

NEWPORT BEACH HARBOR COMMISSION REGULAR MEETING MINUTES  
City Council Chambers – 100 Civic Center Drive  
Wednesday, May 10, 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  
Don Yahn, Secretary  
Scott Cunningham, Commissioner  
Marie Marston, Commissioner  
Rudy Svrcek, Commissioner  
Gary Williams, Commissioner

Excused:

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

**3) PLEDGE OF ALLEGIANCE – Chair Scully**

**4) PUBLIC COMMENTS**

Chair Scully outlined the meeting rules of decorum. 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.

**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.

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

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

**2. Draft Minutes of the April 12, 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.

Vice Chair Beer moved to approve the minutes of the April 12, 2023, as amended. Commissioner Williams seconded the motion. The motion carried by the following roll call vote:

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

## 6) CURRENT BUSINESS

### 1. Review of Proposed Changes to Newport Beach Municipal Code As It Related to Proposed Updated to Council Policy H-1

Council Policy H-1 (H-1) describes the distance that piers and floats may extend channelward throughout the harbor. At the April 2023 meeting, the Harbor Commission approved the proposed changes to H-1 and recommended they be forwarded to the City Council for review and approval. While preparing for the City Council meeting, staff determined that minor updates to the Newport Beach Municipal Code (NBMC) were required to provide greater clarity to H-1. The Harbor Commission is requested to review and approve the proposed changes to the NBMC and recommend that it be forwarded with H-1 to the City Council for final approval.

#### Recommendation:

- 1) Determine this action is exempt from the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(2) and 15060(c)(3) of the CEQA Guidelines because this action will not result in a physical change to the environment, directly or indirectly; and
- 2) Approve changes to NBMC and recommend that it be forwarded to the City Council for final approval.

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

Chair Scully inquired whether certain words in Item C, such as “homeowners association, piers, and floats” should remain plural or return to the singular. Secretary Yahn concurred with Chair Scully’s comment for the singular use of the words “pier and float” for the first item in Item C.

Chair Scully opened the floor to public comments.

Jim Mosher inquired whether one of the Commissioners may have to recuse himself from this item due to a real property conflict of interest. He concurred with the suggestions to return certain words to the singular and also suggested clarity in the definitions related to the homeowner’s association, as not any homeowner’s association can place a pier on the beach. He requested further research on certain homes along the North Promenade concerning why they are allowed to have a pier placed there.

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

Commissioner Cunningham recused himself from participation in this item due to a conflict of interest. He left his seat on the dais and room for the duration of the item.

Secretary Yahn reiterated his preference for use of the singular case for the words “homeowner association, pier, and float” in Items A, B, and C. He was in disagreement with the public speaker’s assessment of Item D. He was not opposed to putting in “Lido Isle Community Association” for clarity. He did request further clarification on Lot 848 with regard to the public speaker’s comments related to the placement of the pier. Public Works Administrative Manager Miller responded he did conduct research on how the pier was approved for placement in that location and it has been there for quite some time, although there is no record in the file. Ultimately, the pier will need to be rebuilt and staff confirmed there was no permit on file although the file confirms the pier was approved and has been there for decades.

In response to inquiries from Commissioner Marston, staff confirmed Lot 848 is not a public dock, but is private residential. Commissioner Marston suggested changing the wording to “between the prolongation of the easterly line of Lot 848 across the public walkway and the westerly line...”

Chair Scully inquired about adding in the specific Lido Isle Community Association wording. Mr. Miller confirmed that the Deputy City Attorney suggested leaving the generic wording of “homeowner’s association,” although staff could insert “Lido” in front of that. He suggested wording such as “except for Lido Isle Community Association, pier and float” in Item C and “piers and floats” in Item D. Mr. Miller requested approval by the Harbor Commission of the suggested changes and then he could incorporate them into the redline version that will be presented to the City Council for review and consideration.

Mr. Miller read the suggested changes for the record for Item C to include “piers and floats shall not be permitted in the beach area along the northerly side of Lido Isle between the prolongation of the easterly line of Lot 848 across the public walkway, and the westerly line of Lot 493 except for Lido Isle Community Association pier and float.” He further read the suggested changes for the record for Item D to include, “except for Lido Isle Community Association piers and floats.” He noted there were no changes other than what was suggested in the agenda report for Items E and F.

Commissioner Marston moved to find the project exempt from CEQA and to approve changes to NBMC as read into the record by City staff and recommend that it be forwarded to the City Council for final approval. Commissioner Williams seconded the motion. The motion carried by the following roll call vote:

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

## **2. Establish Ad Hoc Committee to Provide Guidance to the Balboa Ferry with Compliance of California Regulations**

The Harbor Commission establishes annual Objectives to focus the Commission on issues that are important to the City Council, the Harbor Commission and community. At the Harbor Commission meeting of April 12, 2023, Chair Scully requested an Ad Hoc Committee be set up to provide guidance to the Balboa Ferry and help them with compliance of California regulations.

### **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) Establish and Appoint Harbor Commission Members to an Ad Hoc Committee to provide guidance to the Balboa Ferry with compliance of California regulations.

Harbormaster Blank provided a summary of the agenda report provided in the publicly noticed agenda packet.

Discussion ensued regarding the purpose of the ad hoc committee and the Commission’s potential interest in assisting the Balboa Ferry navigate new regulations as it is an important aspect of the Harbor.

Chair Scully opened the floor to public comments.

Jim Mosher requested further clarification as to the purpose of the ad hoc committee as well as the advisory nature of the ad hoc committee, as it cannot provide direct guidance directly to the Balboa Ferry organization. It is his understanding that the ad hoc committee would advise the Harbor Commission at a noticed public meeting.

Hein Austin inquired whether the use of propane could be considered in the interest of clean air.

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

Harbormaster Blank clarified the purpose of the ad hoc committee would be to bring back recommendations to the full membership of the Harbor Commission for review and consideration at a publicly noticed meeting. The recommendations could be suggestions as to how the Balboa Ferry could come into compliance with regulations.

Commissioner Williams confirmed that the ad hoc committee should not be directly advising the Balboa Ferry regarding compliance, but rather returning research and recommendations to the full membership of the Harbor Commission.

Secretary Yahn, Commissioner Svrcek and Chair Scully were suggested as members of the ad hoc committee.

Vice Chair Beer motioned to appoint Secretary Yahn, Commissioner Svrcek and Chair Scully as members of the Balboa Ferry ad hoc committee. Commissioner Marston seconded the motion. The motion carried by the following roll call vote:

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

### 3. **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.

Harbormaster Blank confirmed the Harbor Policy H-1 is scheduled to be heard by the City Council on June 11, 2023 and requested that the ad hoc committee for same be disbanded.

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

Secretary Yahn moved to disband the ad hoc committee for review of City Council Policy H-1 and find this action exempt from CEQA. Commissioner Williams seconded the motion. The motion carried by the following roll call vote:

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

### 4. **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.

<b>Functional Area 1: Harbor Operations (Yahn)</b>		
<b>Matters pertaining to the Management, Policies, Codes, Regulations and Enforcement</b>		
<b>Objective</b>		<b>Report</b>
1.1	Conduct an annual review of Title 17 and recommend updates to the City Council where necessary (Yahn)	No report
1.2	Conduct an annual review of the Marine Activities Permits and recommend updates thereto as necessary.	No report
1.3	Work with City Staff to bring all onshore and offshore Mooring Permittees permit forms current and properly on file. (Beer, Cunningham)	No report
1.4	Evaluate current Harbor Department Operations to determine if the department is structured properly to meet all responsibilities of the Harbor on a daily basis.	No report
<b>Functional Area 2: Harbor Viability (Beer)</b>		
<b>Matters pertaining to Assets, Amenities, and Access</b>		
<b>Objective</b>		<b>Report</b>
2.1	Study and provide recommendations to the transfer permit policy for onshore and offshore moorings. (Beer, Cunningham)	No report
2.2	Work with City Staff on an update of the market rent to be charged for onshore and offshore moorings. (Beer, Cunningham)	Commissioner Cunningham reported they would like to see the market rent study completed by the summer and hopefully bring to the Commission thereafter.
2.3	Evaluate the current mooring fields and provide a recommendation for new guidelines that better define rows and fairways to improve navigation, safety, and optimization of space within the mooring fields. (Beer)	No report
2.4	Review the On-shore mooring vessel specifications providing a long-term plan with the goal of insuring adequate spacing between moorings, residential docks, and street ends. (Cunningham, Scully)	No report
2.5	Evaluate options for additional City Moorings and/or Multi Vessel Mooring Systems (MVMS) for temporary use by visiting mariners or long-term mooring permittees. (Williams)	No report
2.6	Complete evaluation for establishing day moorings off Big Corona beach and harbor moorings. (Williams)	No report
<b>Functional Area 3: Harbor Infrastructure (Cunningham)</b>		
<b>Matters pertaining to Sea Walls, Sea Level Rise, Dredging, Docks, and Beaches</b>		
<b>Objective</b>		<b>Report</b>

3.1	Support staff on the rehabilitation of the current public floats and gangways including areas of the harbor that could benefit with additional public access.	No report
3.2	Evaluate and identify the responsibilities and obligations of the city for additional safety vessels/equipment that may be added to the Harbor in the future.	No report
<b>Functional Area 4: Harbor Stakeholders (Scully)</b>		
<b>Matters pertaining to Residential, Recreational, and Commercial Users</b>		
<b>Objective</b>		<b>Report</b>
4.1	Evaluate enhancements and/or services to City amenities which will improve the operation and enjoyment of the Harbor. Additionally, identify new revenue generating offerings that would be administered through the Harbor Department. (Scully)	No report
4.2	Evaluate and make recommendations for Lower Castaways. (Marston)	Harbormaster Blank had discussions with Commissioner Svrcek about opportunities, conceptual drawings of what may be placed there. There is no other update. This item was also reported as complete.
4.3	Continue the dialogue with representatives of the Harbor Charter Fleet industry, commercial vessel operators and rental concessionaires to: (1) promote best practices for all charter and commercial boat operations in Newport Harbor with particular attention to safety, operational support, speed, noise and pollution control/compliance and (2) evaluate (a) total number of vessels for hire on the harbor, (b) maximum passenger capacity for each vessel and in total, and (c) overall height of the superstructure of vessels for charter within the Harbor. (Williams)	4.3.1 The Safety Committee will meet on May 30, 2023, 5 p.m. in the community room and attendance is anticipated to be good. They are trying to promote the meeting as much as possible, and Orange County Sheriff's and code enforcement personnel are scheduled to attend. 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.

**5. Harbormaster Update – April 2023 Activities**

The Harbormaster oversees the City Harbor Department and is responsible for the management of the City's mooring fields, enforcement of the municipal code, events permitting, safety and rescue operations, the Marina Park Guest Marina, marine sanitation pump out equipment and public pier maintenance, impound and disposition of abandoned and unclaimed vessels and public relations and information dissemination on and about Newport Harbor. This report will update the Harbor Commission on the Harbor Department's recent activities.

**Recommendation:**

- 1) Determine this action is exempt from the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(2) and 15060(c)(3) of the CEQA Guidelines because this action will not result in a physical change to the environment, directly or indirectly; and
- 2) Receive and file.

Harbormaster Paul Blank provided a summary of the agenda report provided in the publicly noticed agenda packet. A PowerPoint presentation was displayed.

Commissioner Cunningham requested information regarding the status of the large vessel private party arrangements. Harbormaster Blank confirmed that the City does not own or participate in the deployment of the tackle, however the City does write the permit for it. Commissioner Cunningham inquired if the City should own the tackle and should that item be run through the Harbor Commission. In response, Harbormaster Blank stated that he is not responding on behalf of the City, however, he would not mind it as it may improve the process and costs were estimated at between \$25,000 and \$30,000.

Secretary Yahn congratulated staff as to the success of the boat show. Harbormaster Blank noted that approximately 20 vessels were sold during the show, of which the sales tax proceeds are allocated to the City.

Vice Chair Beer and Commissioner Marston thanked the Harbormaster and his team for their good work.

In response to a request from Commissioner Svrcek, Harbormaster Blank provided detail as to the process and fees for assistance for when a sea lion is on a property's deck or boat. Discussion ensued regarding cost recovery to the City for costs incurred. Harbormaster Blank mentioned the fee study that will be underway citywide, which will also include review of the various fees of the Harbor Department. Discussion ensued regarding the various fees.

Chair Scully inquired regarding an upcoming event in Pirate's Cove. Harbormaster Blank provided detail regarding a consultant's request for an event over Memorial Day weekend and his response to them to confirm several permits would be needed. The request for permits were denied by the City. He did confirm the event is still being advertised on the private organization's website however the City has not issued any permits for such event.

In response to an inquiry from Chair Scully, Harbormaster Blank provided a summary of the permits requested for the east anchorage.

Chair Scully thanked Harbormaster Blank and his team for their excellent work.

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.

**7. MOTION FOR RECONSIDERATION**

None.

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

Secretary Yahn announced opening day of the Balboa Yacht Club and good luck for the events that will ensue.

Chair Scully announced he and Commissioner Svrcek attended the recent Water Quality and Coastal Tidelands Committee meeting and provided a summary of the items. The Harbor Commission's July

meeting will be held at Marine Park. He requested the Commissioners begin formulating their ideas for the Commission's 2024 goals.

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

Commissioner Cunningham suggested agendizing a discussion regarding the 2024 objectives.

Vice Chair Beer suggested agendizing a discussion and potential action on City moorings.

Chair Scully suggested agendizing a discussion on a dredging update from Public Works Administrative Services Manager Miller.

**10. DATE AND TIME FOR NEXT MEETING: Wednesday, June 14, 2023 at 5 p.m.**

**11. ADJOURNMENT**

There being no further business to come before the Harbor Commission, the meeting was adjourned at 6:16 p.m.

DRAFT