

NEWPORT BEACH HARBOR COMMISSION REGULAR MEETING MINUTES
City Council Chambers – 100 Civic Center Drive, Newport Beach, CA
Wednesday, September 14, 2022
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

Staff Members: Paul Blank, Harbormaster
Jennifer Biddle, Administrative Support Specialist

3) PLEDGE OF ALLEGIANCE – Commissioner Cunningham

4) PUBLIC COMMENTS

None

5) APPROVAL OF MINUTES

1. Draft Minutes of the August 10, 2022 Harbor Commission Regular Meeting

Chair Scully announced he submitted written comments.

Commissioner Marston recommended adding the words “for design” after “Request for Proposals” on Page 3 under Functional Area 4. On Page 4 in the last paragraph and subsequently on Page 5 she recommended the paragraphs be regrouped into cohesive thoughts.

Vice Chair Beer moved to approve the draft Minutes of the August 10, 2022 with the additional changes from Commissioner Marston and Chair Scully. Commissioner Williams seconded the motion. The motion carried by the following roll call vote:

Ayes: Chair Scully, Vice Chair Beer, Secretary Yahn, Commissioner Cunningham, Commissioner Marston, Commissioner Williams, Commissioner Svrcek

Nays: None

Abstaining: None

Absent: None

6) CURRENT BUSINESS

1. 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.

With respect to the ad hoc committee assigned to floats attached to docks and piers, Secretary Yahn reported some of the float and lift offenders are taking corrective actions. The ad hoc committee recommends those issues be fully resolved before moving the item forward.

With respect to the ad hoc committee assigned to Council Policy H-1, Commissioner Marston reported Public Works Administrative Manager Chris Miller, Chair Scully and herself met on August 22, 2022 and discussed the most recent potential updates to the policy. Commissioner Marston provided several comments at that time and Public Works Administrative Manager Miller agreed to explore responses to her comments.

Chair Scully added that the group discussed the potential of reevaluating the different categories of the different parts of the Harbor to make determinations on how the policy impacts them.

With respect to the ad hoc committee assigned to review the Harbor and Beaches Master Plan, Secretary Yahn noted the committee will hold its first meeting in the coming month.

Chair Scully suggested another ad hoc committee be formed for the Harbor Commission 2023 Objectives and requested to be on it.

Commissioner Cunningham volunteered to be on a Harbor Commission 2023 Objectives ad hoc committee as well. He agreed with a previous comment that Public Works Administrative Manager Miller is extremely business and any update to Council Policy H-1 will require a lot of resources from staff.

Harbormaster Paul Blank recommended the item be agendaized for the next meeting.

2. Harbor Commission 2022 Objectives

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: Secretary Yahn reported with respect to Objective 1.1, comments regarding areas of concern are being collected. With respect to Objective 1.3, Vice Chair Beer believed the item will be closed by the end of the year. With respect to Objective 1.4, Secretary Yahn stated there is no report at this time.

Functional Area 2: Vice Chair Beer remarked with respect to Objective 2.1 and 2.4, there is no report at this time. With respect to Objective 2.3, he expressed there are four primary components which includes engineering, drafting new mooring fields and moving vessels to make more space, applying the changes

to the Geographic Information System (GIS) and then sending the item to the City's Legal Department to draft language for Title 17 to reflect the changes. He reported that the engineering component is complete.

Functional Area 3: Commissioner Cunningham stated there is no report.

Functional Area 4: Chair Scully remarked the concept of using a QR code to locate public restrooms around the Harbor was not received well by the Water Quality Control Board (WQCB). The WQCB expressed disappointment that the Commission did not pursue having a floating restroom.

In answer to Commissioner Cunningham's query as to why WQCB was disappointed, Chair Scully explained they believe the QR code will not stop folks from using the Harbor as a restroom. Several members expressed that a QR code is not user friendly and Council Member Duffy expressed strong disappointment to the idea.

In answer to Commissioner Williams' inquiry regarding other recommendations besides a QR code, Chair Scully answered their recommendation is to install a floating restroom in the Harbor.

Chair Scully announced the WQCB discussed the trash wheel and the project is moving forward. With respect to Objective 4.2, the work is on hold while the City works with the Orange County YMCA. Harbormaster Blank concurred there has been no further discussion on the matter. With respect to Objective 4.3.2, the objective is complete and the presentation is on the Newport Harbor Department's website. With respect to Objective 4.3.1, the first Harbor Safety Committee meeting will be held on October 18, 2022 at 5:30 p.m. at Marina Park.

In answer to Chair Scully's query regarding sending changes to Title 17 to the Council, Harbormaster Blank strongly suggested any proposed changes be done in an efficient and consolidated manner. In answer to Chair Scully's inquiry regarding Council's review of proposed changes to Title 17 and critical changes to Title 17, Secretary Yahn noted that Council reviewed changes to Title 17 twice this year and there is no proposal at this time to bring additional changes forward. Harbormaster Blank concurred there are no critical changes that need to be made at this time.

3. Harbormaster Update – August 2022 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 Blank reported that staff assisted the Long Beach Harbor Department with a vessel removal. Also, the department assisted with spill containment when a car entered the Harbor. The Harbor Department became aware of an inappropriate dock construction technique which lead to a Stop Work Order. Upon further research, there was no permit for the dock and the project was halted. For the month of August, code enforcement was focused on inappropriate construction, discharge into the Bay, unpermitted charters, etc. The Harbor Department was able to use technology to identify folks jumping off the Lido Isle Bridge. Harbor service workers assisted a vessel that was taking on water, sailors in distress, provided first aide to a Marina Park patron as well as a stranded seabass. The Harbor Department participated in National Eat Outside Day. Harbormaster Blank engaged in a conversation with a concerned residents about the Harbormaster's liaison role to the Harbor Commission. The Harbor Department recently transitioned to a new City-wide permitting system which will provide more efficient reporting and permit

issuance. The Harbor's revenue continues to trend beyond previous years. During the month of August, the Harbor Department experienced more bridge jumping activities and received more noise complaints. With respect to the status of mooring permits, as of September 1, 2022, 16 permits are in process with 893 complete. The Council recently directed the Harbor Commission to form an ad hoc committee for the purpose of reviewing the Municipal Code and City Council policies relevant to the Harbor Commission and submit recommendations back to the Council by June 30, 2023. Harbormaster Blank remarked the work can be addressed by the Title 17 Objective committee and recommends not forming a special ad hoc committee for the matter. Recently, the Newport Harbor code enforcement division was awarded the 2022 Innovative Program Award by the California Association of Code Enforcement Officers. An award ceremony will be held on October 25, 2022 in Sacramento, California and then a presentation to the Harbor Commission at the November 2022 meeting.

In reply to Commissioner Cunningham's queries, Harbormaster Blank reported that the Council directed all City committees, boards and commissions to review their appropriate Municipal Code sections. With respect to Labor Day weekend, he noted the largest challenge was addressing boats anchored outside of the anchorage boundaries. Both anchorages were full on Labor Day weekend and there was additional anchorage happening in Corona del Mar Cove. With respect to optimizing space in the anchorages, he noted increasing the size of the anchorages will be challenging. There is no law or code that prohibited folks from traversing through the anchorages. With respect to the fine amount given to the rental operator for the restroom incident, Harbormaster Blank reported it was \$100.00. The Police Department has their own fee schedule for incidents that happen on land and code enforcement has a separate fee schedule for incidents that happen in the water. Commissioner Cunningham agreed that incidents of folks using the Harbor as a restroom will only increase. He recommended the Commission explore increasing the fines and provide additional education to all of the operators on the Harbor. Harbormaster Blank concurred that the department has the discretion to levy larger fines and that discretion has been exercised in the past. With respect to noise, Harbormaster Blank explained that folks express their noise complaints to the Harbor Department. There may have been a data collection error made on how many reports actually came in.

In answer to Secretary Yahn's inquiries, Harbormaster Blank confirmed that the majority of noise complaints is due to amplified music. The Harbor Department uses the language in the Municipal Code, Title 10, that noise shall be based on the observer's determination. With respect to bridge jumping, there are staffing challenges amongst the lifeguards. On several occasions bridge jumping was an overwhelming popular activity and an overwhelming disregard on preventing it. With respect to the Laguna Beach Marine Department using space at Marina Park, Laguna Beach is exploring using a space at Marina Park for one of their lifeguard patrol boats on a short-term and potential long-term basis. Housing the vessel in the Harbor will be beneficial to the City in terms of mutual aid.

In answer to Vice Chair Beer's question regarding permittee permits and data collection, Harbormaster Blank confirmed that new and better reporting will be available. Vice Chair Beer noted that the mooring permittee list is not complete and that he will be reaching out to the Harbor Department for more information.

In response to Commissioner Marston's inquires, Harbormaster Blank believed an occupancy report will provide better data information and explain the revenue coming from Marina Park. Of the \$190,000 revenue generated in the month of July, he estimated 80 percent of that revenue was generated at Marina Park. With respect to bridge jumping, there have been no injuries reported at this time. With respect to the Confided Aquatic Disposal (CAD) project, based on the significant amount of public input and lack of written approval from the Water Board, the Coastal Commission delayed the hearing until October 2022. Of the five agencies responsible for permitting the project, three have provided written approval. With respect to an East Balboa resident and the Via Lido Soud resident, the situation with the Via Lido Soud resident has been resolved. The East Balboa resident has received three Notices of Violation and he has taken corrective action for one of them. The Notice of Violation for the temporary float is being disputed. The Public Works Department has indicated their support for the Harbor Department's determination regarding the temporary float and staff is waiting for a determination from the City Attorney's Office. Commissioner Marston recommended the Harbor Department see if there are any trends to the noise complaints.

Commissioner Williams appreciated Harbormaster Blank's presentation at the Balboa Bay Club.

In answer to Chair Scully's questions, Harbormaster Blank stated one tenant at the Balboa Yacht Basin requested the City hire an outside professional to resurvey the comps and recalculate the rates. The City Attorney's Office responded that they will not be pursuing the issue further and offered the tenant a claims form if they wish to pursue legal action. With respect to the fatality that happened during July's raft-up, there is no further information. With respect to the water space off the beach south of the breakwater, that is a formal anchorage and the City controls the water. The Coastal Commission is supportive of having day-use mooring in that anchorage.

Eric Peterson inquired if there is discussion about improving the Harbor Department's facility space and department size.

Commissioner Marston recalled she has suggested agendizing an analysis of the Harbor Department's revenue and staffing compared to other City departments of similar size.

Vice Chair Beer clarified the revenue generated from the Harbor goes to the Tidelands Fund which covers the operation expenses of the Harbor Department. In the year 2022, the Harbor Department had a \$6 million deficit which was covered by the City's General Fund. Any increases to staff or upgrades to the facility would have to be approved by the Council.

Chair Scully noted the Tidelands Fund had a \$6 million deficit, not the Harbor Department. Vice Chair Beer concurred.

7) **MOTION OF RECONSIDERATION**

None

8) **COMMISSIONER ANNOUNCEMENTS (NON-DISCUSSION ITEM)**

None

9) **QUESTIONS AND ANSWERS WITH STAFF ON HARBOR-RELATED ISSUES**

Commissioner Cunningham suggested this item be removed from future agendas.

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

Commissioner Cunningham reminded to agendize an item to establish an ad hoc committee for the 2023 Harbor Objectives.

Vice Chair Beer recommended to agendize a review of Functional Area 2.3 and reexplore a potential floating public restroom.

Commissioner Williams suggested the Harbor Safety Committee discuss whether to install a floating public restroom.

In response to Chair Scully's inquiry whether to agendize a discussion about a floating public restroom, Commissioner Cunningham did not believe installing a bathroom on the water will resolve the problem. He supported having a discussion that focuses on ways to deter the behavior besides installing a restroom. Secretary Yahn wanted to understand who is not satisfied with the Commission's original recommendation to use a QR code. He agreed the problem is not a water quality issue but an indecent exposure issue. Vice Chair Beer believed it is worth further discussion. Commissioner Marston agreed it is an education issue and recalled there was concern in the prior conversation about the 10-year maintenance commitment. She supported discussing the item again. Commissioner Williams agreed with Commissioner Cunningham that

a floating restroom will not solve the issue and the City should explore bigger deterrents. Commissioner Svrcek agreed that there should be more public education about where the existing restrooms are located.

Commissioner Cunningham commented he has discussed with Public Works Administrative Manager Miller about adding additional public restrooms around the Harbor in the Harbor and Beaches Master Plan. He restated the issue is about raising awareness about their locations and that is a better solution than installing a floating restroom on the water.

In answer to Commissioner Williams's query regarding quantifying the lack of awareness of restroom locations, Harbormaster Blank remarked the map has been updated to include all the public restrooms in the Harbor. The Harbor Department is currently distributing business cards to rental operators that has the QR code on the back of it. The next step is to improve the signage on all public docks and anchorage boundary buoys.

Commissioner Svrcek suggested, in parallel, to increase the fine and do that before installing a floating restroom.

Vice Chair Beer read a comment that was voiced at the Water Quality and Coastal Tidelands Committee (WQCTC) meeting. The commenter noted there are only three restrooms that are easy to locate but they are off the water and there is no simple docking arrangement. Vice Chair Beer recommended staff and the Commissioners explore each restroom location and see what constraints there are.

Chair Scully agreed with Vice Chair Beer's comment. He mentioned to the WQCTC that the Commission is unanimous in its decision to provide more education. He announced that the item will not be agendaized for further discussion. In answer to his question regarding a presentation from the Finance Department, Harbormaster Blank announced the Commission will receive a presentation at the October 2022 meeting.

11) **DATE AND TIME FOR NEXT MEETING: Wednesday, October 12, 2022 at 5 p.m.**

None

12) **ADJOURNMENT**

There being no further business to come before the Harbor Commission, the meeting was adjourned at 6:36 p.m.