher whether the subsequent language that discusses established length replaced the five-foot extension. Mr. Mosher responded the language is not in there at all.

5. APPROVAL OF MINUTES

1. Draft Minutes of the June 12, 2024 Harbor Commission Regular Meeting

Chair Scully opened public comments.

Jim Mosher supported Vice Chair Beer's amendments to the minutes on page 13 related to City Council Closed Sessions.

Seeing none, Chair Scully closed public comments.

Vice Chair Beer moved to approve the June 12, 2024 Harbor Commission Regular Meeting minutes, as amended, including those offered by Mr. Mosher related to City Council Closed Sessions. Seconded by Commissioner Yahn. The motion carried by the following roll call vote:

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

6. ELECTION OF OFFICERS

1. Harbor Commission Election of Officers for the 2024-25 Year

Chair Scully opened public comments. Seeing none, Chair Scully closed public comments.

Chair Scully outlined procedures for nominating and electing the officers for the 2024-25 year.

Office of Chair of the Harbor Commission for the 2024-25 year

Vice Chair Beer nominated Commissioner Cunningham to serve as Chair for the 2024-25 year.

Vice Chair Beer moved to appoint Commissioner Cunningham to serve as Chair for the 2024-25 year. Seconded by Commissioner Marston. The motion carried by the following roll call vote:

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

Office of Vice Chair of the Harbor Commission for the 2024-25 year

Commissioner Scully nominated Commissioner Beer to serve as Vice Chair for the 2024-25 year.

Commissioner Scully moved to appoint Commissioner Beer to serve as Vice Chair for the 2024-25 year. Seconded by Commissioner Yahn. The motion carried by the following roll call vote:

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

Office of Secretary of the Harbor Commission for the 2024-25 year

Commissioner Scully nominated Secretary Marston to serve as Secretary for the 2024-25 year.

Commissioner Svrcek nominated Commissioner Yahn to serve as Secretary for the 2024-25 year.

Commissioner Scully moved to close the nominations for Secretary for the 2024-25 year. Seconded by Secretary Marston. The motion carried by the following roll call vote:

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

Discussion ensued on the method to proceed with the vote. It was ultimately determined that a secret ballot would not be allowable and that a voice vote would be taken.

A voice vote for Secretary for the 2024-25 year was taken.

For Commissioner Marston: Cunningham, Williams, Marston, Beer, Scully

For Commissioner Yahn: Svrcek, Yahn

By majority voice vote, Commissioner Marston was appointed to serve as Secretary for the 2024-25 year.

7. PUBLIC HEARING

1. Residential Dock Reconfigurations at 20 Beacon Bay (Beacon Bay Homeowner Association Dock Systems)

Chair Cunningham recused himself from participating in this item citing a real property conflict of interest. He left the meeting for the duration of this item.

Public Works Administrative Manager Miller provided a staff report as detailed in the publicly noticed agenda report. This is the first dock reconfiguration project the Harbor Commission has reviewed under the new rules, rather than the former Council Policy H-1. All four docks are Beacon Bay Homeowner's Association Docks. Slides were displayed which detailed the specifics for each dock. There is now a website which allows staff and the applicant and/or contractors to visually understand the new rules throughout the harbor including the float limit lines. The applicant proposes to extend beyond the limit line and that requires Harbor Commission review and approval. The limit lines are different throughout the Harbor. Previously approved Beacon Bay projects were displayed. The existing and proposed dock configurations were displayed.

Public Works Administrative Manager Miller continued with his presentation by noting that the most important element of the proposed dock project are the shoreward facing/accessible slips. Traditionally, slips are accessed from the bayward side. It is the primary reason why the slips were originally built out to the project line, and why the applicant is requesting it to remain at the project line. If the applicant were to bring the dock shoreward four feet to the 16-foot limit line, it would severely impact their ability to freely access and dock at the shoreward facing slips at all tides. The proposed floats (dock numbers one to three) are virtually the same. Public notice was provided in the newspaper, posted on the docks, and mailers were sent to a wide radius. Staff's recommendation is for the Harbor Commission to approve this project by making the required findings as stated in the Municipal Code, and those findings are noted in the staff report, and noted and explained in the proposed resolution of approval.

Public Works Administrative Manager Miller added that the proposed new gangway would be compliant with the Municipal Code, as it is currently not in compliance.

Commissioner Scully inquired as to the location of the fingers and confirmation that a vessel can stick out the width of the beam. Mr. Miller confirmed that the statement concerning the width was accurate. The docks are only to be used for electric Duffy-sized boats on the landward side. The bayward facing side is not a permanent berthing place to dock boats. It is more for temporary use and the idea is not to have larger boats there. The added benefit of having slips that are landward facing is that it maintains an open channel more so than other docks in the area including the Balboa Yacht Basin directly to the east.

Commissioner Scully inquired as to the purpose of pushing the work dock out. It was determined that the applicant would respond to this inquiry.

Commissioner Scully inquired as to the purpose of reducing the footprint and whether it was a Municipal Code or City requirement on dock configurations. Public Works Administrative Manager Miller responded that with one exception, the Commission and staff are not concerned about increases or decreases in square footage, however that remains a concern of different agencies. Balboa Island will always have that square footage requirement to preserve the public area of the beach.

Commissioner Yahn inquired as to the types of restrictions that exist in the subject area. Public Works Administrative Manager Miller responded the application is from the homeowner's association itself, and they work with their residents as to how wide they desire the floats to be. Discussion ensued concerning the lines in the reconfiguration, and slides were displayed which illustrated the subject area.

Commissioner Yahn requested clarification as to the limit line with the shaded colors and what it depicted. Public Works Administrative Manager Miller responded the goal was not to make drastic changes from what had been in place for decades, as related to the former Council Policy H-1. The goal was to change the process and allow the Harbor Commission to be able to make certain decisions, when they could not do so before.

Secretary Marston requested clarification as to when the 16-foot limit line rules were established. Public Works Administrative Manager Miller responded the policies were in place from the 1960's. He confirmed that the City is not imposing a time limit, as it is not a public dock. He also confirmed the rules allow for people to extend to the width of their beam. The applicant could confirm as to the size of the boats that are allowed.

Vice Chair Beer also requested clarification as to the homeowner's association restrictions from allowing a permanent side tie that would extend out beyond the project line on the work dock.

Public Works Administrative Manager Miller noted that special conditions are attached as part of the resolution, which includes only allowing extension beyond the end of the float by the beam width.

Pete Swift, applicant, thanked Mr. Miller for his work on this matter. He noted the line was originally designed for the Army Corps of Engineers dredging. The tips of the fingers line up exactly with the rest of Beacon Bay, and it goes all the way out to the project line. He commented on historical input that may have been given on early Harbor design.

Vice Chair Beer requested clarification of the actual distance from the project line to the border of the D field. Mr. Swift responded he scaled it at about 85 feet.

Mr. Swift continued his comments by stating the Coastal Commission and Army Corps of Engineers are concerned about eelgrass and shading, but square footage only became a concern about twenty years ago for those reasons. If the Harbor Commission approves tonight's request, then the applicant will move forward with requesting approval from those external agencies. The proposed gangway is compliant with the City's rules. The docks would be unusable if they were moved landward. Slides displaying the subject site were displayed and detailed, including a display of the sandy beach.

Secretary Marston requested clarification of the side tie on the bayward/outside side. Mr. Swift responded it was designed for guests and is not a permanent slip.

Secretary Marston requested clarification as to the maximum length of time a guest would be allowed to remain on the side-tie. Ken Crume, a homeowner and Beacon Bay Board Member, stated they have internal homeowner's association rules and regulations, and he believes the limit is between two and three days.

The dock captain must approve use of the outside. There are many homeowners, and they want to prevent stacking up of boats on the side-ties.

Commissioner Yahn inquired as to the slip conditions during low tide. Mr. Crume responded the conditions are challenging and there is opportunity to dredge, which they do as often as they can.

Commissioner Scully inquired if there were any comments received on the public outreach for this item. Public Works Administrative Manager Miller confirmed that no comments were received.

Vice Chair Beer stated the Commission's obligation is to ensure there is a justification for having an exemption to the current Municipal Code, and these circumstances, if not complied with, would probably deny the property of privileges enjoyed by other properties in the vicinity. The bayward extension does not provide any special privileges as they exist today, and it does not look like there will be any negative impacts to the adjacent property owners.

Vice Chair Beer opened public comments.

Adam Leverenz requested clarification of the determination of the bulkhead line. Vice Chair Beer responded that the lines are fixed. Mr. Miller responded the lines were established in the 1930's and they are fixed lines regardless of what happens naturally.

Jim Mosher believes there is a mistake in the plans which show the dock is running not along the project line. Beacon Bay appears to be tilted by a few degrees. The applicant is trying to make it exactly north and south rather than square the way the track is laid out. There is no reason for it not to be parallel to the project line. Under the new rules this is the first hearing, and he believes the burden of explaining the four findings that must be made is on the applicant, rather than staff. He did not agree with the findings as written. If there is part of the decision about the use of the bayward side of the float, then that should be reflected in the conditions of approval.

Len Bose noted that they are constantly monitoring the usage.

Seeing no others, Vice Chair Beer closed public comments.

Commissioner Scully agreed that condition number eight should state that you cannot extend past your beam on the ends of the dock. Mr. Miller stated it could be reworded to state, "Extending beyond the face of the float, the bayward face" or just clean up the language for clarification. He noted that is a rule in the Harbor.

Vice Chair Beer stated for clarification, there has been discussion related to the bayward facing tie ups and how long they are there. That is a homeowner's association rule, which is subject to change. Based upon his understanding, the rules are what they are, and they have to comply with them and not extend beyond the beam width.

Commissioner Yahn moved to:

- a) Find the Project exempt from the California Environmental Quality Act ("CEQA") pursuant to Section 15301 (Existing Facilities) and Section 15302 (Replacement or Reconstruction) of the CEQA Guidelines, California Code of Regulations, Title 14, Division 6, Chapter 3; and
- b) Adopt Resolution HC2024-02 approving in concept the Project, with slight modifications in condition number eight. Seconded by Commissioner Svrcek. The motion carried by the following roll call vote:

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

Chair Cunningham returned to the meeting after the vote on this item.

8. CURRENT BUSINESS

1. Ad Hoc Committee Updates

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 – Commissioners Scully, Svrcek and Yahn (05-10-2023)

No further update. The item will remain until there is direction on the Ferry and how they are going to comply with CARB and environmental requirements.

General Plan Vision Statement Ad Hoc – Commissioners Scully and Marston (08-09-2023)

Committee Member Black from the Water Quality and Coastal Tidelands Committee is very involved in this matter and will make a presentation to the Commission. This item will be added under future agenda items.

Public Dock Utilization Ad Hoc – Commissioners Beer, Svrcek, and Williams (04-10-2024)

It was determined that in order to provide any type of shore boat service for offshore moorings or for the general public to get to various points around the Harbor, a change in the Municipal Code would be required to allow that to occur, notwithstanding that an offer was presented by Harbormaster Blank to allow the potential applicant for this initiative to run a test over a 10 day period, as that could be granted by the Harbormaster. It does not appear to be enough time for them to make an economic evaluation, although they may want to consider doing that in the month of December, but that is for them to come back to the Harbormaster with. Additional documentation would have to be filed with the Coastal Commission. There is a bit to get done there in order to even consider that type of project. At least one of the two potential applicants for this has indicated that they would like to pursue that route and figure they could start that process with some assistance from the ad hoc committee and staff. Discussion ensued on the topic, including determining the City's role and responsibilities in the matter.

Chair Cunningham opened public comments.

Jim Mosher suggested renaming the current General Plan Vision Statement ad hoc committee as they would be looking at the entire General Plan Update and not just the vision statement. The consultant is going into a new outreach phase, and they will be arranging a presentation separate from that by Committee Member Black.

Len Bose referred to an email he sent about an incident between a rental and privately owned boat, noting his understanding that the renters were not insured. He referred to potentially researching legal requirements for boat renters to have insurance. He suggested the Commission form an ad hoc committee to review the matter.

Seeing no others, Chair Cunningham closed public comments.

There was no further action taken on this item and it was received and filed unanimously.

2. Harbor Commission 2024 Objectives

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.
1. Conduct annual review of Title 17 and recommend updates to City Council where necessary (Commissioner Yahn).
Update: *No report. They are mobilizing with the Harbormaster and his staff to develop a list and come up with some ideas and concepts.*
 2. Collaborate with the Water Quality/Coastal Tidelands Committee to partner on areas within the Harbor that both Commission/Committees intersect (Commissioners: Svrcek, Scully)
Update: *No report.*
 3. Successful implementation of the mooring reconfiguration initiative, including design, testing, permitting, execution, and monitoring (Commissioner: Beer).
Update: *Item remains at Coastal Commission for further review; Successfully completed application process.*
 4. Collaborate with Parks, Beaches, and Recreation Commission and Staff to evaluate the best use for Lower Castaway and make a recommendation to City Council (Commissioners: Marston, Svrcek).
Update: *Eliminating this objective as the City Council is leading this process.*
 5. Work with staff to identify opportunities to add additional Harbor Services (Restrooms, additional pump out stations, dock space, Shore Boat Service, Boat Launch Ramp, and development of the mobile app) (Commissioners: Marston, Yahn)
Update: *No report.*
 6. Continue with the participation of businesses, nonprofits, and the Harbor Department with a Newport Harbor Safety Committee to promote best practices and address safety issues on the water (Commissioner: Scully).
Update: *There is a potential opportunity to review insurance/risk issues*
 7. Review Harbor Department responsibilities, evaluate the Department's readiness and effectiveness to deliver Harbor services as necessary for normal operations and during emergencies and make recommendations as determined necessary (Commissioner: Scully, Williams).
Update: *No report.*
 8. Work with City Staff on an update of the market Rent to be charged for onshore and offshore moorings (Commissioner: Cunningham, Beer).
Update: *City Council voted 6 – 1 to approve an alternative to the one recommended by the Harbor Commission for increases to fair market rental rates for the onshore and offshore moorings. The alternate would allow a permittee a one-time transfer for four years, also grandfathering existing permittees into the current low rates, and once the permittee makes the transfer, the new user of the mooring will convert to a mooring license, and the mooring license fees conform to the fair market value assessment that this Commission looked at based upon an independent appraisal, which was also approved by the City Council several months back. The subcommittee believed it is a big win for the existing permittees, as they will get to keep their low rates possibly for life, as long as this is not affected by subsequent rulings by subsequent City Councils. It is also a big win for the general public, which, because of the removal of the*

transferability in time, anyone that now wants to have a mooring to gain access over public tidelands will not have to pay a private party to have that right. Instead, they will pay the City directly a fair market rent, and they can continue to enjoy the Harbor like anyone else. In time, the City will eventually convert to City licenses under their control and their responsibility to maintain the tackle gear and weights. The Harbormaster is taking the initiative to look at developing eco-friendly moorings which would assist in reducing metal material from the Harbor.

9. Evaluate establishing day moorings off Big Corona Beach (Commissioner: Williams).
Update: No report.
10. Support staff in all efforts related to the dredge completion of the Federal Navigation channels in addition to the upcoming agency renewals of Regional General Permit (RGP54) shallow water dredging permit. (Commissioners: Cunningham, Svrcek)
Update: No report.

Chair Cunningham opened public comments.

Jim Mosher requested clarification as to the difference between the work of the Commissioners assigned to the objectives and the work of those assigned to ad hoc committees. He stated the mooring rate alternative considered by the City Council at their last meeting was not reviewed by the Harbor Commission, although Vice Chair Beer did endorse the alternative on behalf of the subcommittee, which gave the impression the entire Harbor Commission supported the alternative. Mr. Mosher stated he believed the alternative should have been reviewed by the Harbor Commission first.

Seeing no others, Chair Scully closed public comments.

There was no further action taken on this item and it was received and filed unanimously.

3. Harbormaster Update – June 2024 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.

Commission and staff discussion ensued including comments related to the number of objections received concerning language on warnings issued, use of the Rhine Wharf requires 48-hour written notice to Harbor Department, the subject wharf has signage that states a permit is required for use, confirmation that the large majority of public dock enforcements are related to exceedance of time limitations, the Department's practice of photographic documentation, confirmation that permitted moorings can have "free range" sand lines or spreader lines, confirmation that 48-hour advance requests to use loading must include a specific day and specific maximum four-hour window for use,

Chair Cunningham opened public comments.

Adam Leverenz commented that the data presented by Harbormaster Blank concerning violations is not reflective of actual violations, but rather mostly reflective of notices of time requirements to cure a line issues.

Anne Stenton noted she is currently serving as the President of the Newport Mooring Association and thanked Harbormaster Blank for his educational approach with permittees. She thanked the Commission for their help in City Council's decision at their last meeting to move forward with a fair rate.

Chair Cunningham thanked Ms. Stenton for her kind comments.

Seeing no others, Chair Cunningham closed public comments.

Harbormaster Blank confirmed the underwater cleanup is scheduled for September 21, 2024 would be headquartered at Marina Park, with volunteers, sponsorship opportunities, and City staff participating.

There was no further action taken on this item and it was received and filed unanimously.

9. MOTION FOR RECONSIDERATION

None.

10. COMMISSIONER ANNOUNCEMENTS (NON-DISCUSSION ITEMS)

None.

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

Commissioner Scully requested the General Plan Update consultant and Committee Member Curt Black with the Water Quality and Coastal Tidelands Committee be invited to attend an upcoming Harbor Commission meeting to make a presentation on the General Plan Update.

Chair Cunningham requested the Helix Anchor System be placed on a future agenda for discussion.

12. DATE AND TIME FOR NEXT MEETING:

The next meeting was scheduled for Wednesday, August 14, 2024, at 5 p.m.

13. ADJOURNMENT

There being no further business to come before the Harbor Commission, the meeting was adjourned at 7:17 p.m.