

NEWPORT BEACH HARBOR COMMISSION REGULAR MEETING MINUTES
City Council Chambers – 100 Civic Center Drive/Teleconference Location pursuant to GC 54953(b):
Marriott Business Center, 40 Perimeter Center Place, Dunwoody, Georgia 30346
Wednesday, February 14, 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 (Teleconference)
Don Yahn, Commissioner

ABSENT: None

Staff Members: Paul Blank, Harbormaster
Jennifer Biddle, Administrative Assistant
Lauren Wooding Whitlinger, Real Property Administrator
Jeremy Jung, Deputy City Attorney

3. PLEDGE OF ALLEGIANCE – Led by Vice Chair Beer.

4. PUBLIC COMMENTS

Brian Ozounian commented inquiring whether having the Harbor Department is more effective than contracting with the County for Harbor-related services, as it is not less expensive than the County's cost.

5. APPROVAL OF MINUTES

1. Draft Minutes of the January 10, 2024 Harbor Commission Regular Meeting

Chair Scully opened public comments.

Jim Mosher requested correction to the spelling of a speaker's name in the minutes (Adam Leverage).

Seeing no one else wishing to speak, Chair Scully closed public comments.

Vice Chair Beer moved to approve the January 10, 2024 Harbor Commission regular meeting minutes, as amended. Seconded by Commissioner Marston. The motion carried by the following roll call vote:

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

6. CURRENT BUSINESS

**1. Review of Appraisal and Discussion of Rental Rates for Mooring Permits
Recommendation:**

Real Property Administrator Lauren Wooding Whitlinger provided a summary of the publicly noticed agenda report. A PowerPoint presentation was displayed.

At this juncture, Chair Scully opened the floor to inquiries from the Harbor Commissioners on Real Property Administrator Lauren Wooding Whitlinger's presentation. Seeing none, Chair Scully opened the floor to the next presenter.

Harbor Commission subcommittee member Vice Chair Beer provided a summary of the Harbor Commission's involvement in this topic and history of the public meetings held on the topic. A PowerPoint presentation was displayed.

Vice Chair Beer provided a summary of the primary issues as raised at previous public meetings held and via correspondence received on the matter. The primary concerns were presented as: 1) Charging fair market value was not necessary, 2) Mooring rates should not be tied to slip rate, 3) Mooring permittees are being discriminated against compared to residential and commercial dock owners, and 4) Raising mooring rents over 300% is unfair. He noted the subcommittee evaluated the input and provided fair response. With regard to Item 1, the Harbor Commission, via the California Constitution, cannot make a gift of public funds by charging less than fair market value to any individual or other entity. With regard to Item 2, a 2006-07 Grand Jury report included a recommendation to establish a regularly scheduled independent appraisal for the fair market value of mooring permit fees based on a percentage of the cost of a slip. With regard to Item 3, the City is required to obtain rent in exchange for that exclusive use and shall make no discrimination and rates tolls or charges for any use. Also, the City may charge different rates for different uses, when it is supported by an appraisal that makes distinctions in value, such as for an on-shore mooring versus an off-shore mooring. With regard to Item 4, the City's Municipal Code requires a regularly scheduled appraisal to be used to determine fair market value, and while a 300% increase seems very substantial, rates have seen only one adjustment over the past 28 years, in 2016. Subsequently, only CPI rate adjustments had been applied. An independent appraisal has been used to determine current fair market values. The subcommittee intends to recommend an increase phased in over several years.

At this juncture, Chair Scully opened the floor to inquiries from the Harbor Commissioners on Vice Chair Beer's presentation.

Discussion ensued between the Commissioner Yahn and Vice Chair Beer, with comments including the result of the 2006-07 Grand Jury report was that the City was to conduct an analysis of mooring permit fees utilizing relevant methodology was underway, the rates were increased to a percentage of the slip fees, and then were recalled by a subsequent City Council, cost comparisons were done concerning assets which provide access to the water, an index was used for slip rates which compared the costs at 6 or 7 marinas, and moorings should act similarly as a reflection of general increases of other assets providing access to the water.

Chair Scully opened public comments.

Scott Karlin commented expressing concerns with the proposed increase in rates, including a request to conduct a fair analysis of both appraisals submitted and referencing deficiencies in the Netzer appraisal.

Anne Stenton commented expressing concerns with the proposed increase in rates, referencing deficiencies in the Netzer appraisal including absence of the value of dinghy dock access, use of established methods used by State Lands Commission, and unreliability of the ratio of slip to mooring rates.

Jennifer Kreston commented expressing concerns with the proposed increase in rates, including that the valuation of home docks is an unacceptable and unreliable method and will raise home dock taxes and fees.

George Hylkema commented expressing concerns with the proposed increase in rates, including that the significant proposed increase in rates is a form of discrimination against current mooring permittees.

Chris Benzin commented expressing concerns with the proposed increase in rates, including that there is a discrepancy over whether mooring and dock permittees are paying different rates for different uses or for the same use.

Michael Lawler commented expressing concerns with the proposed increase in rates, including that there needs to be clarification of definitions concerning the subject assets in the Tidelands areas and in Beacon Bay, the homeowners pay a lease fee based on the sale price of the house. He supports a similar methodology for the mooring permits.

Ernie Minney commented expressing concerns with the proposed increase in rates, including that there are no amenities offered for the permittees and parking continues to be a problem for those with moored boats, adding to the increase in costs.

Eric Bantree commented expressing concerns with the proposed increase in rates, including that proper calculations of the fair market value need to be provided and that it is unreasonable for there to be increases potentially every five years.

Chris Bliss commented expressing concerns with the proposed increase in rates, including that marinas and slips are tied to property increases and have huge amenity expenses, where the moorings do not.

Barbara Walker commented expressing concerns with the proposed increase in rates, including that the proposed increases are discriminatory, there should be a fair look at the submitted appraisals, and there may be erroneous information in the Netzer appraisal.

A member of the public commented expressing concerns with the proposed increase in rates, including that the current appraisal is flawed and inaccurate.

Bob Piott commented expressing concerns with the proposed increase in rates, including that the Harbor Commissioners have already made up their mind on this matter without taking into consideration the input and the NMA appraisal should also be considered.

A member of the public commented expressing concerns with the proposed increase in rates, including that the proposed increases will drive out those who are not high net worth earners.

Don Potenza commented expressing concerns with the proposed increase in rates, including that the Harbor Commissioners have already made up their mind on this matter and that Tidelands management is not supposed to be "for-profit."

Wade Womack commented expressing concerns with the proposed increase in rates, including that the City should consider the NMA's appraisal, that the City's \$4 million deficit should be the permittee's problem to fix, and the Grand Jury report has no bearing on this matter.

Tim Lewis commented expressing concerns with the proposed increase in rates, including that there seems to be a bias toward those with very high incomes versus those who earn lower incomes with regard to the affordability of mooring permits and that Proposition 13 defined what was fair.

A member of the public commented expressing concerns with the proposed increase in rates, including that proposed rates are outrageous and that this could result in a class action lawsuit.

Eric Schoonover commented expressing concerns with the proposed increase in rates, including that such high increases are illegal in accordance with AB 1482, which limits the amount a landlord can raise rents, and the proposed increases are discriminatory.

Bill Powers commented expressing concerns with the proposed increase in rates, including that Netzer report commenced the process with a negative light, as the results were not accurate, nor included appropriate comparisons.

Maureen Cotton commented expressing concerns with the proposed increase in rates, including that the City should have received multiple appraisals for fairness, there are flaws in the Netzer appraisal, and the City may be subject to litigation due to the lack of clarity in definitions.

Adam Devone commented expressing concerns with the proposed increase in rates, including that the City needs to be fair and equitable with the mooring rates, as to not become a "Harbor of the Rich."

Jim Mosher commented expressing concerns with the proposed increase in rates, including that he was unable to find anything in the California Constitution declaring the City as fiduciary, that the Grand Jury report stated the City should conduct appraisals at regular intervals, and the lack of information concerning the breakdown of fees.

Brian Ozounian commented expressing concerns with the proposed increase in rates, including that it was inappropriate that the Netzer appraisal was a no-bid contract and the solution is to use the methodology on rates provided by the State Lands Commission.

Mike Fleming commented expressing concerns with the proposed increase in rates, including that he would prefer a more information stakeholder meeting where back and forth discussion could take place, including comments from the individual Commissioners on the subject matter. He inquired concerning the post-pandemic lack of enforcement in the Harbor.

Seeing no others, Chair Scully closed public comments.

Vice Chair Beer thanked meeting participants for their comments and stated the subcommittee will compile the input and information submitted, including the additional appraisal and opened the floor to the Commissioners who are not on the current mooring subcommittee for any comments.

Commissioner Yahn stated the Commissioners as a whole can only meet to discuss this matter in compliance with the State's Open Meeting law (Brown Act) and that he listens to all the feedback and information provided. He stated that there may need to be more clarification concerning the process for obtaining official appraisals, to ensure fairness, and clarification concerning errors in the subject Netzer appraisal. It may be worthwhile to obtain a second opinion.

Commissioner Marston supported Commissioner Yahn's observations and would like further clarification concerning the allegations of discriminatory practices, tying proposed rates to boat length, Mr. Mosher's inquiry concerning the California Constitution and the City's fiduciary obligations, and the Grand Jury's conclusion.

Commissioner Svrcek supported taking a deeper dive into the formula on how rates would be increased and the need to get more familiar with the process. He looks forward to reading the new appraisal submitted and provide his resulting thoughts in a future meeting.

Commissioner Williams stated the Commissioners are not compensated for their service on the Commission and they have nothing personally to gain, he has not made up his mind in advance on this

issue, and that they have the public's best interests in mind when forwarding a final recommendation to the City Council.

Chair Scully commented that City staff engaged Netzer and Associates for the appraisal, not the Commission, and he ensures the process was legal and correct. The resulting appraisal data is utilized to support the Harbor Commission's duties to make recommendations to the City Council, as related to the proper pricing of mooring permits for the permission to dock a vessel over public tidelands. The rates need to be discounted for amenities that are not provided, if rates are being compared to other moorings with amenities. The public process is to receive public input and get everyone on common ground. He emphasized the City is not discriminating against anyone, transfer fees should be looked at as part of the process, and that a Harbor Department is necessary given the impacts of Harbor use and to protect it for all.

There was no further action taken on this item.

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.

Balboa Ferry ad hoc committee report:

Chair Scully had phone meeting with Ferry representatives; Ferry representative is working with a naval architect to come up with a plan to electrify the existing ferries and is looking at a number of grant projects with California Air Resources Board, Southern California Edison, and a number of other resources to try to assemble funds to either purchase new boats or to convert the existing boats from diesel to electric. There may be a press conference on Monday with Diane Dixon and trying to get a bill through to give an exemption to the Ferry.

General Plan Vision Statement ad hoc committee report

No updates at this time; it was acknowledged that Mr. Jim Mosher had provided comments via email.

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

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

3. Harbor Commission Current Objectives - Final 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.
1. Conduct annual review of Title 17 and recommend updates to City Council where necessary (Commissioner Yahn).
Update: None

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: None
3. Successful implementation of the mooring reconfiguration initiative, including design, testing, permitting, execution, and monitoring (Commissioner: Beer).
Update: None
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: Process on hold; a City Council proposing the formation of a Council ad hoc committee to study the site and Harbor Commission may be involved.
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: None
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: Will be working to start up the Safety Committee very soon
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: None
8. Work with City Staff on an update of the market Rent to be charged for onshore and offshore moorings (Commissioner: Cunningham, Beer).
Update: None
9. Evaluate establishing day moorings off Big Corona Beach (Commissioner: Williams).
Update: None
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: None

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

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

4. Harbormaster Update – January 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 successful work of the Harbor Department, notifications to the public concerning mooring rates are subject to change, requirements to report on the City's utilization of non-zero emission vehicles, the spike in sea lion activity, the upcoming process concerning City mooring applications, a brief update on the Trash Wheel, correction of a reconciling

error on submitted documentation for this report, update on the dinghy dock enforcement, and an update on a recent mass casualty training.

Chair Scully opened the floor to public comments.

Adam Leverage commented on his reasonable expectation concerning the mooring permit fees and requested advance notification of any further increases. He also inquired concerning the location of lift assist devices related to the sea lion situation.

A member of the public provided suggestions regarding grandfathering in those with existing mooring permits, to buffer them from the proposed increases.

Seeing no others, 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)

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

None.

10. DATE AND TIME FOR NEXT MEETING:

The next meeting was scheduled for Wednesday, March 13, 2024, at 5 p.m.

11. ADJOURNMENT

There being no further business to come before the Harbor Commission, the meeting was adjourned at 7:33 p.m.