

NEWPORT BEACH HARBOR COMMISSION REGULAR MEETING MINUTES
City Council Chambers – 100 Civic Center Drive
Wednesday, April 12, 2023
5 p.m.

1) **CALL MEETING TO ORDER**

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

2) **ROLL CALL**

Commissioners: Steve Scully, Chair
Ira Beer, Vice Chair
Scott Cunningham, Commissioner
Marie Marston, Commissioner
Rudy Svrcek, Commissioner
Gary Williams, Commissioner

Absent: Don Yahn, Secretary

Staff Members: Paul Blank, Harbormaster
Chris Miller, Public Works Administrative Manager
Kyle Aube, Associate Civil Engineer
Jeremy Jung, Deputy City Attorney
Jennifer Biddle, Administrative Support Specialist

3) **PLEDGE OF ALLEGIANCE** – Secretary Yahn

4) **PUBLIC COMMENTS**

Chair Scully outlined the meeting rules of decorum.

Hein Austin expressed support for the installation of floating restrooms, requesting a pilot program on one of the public piers.

5) **APPROVAL OF MINUTES**

1. **Draft Minutes of the February 8, 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.

Consideration of the February 8, 2023 minutes was continued to the next meeting due to a lack of quorum of Commissioners who were present at that meeting.

2. **Draft Minutes of the March 8, 2023 Harbor Commission Regular Meeting**

Chair Scully reported that written comments were submitted to staff by Vice Chair Beer, Commissioner Marston, and himself.

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.

Chair Scully moved to approve the minutes of the March 8, 2023, as amended. Commissioner Williams seconded the motion. The motion carried by the following roll call vote:

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

6) PUBLIC HEARING(S)

1. Dock Reconfiguration at 398 Via Lido Nord (Lido Isle Community Association Public Pier, Via Genoa)

Lido Isle Community Association (“LICA” or “Applicant”) has applied for a harbor development permit to remove and replace the LICA public dock system at 398 Via Lido Nord in the same location and configuration (“Project”). The proposed float extends beyond the pierhead line by 2-feet (2'-0”) which is the same distance as the existing float extends. Because Applicant is proposing to construct bayward beyond the pierhead line, staff is unable to approve the project. Therefore, Council Policy H -1 directs the Harbor Commission to hold a public hearing for the proposed project.

Recommendation:

- 1) Conduct a public hearing; and
- 2) 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
- 3) Adopt Resolution HC2023-007 approving in concept the Project.

Public Works Administrative Manager Chris Miller provided a staff report. A PowerPoint presentation was displayed. Mr. Miller stated this is the lone public pier on the stretch of Via Lido Nord. The Harbor Commission may approve or conditionally approve a permit if all findings listed in the agenda report attachment are made. This item was publicly noticed and one (1) written comment was received in support of this project and additionally requesting information regarding the operational characteristics of the dock. Mr. Miller informed the party that the dock is under control of the Lido Isle Community Association. He also directed the party to LICA for inquiries concerning signage.

Discussion ensued among the Commission and staff on the proposed project. Mr. Miller confirmed this item could not be approved at the staff level as the proposed project would construct beyond the pierhead line. He also confirmed this proposed project could not be approved administratively even under the updated Council Policy H-1 that will be discussed under the next agenda item. He further confirmed the language requiring a permit on file was removed from the proposed Council H-1 policy update.

Chair Scully opened the public hearing and public comment period.

Bud Richley, representing the Lido Isle Community Association, commented on the matter noting the pier has been there for decades and acknowledged there are no records for it. He expressed

support for approval of the dock reconfiguration as proposed as it will not present a hardship for those traveling up or down the Bay.

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

Vice Chair Beer confirmed with Deputy City Attorney Jeremy Jung that the Harbor Commission did have discretion to approve this item without the potential that it would be potentially overturned due to existing permit requirements in Council Policy H-1. Discussion ensued on the permit requirements, and it was determined that a permit existed on file that was unique to the property address, thereby fulfilling the current Council Policy H-1 requirement for Harbor Commission approval.

Vice Chair Beer moved to find the project exempt from CEQA and to adopt Resolution HC2023-003 approving in concept the subject project, making the finding that there is an evidentiary record the pier was properly permitted. Commissioner Williams seconded the motion. The motion carried by the following roll call vote:

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

7) **CURRENT BUSINESS**

1. **Council Policy H-1: Review of Proposed Changes to Pier and Float Channelward Extensions**

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 based on individual areas within the harbor and their unique characteristics versus a broad harbor -wide approach. The proposed revisions to Policy H-1 reflect this perspective change and describe where staff and the Harbor Commission may make decisions based on a set of parameters. The Harbor Commission is requested to review and approve H-1 and recommend 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) Review Council Policy H-1 and recommend that it be forwarded to the City Council for final approval.

Public Works Administrative Manager Chris Miller provided a staff report. A PowerPoint presentation was displayed. He provided a brief historical summary of Council Policy H-1. As directed by the City Council, the Harbor Commission and staff have reviewed the policy and proposed updated language which specifically delineates which projects can be approved administratively by staff and those which must be approved by the Harbor Commission. A visual tool has also been developed which will assist research as related to proposed projects. Staff is

recommending Harbor Commission final review and approval prior to forwarding the proposed updates to Council Policy H-1 to the City Council for their review and consideration.

In response to Commissioner Marston's inquiries regarding the differences between the proposed policy as presented now as compared to the version presented in March, Public Works Administrative Manager Miller noted there is more consistency throughout the updated proposed policy so the Harbor Commission could review projects from a holistic approach and afford an applicant the opportunity to have the Harbor Commission make a final determination, subject only to appeal to the City Council.

In response to Commissioner Marston's inquiries regarding negative impacts of pier floats to a proposed project's adjacent neighbors, Mr. Miller responded that an example of negative impacts would be if approval of a proposed project would ultimately result in a property owner to be reliant upon an adjacent neighbor's waterway to access their own slip.

Mr. Miller also confirmed, in response to written comments submitted by Jim Moser, that the proposed updates to Council Policy H-1 are a result of the Harbor Commission's determination based upon their subcommittee research that they have a responsibility to suggest updates to the City Council related to ongoing issues with approval of projects that have come before them. This does differ from the original direction provided by the Council to the Harbor Commission in 2018, although there has been a determination by the Harbor Commission subcommittee that these proposed updates are necessary to provide better service to the City and future applicants.

Chair Scully expressed his appreciation to the Harbor Commission and staff for their work on the proposed updates and is in support of forwarding it to the City Council for their review and consideration as it will facilitate improved processing of proposed projects.

Chair Scully opened the public comment period.

Jim Mosher expressed concern the proposed policy is without purpose and does not align with Council's direction. His historical research led him to the conclusion that progressive creeping of the piers into the Harbor, from owners not doing the proper dredging, was taking away public water. His understanding of the Council's direction was to stop the pier creep, while allowing the previously permitted development to remain. He expressed concern that the proposed updates to Council Policy H-1 do not further the objective of constraining pier creep into the Harbor.

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

Discussion ensued among the Commission and staff regarding the ability of the proposed updates to the policy to allow the Harbor Commission actual discretion to make final decisions on proposed projects, including the suggestion that language be added regarding any extension beyond the pierhead line would have to reasonably conform to what is immediately adjacent or in very close proximity to prevent creep into the Harbor. Mr. Miller confirmed that there is a clause in the proposed policy update that in cases where strict application of the section would deny a property owner privileges enjoyed by other people in the vicinity due to special circumstances, there is a mechanism that would trigger a public hearing before the Harbor Commission where the applicant could provide evidence as to a project's unique characteristics.

Discussion ensued as to how to strike the appropriate balance in the proposed policy updates between streamlining the project approval process and ensuring the Harbor Commission is adhering to the Council's direction to constrain pier creep into the Harbor. The proposed update does say that it sets forth the limit exceptions that may exist in the criteria for approval of a project.

Chair Scully moved to find the project exempt from CEQA and to forward the amended Council Policy H-1 to the City Council for their review and consideration. Commissioner Marston seconded the motion. The motion carried by the following roll call vote:

Ayes: Cunningham, Marston, Svrcek, Williams, Beer, Scully

Nays: None

Abstain: None

Absent: Yahn

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.

There was consensus to leave the Council Policy H-1 subcommittee in place until the City Council completes its review of the proposed policy updates.

There were no further updates to report.

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 2022 Objectives Update**

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

Recommendation:

- 1) Find this action exempt from the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment) and 15060(c)(3) (the activity is not a project as defined in Section 15378) of the CEQA Guidelines, California Code of Regulations,

Title 14, Division 6, Chapter 3, because it has no potential for resulting in physical change to the environment, directly or indirectly; and
2) Receive and file.

Functional Area 1 (Yahn): No report.

Functional Area 2 (Beer):

- Objective 2.3 was completed at the last meeting.
- Commissioner Cunningham reported on Objective 2.2 the appraisal for offshore should be coming back in the next few months.

Functional Area 3 (Cunningham): No report.

Functional Area 4 (Scully):

- Objective 4.1: Reported on a conference call that was held to discuss the potential for additional public restrooms adjacent to the new public dock. The call was positive; however they deferred the restroom to the development that will be built on the other side of the PCH bridge.
- Objective 4.2: No report on Lower Castaway.
- Objective 4.3: There is a tentative meeting date of Thursday, May 25 for the Harbor Commission Safety Committee to begin the process to reach out to commercial operators within the Harbor and invite them to the meeting.
- Objective 4.3.2: Completed.

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

The item was received and filed.

4. Harbormaster Updated – March 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 staff report on the Harbor Department's recent activities. A PowerPoint presentation was displayed. Harbormaster Blank opened the floor to inquiries from the Harbor Commissioners as related to the information provided in the agenda report.

In response to an inquiry from Commissioner Svrcek, Harbormaster Blank confirmed the dewatering sticks are battery operated and that several models had been tested, without complaint.

Commissioner Williams expressed support for the upcoming International Boat Show and noted it is likely to be the most successful such show in years.

In response to Commissioner Marston's inquiry regarding the speed of the charter boat as described by Harbormaster Blank in his staff report, City staff determined a notice of violation, rather than a citation, was warranted in the matter. In response to Commissioner Marston's inquiry regarding the Total Maximum Daily Load (TMDL), the City is objecting to the Santa Ana Regional Water Quality Control Board's TMDL mandate in total, as the City does not feel as though it has responsibility for having created the high level of control over who introduces copper into the Harbor.

In response to an inquiry from Vice Chair Beer, Harbormaster Blank reported the number of mooring assists is down as compared to last year and that city staff does track mooring assists separately from other assists for boats 20-feet or over and the differentiation there is presumably electric/rental boats versus larger vessels.

In response to an inquiry from Chair Scully, Harbormaster Blank confirmed that he signed two letters for morning revocations, and he also provided detail on the positive results of the recent sea trial on the electric boat. Additionally, he commented on the significant upgrades currently underway for the Catalina Flyer to bring the vessel into compliance with the California Air Resource Board's requirements. The Catalina Flyer is currently anticipated to be out of service for at least 90 days, although there is a smaller replacement vessel which will provide continuity of service during the repair period.

There was no further action taken on this item.

8. MOTION FOR RECONSIDERATION

None.

9. COMMISSIONER ANNOUNCEMENTS (NON-DISCUSSION ITEMS)

Chair Scully announced that he and Commissioner Svrcek attended the recent Water Quality and Coastal Tideland Committee meeting and commented on the various topics which were on the agenda. He expressed support for the Harbor Commission's presence at the meeting.

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

Chair Scully requested the formation of an ad hoc committee to work with the ferry to assist in the process of complying with the California Resources Board.

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

12. ADJOURNMENT

There being no further business to come before the Harbor Commission, the meeting was adjourned at 6:38 p.m.