

NEWPORT BEACH HARBOR COMMISSION REGULAR MEETING MINUTES
City Council Chambers – 100 Civic Center Drive, Newport Beach
Wednesday, October 9, 2024
5 p.m.

1. CALL MEETING TO ORDER

The meeting was called to order at 5:01 p.m.

2. ROLL CALL

PRESENT: Ira Beer, Vice Chair
Marie Marston, Secretary
Steve Scully, Commissioner
Rudy Svrcek, Commissioner
Gary Williams, Commissioner
Don Yahn, Commissioner

ABSENT: Scott Cunningham, Chair (Excused)

Staff Members: Paul Blank, Harbormaster
Jennifer Biddle, Administrative Assistant
Chris Miller, Public Works Administrative Manager
Jose Montoya, Deputy City Attorney
Cynthia Shintaku, Administrative Assistant
Rosalinda Gonzalez, Assistant to the Assistant City Manager

3. PLEDGE OF ALLEGIANCE – Led by Commissioner Williams

4. PUBLIC COMMENTS (NON-AGENDA ITEMS)

Vice Chair Beer opened public comments.

Adam Leverenz thanked Commissioners Yahn and Svrcek for their presentation to the City Council on alternative plans for Lower Castaways. He praised Commissioner Yahn for a strong presentation and noted the public's preference for placing the pool elsewhere. He encouraged the commissioners to keep pushing the effort, suggesting they connect with local school districts to build support. Leverenz highlighted that, unlike a pool, harbor-dependent resources are a better fit for the proposed site.

Seeing no others wishing to speak, Vice Chair Beer closed public comments on non-agenda items.

5. APPROVAL OF MINUTES

1. Draft Minutes of the August 14, 2024 Harbor Commission Regular Meeting

Vice Chair Beer opened public comments. Seeing none, Vice Chair Beer closed public comments.

Commissioner Scully moved to approve the August 14, 2024 Harbor Commission Regular Meeting minutes, as amended. Seconded by Commissioner Williams. The motion carried by the following roll call vote:

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

6. PUBLIC HEARING

1. Appeal of Harbormaster's Decision to Deny Robalo 180 Vessel Assignment and Variance to Onshore Mooring S-124

Recommendation:

- a) Determine that the action is not subject to 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

- b) Hold an appeal of denial hearing and, if justified, adopt Resolution No. HC2024-03 affirming the Harbormaster's decision to deny the variance and vessel assignment request to Mooring S-124.

OR

- c) Hold an appeal of denial hearing, amend, or rescind the Harbormaster's decision and allow the vessel assignment to Mooring S-124 after making all of the requisite findings pursuant to Newport Beach Municipal Code Section 17.05.140.D.2.

Harbormaster Paul Blank thanked the appellant for their patience and cooperation. He explained that on September 5, 2024, the permittee requested a pre-approval and variance to assign an 18-foot 4-inch Robalo 180 vessel to onshore mooring S-124 on Balboa Island. Since the vessel exceeded the 18-foot limit, he denied the request on September 10. The permittee appealed on September 11, and public hearing notices were sent on September 26.

Harbormaster Blank emphasized his duty to enforce Newport Beach's Title 17, which restricts mooring vessels longer than 18 feet. He could not approve the variance because it did not meet the necessary requirements, such as not impacting public safety and preserving property rights. After reviewing the vessel and mooring terms, he upheld his decision to deny the request due to the vessel exceeding the length limit.

Vice Chair Beer opened the floor for questions for staff.

The commission and staff discussed whether the boat's manufacturer included the outboard engine in its listed length. It was confirmed that the swim step is included, but not the outboard engine. Commissioner Yahn asked if removing or modifying the swim step could bring the boat within the 18-foot limit, and Harbormaster Blank explained that any such changes would need official documentation from the manufacturer, DMV, or Coast Guard.

Questions arose about other boats exceeding the 18-foot limit. Harbormaster Blank confirmed that 11 boats in the harbor exceed the limit, all assigned before his tenure, with no current plans to change these assignments. However, new or transferred assignments must now comply with the 18-foot rule, with no exceptions unless officially documented.

Secretary Marston clarified that the permit listing a 14-foot vessel on the mooring referred to a prior assignment, not the current request for a longer boat.

Commissioner Williams asked if the swim step could be modified to meet the length requirement, and Blank replied that any modifications would need verification from an official source, like the manufacturer or DMV.

Vice Chair Beer noted that swim steps on newer boats are often integral to the hull, making modification difficult. He asked if the 18-foot policy was strictly enforced. Blank confirmed this and reiterated that, moving forward, all onshore mooring assignments must comply with the 18-foot limit.

Vice Chair Beer asked the commissioners if any had engaged in ex-Parte communications with the appellant or neighbors, or made site visits. All confirmed they had not.

Vice Chair Beer opened the public hearing.

Casey Jones, the appellant, argued that he is not asking for special treatment and that approving his appeal would not harm the harbor, public safety, or violate the code's intent. He presented two photos of his Robalo 180, which is marketed as an 18-foot boat, showing it on mooring S-84, blending in with similar boats. Jones noted that the swim step extends just over four inches and questioned why it's included in the length while the engine, which extends further, is not.

Mr. Jones claimed that the staff report applied offshore rules to his shore mooring case, and since the code rounds lengths to the nearest foot, the Robalo 180 should count as 18 feet. He pointed out that other boats over 18 feet have been approved, setting a precedent, and that the report undercounts such boats. He argued the Robalo 180 would not create safety issues or break the code and urged the Harbor Commission to approve his appeal.

Commissioners discussed the appeal, with Commissioner Yahn clarifying that the cited code applies to offshore moorings and asking if the appellant was using it for onshore moorings. The appellant noted that the code only specifies boat length for offshore moorings and does not address onshore moorings.

They reviewed photos of the boat, particularly the ladder. When asked if the ladder could be shortened, the appellant said they had not considered it. Commissioner Svrcek suggested shortening it and asked if the boat's overall length (LOA) could be reconsidered. The appellant requested flexibility, as the ladder fits within the engine's range, and the boat is marketed as 18 feet despite the 4-inch extension.

Commissioner Williams felt that challenging the manufacturer's LOA, listed as 18 feet 4 inches, was unnecessary, given its precise measurement.

Vice Chair Beer agreed the boat was not a safety risk but noted the appellant had not met all requirements for a variance. He emphasized that the code caps mooring length at 18 feet and any exception would need an amendment. He asked if the appellant had considered an offshore mooring; the appellant had not and argued that lengths should be rounded, treating the boat as 18 feet. Vice Chair Beer reaffirmed that the 18-foot 4-inch measurement by the manufacturer must be followed under the code.

Vice Chair Beer opened public comments.

Jim Moser noted that staff microphones were not working, potentially affecting the meeting's minutes. He questioned whether this appeal was a variance request or a misunderstanding of the code's interpretation. He agreed with the appellant on the unclear basis of the 18-foot limit and suggested clarifying code section 17.60.040(M) on mooring lengths. Moser argued that if a strict limit was intended, the code should specify "over 18 feet zero inches" and define "length overall" (LOA). He noted that residential pier owners face less strict requirements than moorings.

Mr. Leverenz addressed the commission, saying that removing the swim step would not comply with Title 17, which defines boat length by the U.S. Coast Guard, DMV, or manufacturer. He suggested revisiting Title 17 for flexibility, allowing exceptions like offshore moorings. He argued it is unreasonable to deny a boat over a small extension and called for Title 17 updates for fairness.

Mr. Jones argued for clarity in the code, suggesting it should use standard rounding, which would qualify his boat for an 18-foot mooring. He emphasized he was not asking for special treatment, noting his boat is similar to the one previously moored there. He expressed frustration, feeling penalized for seeking approval rather than forgiveness.

Vice Chair Beer closed the public hearing.

Vice Chair Beer asked Deputy City Attorney Jose Montoya if the motion could be discussed after being made. Deputy City Attorney Montoya confirmed that Vice Chair Beer could entertain a motion and then open the floor for comments.

Commissioner Scully moved to adopt Resolution HC 2403, affirming the Harbormaster's decision to deny the variance and vessel assignment request for mooring S-124, and noted that the motion was exempt from the California Environmental Quality Act (CEQA). Seconded by Commissioner Williams.

Commissioner Williams began by saying he understood the applicant's frustration, given that other boats over 18 feet are on moorings. He questioned why rule enforcement waits for transfers and disagreed with considering a boat with an 18-foot, 4-inch length as 18 feet. He asked the Harbormaster to explain this approach.

Harbormaster Blank explained that the Harbor Department enforces rules only when complaints are filed; otherwise, no action is taken.

Vice Chair Beer agreed with Commissioner Williams, noting that approving this request could set a precedent, allowing more oversized boats on moorings. He emphasized the need to follow established rules.

Commissioner Williams, initially uncertain, supported enforcing consistent rules in the future, even for those "grandfathered" in. He proposed considering whole-foot rounding to address the small measurement margin, without changing the rules but interpreting them fairly. He asked for legal counsel's input on Title 17.

Harbormaster Blank suggested that if the Commission wished to overturn his decision, they clarify that boats up to 18 feet 6 inches be rounded down to 18 feet, and over 18 feet 7 inches be rounded up to 19 feet. Commissioner Williams supported amending the motion to include this guideline and invited input from other commissioners.

Commissioner Scully thanked Mr. Jones, acknowledging the quality of the presentation. As a boater, he recognized the vessel's appeal but reminded the commission of the importance of precise measurements. He cited past cases where the commission upheld rules based on inches and feet and expressed concern that making exceptions would lead to larger boats in the harbor. Noting his own experience with similar restrictions, he emphasized the need to maintain the 18-foot limit, saying the 18-foot 4-inch boat does not qualify. He supported upholding the denial as it aligns with established rules.

Vice Chair Beer agreed, addressing points raised by Commissioner Yahn. He noted that while legal documents can be interpreted differently, the code's intent has been applied consistently. Allowing a margin of several inches would conflict with established procedures. He mentioned that an ad

hoc committee is reviewing Title 17, with recommendations requiring thorough review and City Council approval, a process that can take over a year. He stressed that changes should follow the established process, not be made unilaterally in this discussion, and called for the vote.

Commissioner Scully moved to adopt Resolution HC 2403, affirming the Harbormaster's decision to deny the variance and vessel assignment request for mooring S-124, and noted that the motion was exempt from the California Environmental Quality Act (CEQA). Seconded by Commissioner Williams. The motion carried by the following roll call vote:

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

7. CURRENT BUSINESS

1. General Plan Harbor & Bay Element Update

Recommendation:

- 1) Receive and file.

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

Harbormaster Blank informed the commissioners that Curtis Black from the General Plan Advisory Committee would give a presentation on updating the Harbor and Bay sections of the City's General Plan. He noted that the current plan, approved in 2006, includes Chapter 4, which addresses these elements under the commission's jurisdiction. This meeting is the commission's first chance to participate in the update process. He briefly summarized a 2017 Planning Commission presentation that focused on Newport Harbor's long-term welfare and collaboration with stakeholders, highlighting waterfront businesses and services that were underserved at the time, and invited commissioners to consider if these issues are still relevant.

Curtis Black highlighted that the General Plan guides City goals and policies, with the Harbor and Bay Element focused on recreation, natural resources, and commercial boating. While the 2006 plan led to creating the Harbor Department, much is now outdated, making the commission's input crucial. The update, started in 2023, includes background analysis and community engagement, aiming for completion by 2025. He reviewed key themes from 2006, such as harbor resource management, boating, and public access, noting that goals like dredging and zoning policies remain relevant. He also mentioned planning for sea level rise. He invited the commission to provide feedback directly or through a subcommittee and to participate in public hearings and feedback sessions.

Commissioner Scully thanked Mr. Black for the presentation and noted Mr. Moser's suggestion to form an ad hoc committee to enhance the Harbor Commission's role in the general plan update. Scully and Secretary Marston are on this committee and aim to integrate the Harbormaster's vision into the plan, contributing long-term ideas, some from as far back as 2006.

Commissioner Yahn was enthusiastic, seeing a strong alignment between the Harbor Commission's work and the General Plan's goals, and looked forward to the ad hoc committee's efforts.

Secretary Marston, drawing on her experience with the General Plan Advisory Committee, asked if the new plan would build on or entirely redefine the 2006 goals, emphasizing the committee's role in aligning with the General Plan update.

Mr. Black explained that the General Plan would be re-envisioned with new goals based on community feedback, retaining some elements from 2006. Workshops are planned for November, with feedback

needed by early 2024, and he encouraged collaboration between the ad hoc committee and the Harbor and Bay subcommittee.

Commissioner Williams suggested scheduling a formal check-in with the General Plan Advisory Committee in early 2024. Commissioner Svrcek asked if feedback could come from all commissioners or just the ad hoc committee.

Vice Chair Beer proposed adding another commissioner to the ad hoc committee, given the plan's importance, and recommended regular updates and collaborative discussions to provide unified recommendations.

The Harbormaster noted that a 2016 subcommittee review of the General Plan had led to recommendations but no amendments.

Vice Chair Beer called for commissioners to join the ad hoc committee. Commissioner Yahn volunteered to be on the ad hoc committee.

Vice Chair Beer opened public comments.

Mr. Leverenz pointed out a typo in the General Plan text, which currently reads, "encourage development of waterfront facilities that displace water-dependent uses," but should read "that do not displace water-dependent uses," as per Mr. Black's comments.

Mr. Moser reminded the commission that last year he alerted them to ongoing work on the General Plan update, focusing then on the Vision Statement. He suggested renaming the ad hoc committee from "General Plan Vision Statement Ad Hoc Committee" to "General Plan Update Ad Hoc Committee" for broader focus, as the Vision Statement guides larger policy work.

He noted that some 2006 policies were followed, while others, like maintaining shipyards, were not. He also questioned the policy on tidelands revenue, which currently suggests all costs be repaid by users. He argued that this is inconsistent with other public spaces, like beaches, which are maintained without direct fees. He suggested that harbor costs, which benefit all Newport Beach properties, should not fall solely on users. Finally, he mentioned that public workshops for the General Plan update, including one for the Harbor and Bay Element, are scheduled for December and promised to keep the committee updated.

Vice Chair Beer closed public comments.

Vice Chair Beer moved to rename the ad hoc committee as the General Plan Update for the Harbor and Bay Element and to increase the committee's membership from two to three commissioners, to provide the necessary input to the commission and feedback on the General Plan Advisory process, and is exempt from CEQA. Seconded by Commissioner Williams who clarified that the third commissioner would be Commissioner Yahn.

The motion was then put to a vote and carried with unanimous approval, 6-0.

Balboa Ferry Ad Hoc – Commissioners Scully, Svrcek and Yahn (05-10-2023)

Commissioner Svrcek shared details from his conversation with Joe Beek, who has been working on various grant applications to replace the ferries with electric ones—a \$12 million project needing multiple grants. They discussed the challenges of securing grants and possibly delaying one ferry replacement until late 2025. Svrcek also noted the complexities of setting up charging infrastructure, requiring coordination with the city, Southern California Edison, and property owners.

Commissioner Yahn added that he discussed power and infrastructure challenges with Seymour Beek and wants more ad hoc committee members involved. He and Commissioner Scully plan to hold a meeting to

address these issues. He also reported presenting to the California Air Resource Board (CARB) Director, with city representatives and Assemblywoman Diane Dixon, to advocate against mandatory ferry electrification.

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

No update.

Vice Chair Beer opened public comments. Seeing none, Vice Chair Beer closed public comments.

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

2. 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.

1.	Conduct annual review of Title 17 and recommend updates to City Council where necessary (Commissioner Yahn).
	<u>Update:</u> <i>No report.</i>
2.	Collaborate with the Water Quality/Coastal Tidelands Committee to partner on areas within the Harbor that both Commission/Committees intersect (Commissioners: Svrcek, Scully)
	<u>Update:</u> <i>No report.</i>
3.	Successful implementation of the mooring reconfiguration initiative, including design, testing, permitting, execution, and monitoring (Commissioner: Beer).
	<u>Update:</u> <i>Harbormaster Blank reported the City is on a 90-day pause on its application related to the reconfiguration at the request of the California Coastal Commission.</i>
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).
	<u>Update:</u> <i>Commissioner Svrcek reported attending a City Council study session on the Lower Castaways, where the City recommended a public pool facility and presented a comprehensive architectural plan, including completed designs, elevation images, building floor plans, perspective images, fly-around videos, a traffic study, timelines, and cost estimates. The construction costs were projected at \$47 million, with an estimated annual operating cost of \$2.5 million. The City Council approved a \$500,000 expenditure to advance the pool plan. He encouraged those interested in providing input to review the plan on the City's website and monitor upcoming City Council agendas, as the plan is moving forward rapidly. Commissioner Yahn expressed satisfaction in seeing the ad hoc committee's efforts acknowledged and commended the culmination of their work in representing the Harbor Commission's voice.</i>
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)
	<u>Update:</u> <i>Harbormaster Blank reported he has not met yet with a potential water taxi operator and noted they are not a local operator.</i>
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).

	<u>Update:</u>	<i>No report.</i>
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).
	<u>Update:</u>	<i>Commissioner Scully noted that the new electric Harbor Patrol Services boat looks outstanding and is a great addition to the department.</i>
8.		Work with City Staff on an update of the market Rent to be charged for onshore and offshore moorings (Commissioner: Cunningham, Beer).
	<u>Update:</u>	<i>No report.</i>
9.		Evaluate establishing day moorings off Big Corona Beach (Commissioner: Williams).
	<u>Update:</u>	<i>Commissioner Scully reported drafting an outline of a motion for the Harbor Commission's review will be reviewed at the next meeting.</i>
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)
	<u>Update:</u>	<i>Harbormaster Blank reported that a team is actively working to finalize the plan on the potential to barge dredging material to another port, though specific details are not yet available.</i>

Vice Chair Beer opened public comments.

Mr. Leverenz requested that the CDM proposal for Helix Moorings be added to the next meeting agenda, with clarification on whether the moorings are intended for day-use, overnight use, or other purposes, and asked for any City licensing details.

Mr. Moser referred to Item No. 9, suggesting the City Council might benefit from understanding the Harbor Commission's role, as the proposal is outside the harbor. He praised the presentation to the City Council on the Lower Castaways (Item No. 4) but noted it implied a formal recommendation despite the ad hoc committee disbanding before a vote. He added that zoning issues were not covered, pointing out that building a pool would need a zoning change, with Coastal Commission approval required since a pool is not coastal-dependent. This may make the Harbor Commission hesitant to approve it.

Seeing no others wishing to speak on this item, Vice Chair Beer closed public comments.

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

3. Harbor Commission 2024 Objectives

- a) 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
- b) Receive and file.

4. Harbormaster Update – August and September 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 Blank provided updates on recent Harbor Department activities, including the new electric patrol vessel, a successful underwater cleanup at Marina Park, an unusual vessel seizure, diesel spill response, ongoing abatements, the 29th Street Public Dock opening, improved signage at Rhine Wharf, increased enforcement, vessel rescues, fire responses, a reckless sailing incident, and added solar lights on navigation aids. He mentioned an upcoming small vessel auction at Marina Park, with anchorage usage up from last year.

During the discussion, commissioners inquired about the electric patrol vessel's battery performance, which was better than expected, and the new \$28 fee for city-owned mooring waitlist applications as of July 1. Secretary Marston and Commissioner Williams thanked the Harbormaster for the detailed report and praised the department's efforts.

Vice Chair Beer opened public comments. Seeing none, Vice Chair Beer closed public comments.

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

8. MOTION FOR RECONSIDERATION

None.

Harbormaster Blank noted that the language concerning the offer for reconsideration is inconsistent with the current meeting rules. He confirmed that this issue will be addressed and revised at the next meeting.

9. COMMISSIONER ANNOUNCEMENTS (NON-DISCUSSION ITEMS)

Commissioner Svrcek shared an experience from the bay cleanup, where Apex divers found a boat cover on the bay floor that an octopus with 50 eggs had turned into a habitat. This inspired him to consider creating artificial habitats in the bay to support marine life. He plans to contact companies specializing in artificial reefs to explore similar harbor projects. Vice Chair Beer advised consulting staff on environmental requirements, permits, and agency approvals.

Commissioner Svrcek also raised a concern about the historic Pavilion building, built in 1906, where ridge line lights were removed during recent roof work. He suggested exploring options to restore the lights, now more affordable with LED technology, and invited ideas from other commissioners.

Commissioner Yahn announced that on October 23, the Orange County Taxpayers Association will hold its "Roses and Radishes" awards at the Hyatt Regency in Irvine. He was invited by Assemblywoman Dixon to join her as she presents an award to the Balboa Island Ferry.

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

Commissioner Scully requested that Item No. 9, regarding offshore moorings, be added to the agenda, with Vice Chair Beer recommending that Mr. Moser's comments be considered.

Commissioner Svrcek requested an agenda item to discuss adding public dock access to Bayside Shopping Center on Bayside Drive, highlighting how it would allow boaters to dock and enjoy nearby restaurants, grocery stores, and other amenities.

11. DATE AND TIME FOR NEXT MEETING:

The next regular meeting is scheduled for Wednesday, November 13, 2024, at 5 p.m.

12. ADJOURNMENT

There being no further business to come before the Harbor Commission, the meeting was adjourned at 7:46 p.m.

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