

NEWPORT BEACH HARBOR COMMISSION SPECIAL MEETING MINUTES
City Council Chambers – 100 Civic Center Drive/Teleconference Location pursuant to GC 54953(b): Bus.
Ctr, 9 Beach Club Dr., Stateline, NV 89449
Monday, March 18, 2024
5 p.m.

1. CALL MEETING TO ORDER

The meeting was called to order at 5:03 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 (via teleconference)
Don Yahn, Commissioner

ABSENT: None

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

3. PLEDGE OF ALLEGIANCE – Led by Chair Scully

4. PUBLIC COMMENTS

Wade Womack distributed a document for the record and commented on various aspects of privatization of the municipal marina and referenced various Requests for Proposals issued for a 50-year lease and design work. He expressed concern over the potential for increases in slip rates.

5. APPROVAL OF MINUTES

1. Draft Minutes of the February 1, 2024 Harbor Commission Special Meeting

Consideration of this item was deferred to the April Harbor Commission meeting.

2. Draft Minutes of the February 14, 2024 Harbor Commission Regular Meeting

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

Vice Chair Beer moved to approve the February 14, 2024 Harbor Commission Special 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:

- a) 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
- b) Issue a recommendation to the City Council regarding this matter.

Real Property Administrator Laura Wooding Whitlinger provided a summary of the publicly noticed agenda report and previous reports which were presented publicly concerning the review of appraisal and discussion of rental rates for mooring permits. A PowerPoint presentation was displayed. *(The PowerPoint presentation is considered public record and can be obtained by contacting assigned staff).*

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

Ann Stenton, representing the Newport Mooring Association (NMA), reported that members of the NMA met with Harbor Commission members to discuss the various concerns associated with the appraisals. She presented information regarding possible conflicts of interest that had been brought to the NMA's attention by a mooring holder and which should be investigated by the Harbor Commission and any other City authorities prior to final decision-making on this matter. She deferred to the next NMA presenter.

Chris Benzine, representing the NMA, displayed a PowerPoint presentation. He expressed concerns of discriminatory practices against mooring holders depending on which City District their mooring resides. He referenced the California State Lands Act which prohibits discriminatory practices and displayed various rates alleging that the rates are not fair. He stated that the Harbor Commission has the power to make a recommendation to the City Council on rates and to apply them fairly. He presented information concerning the need by various parties to disclose potential conflicts of interests and reports of financial mismanagement prior to final decision-making on the subject matter under consideration. He submitted documents for the record.

At this juncture, Chair Scully opened the floor to inquiries from the Harbor Commissioners on the Newport Mooring Association's presentation. Seeing none, Chair Scully opened the floor to the next presenter (Vice Chair Beer).

Harbor Commission subcommittee member Vice Chair Beer announced that there would be no Harbor Commission action taken at this meeting as it related to monthly mooring fees charged by the City for onshore and offshore mooring permits. The purpose of the presentation is to provide a Harbor Commission subcommittee report on the subject matter and to receive public input from stakeholders and any other interested parties. The presentation would include discussion of proposed rate increases over a specific rollout period. Public input and feedback, including email and other written correspondence, will be incorporated into the meeting record, and compiled for further review by the associated Harbor Commission subcommittee prior to the scheduling of the matter before the full membership of the Harbor Commission on a publicly noticed agenda for any final recommendations and vote.

Vice Chair Beer provided a summary of the Harbor Commission's involvement in this topic and history of the public meetings and public input received on the subject matter. He stated that one concern expressed is that mooring rental rates should not be tied to slip rates. A previous Grand Jury report recommended the City establish a regularly scheduled independent appraisal for fair market value of mooring permit fees based on a percentage of the cost of a slip. Another concern expressed is that mooring permittees are being discriminated against compared to residential and commercial dock owners. He noted that when

tidelands are reserved for exclusive use by third parties and not open to the general public, the City is required to obtain rent in exchange for that exclusive use and shall make no discrimination in charges. The City may charge different rates for different uses when it is supported by an appraisal that makes distinctions in value, such as an onshore mooring versus an offshore mooring, residential docks versus commercial docks and marinas and so on. Another concern expressed was that raising mooring rents over 300% is unfair. As referenced in the City Municipal Code, there is a requirement that a regularly scheduled appraisal be used to determine fair market value. While a 300% increase seems substantial, rates have seen only one adjustment over the past 28 years. The only rate adjustment applied did not keep up with the CPI index as they are limited to not exceed 2% annually. The Harbor Commission subcommittee intends to recommend a proposal to phase-in any increases over several years.

Vice Chair Beer further stated that a public concern was expressed that the Netzer appraisal is flawed. He stated that an independent appraisal was prepared by Netzer & Associates which has been used to determine current fair market values. Many comments were raised related to the methodology used in the appraisal, such as not considering the cost of accessing an offshore mooring, and other amenities such as power, water, and parking. The appraisal comparison to slip rates is based on the City adopted Marina index and that index is approximately 25% below the average slip rates in Newport Harbor. The wait list for City-owned slips at Balboa Yacht Basin is three to five years. The recommended fair market value by the Harbor Commission subcommittee in the appraisal is consistent with rates for similar mooring rentals in Newport Harbor, and Vice Chair Beer noted this significance. The Netzer appraisal uses a ratio of about 32%. The Harbor Commission subcommittee is using about 25% less than that for the new mooring rate recommendations to remain consistent with actual comparable rates in Newport Harbor. He stated that fair market value is the goal of this current process and that fair market value is reflected by what a very similar product is selling for in the open market, which the appraisal has tried to describe. He also noted that there is additional value associated with transferability of the mooring permits.

In conclusion, Vice Chair Beer noted the Harbor Commission has an obligation to remain in compliance with the Constitution, the City's municipal code, and provide a recommendation to the City Council that is reasonable. He displayed a slide which illustrated the phased-in approach to implementing the proposed increases.

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

Commissioner Yahn requested Vice Chair Beer provide additional details regarding the phased-in approach to implementing the proposed increases. He restated that an appraisal is done every five years pursuant to the City's municipal code. The Harbor Commission subcommittee reviewed the rates for the City mooring licenses and without considering the value of transferability of the mooring permits. They determined that increases would be implemented at the beginning of each new fiscal year, in order to defer the initial increase for a short period of time. Thereafter, the increases are split for the first 18 months or so into 1/10 increases, which makes the increments between each of the years even.

Commissioner Svrcek inquired whether a transferred permit would increase at the full rate or graduated at the same rate as the current permittees. Vice Chair Beer responded that the subcommittee is proposing that when the transfer occurs, it has no effect on the price points going forward, it will continue under the same exact program.

Seeing no further inquiries from the Harbor Commission, Chair Scully opened public comments, noting that each speaker was limited to a maximum speaking time of two minutes.

Barbara Griffith commented expressing concerns with the proposed increase in rates, including that there is evidence of conflicts of interest by involved parties such as coaching of the appraisal firm by City staff and Harbor Commissioners. She inquired about the settlement with pier owners in 2015.

A member of the public commented expressing concerns with the proposed increase in rates, including that their Social Security payment will not be increasing enough by the Consumer Price Index to keep pace with the proposed increase.

Scott Karlin commented expressing concerns with the proposed increase in rates, including that the Netzer recommendations for increases violates the subject appraisal in that charging more for different size moorings other than per square foot.

Dr. Richard Navarro commented expressing concerns with the proposed increase in rates, including providing excerpts from emails which he alleges provide evidence of conflicts of interest and discrimination by the City and Commissioners.

Adam Leverage commented expressing concerns with the proposed increase in rates, including that the City should follow the California State Lands Commission requirements concerning establishment of rates.

Jennifer Krestan commented expressing concerns with the proposed increase in rates, including that the City should follow the California State Lands Commission requirements concerning establishment of rates.

Don Potenza commented expressing concerns with the proposed increase in rates, including that the City should follow the California State Lands Commission requirements concerning establishment of rates.

Chris Bliss commented expressing concerns with the proposed increase in rates, including that in doing his own research on fair market value, he contacted every Harbor in California and alleged that all rates are currently less expensive and come with dinghy docks.

Herman Coomans commented expressing concerns with the proposed increase in rates, including that Orange County set up the mooring fields so the average boater can enjoy boating in California.

A member of the public commented expressing concerns with the proposed increase in rates, including that there does not seem to be logical reasoning for the increase in rates and questioned the purpose of the increases, as they are not off-setting City costs. He suggested the permittees hire an attorney.

Dale Winson commented expressing concerns with the proposed increase in rates, including requests for the excerpt from the State Constitution requiring the establishment of fair market value and the proposed increases make the moorings unaffordable for most people.

Jerry La Pointe commented expressing concerns with the proposed increase in rates, including a request to conduct a peer review of the subject appraisal or to hire a third appraiser to offer another perspective.

Dawn Winson commented expressing concerns with the proposed increase in rates, including that the rates proposed are discriminatory and that there should be an "apples to apples" comparison in what other users in the Harbor are being charged for the same square footage of water.

A member of the public commented expressing concerns with the proposed increase in rates, including protesting the rate increases which are above and beyond the \$10,000 rate for moorings to change hands.

Jessie Fleming commented expressing concerns with the proposed increase in rates, including that the rates will prohibit live aboards from being able to continue their mooring permits in Newport Beach, alleging it is "social engineering" to prevent the less affluent from living in the City.

Jared Parrin commented expressing concerns with the proposed increase in rates, including that seeking out additional appraisals could verify the Netzer appraisal findings, as it appears the City is illogically relying on only one appraisal.

Bob Verren commented expressing concerns with the proposed increase in rates, including that the rationale behind the City's proposed phased-in approach for rate increases does not appear transparent or clear.

Laura Mitchell commented expressing concerns with the proposed increase in rates, including that a new independent appraisal would be preferred, given the allegations made against the Netzer appraisal. The State Lands Commission methodology would be preferred.

Patricia Coomans commented expressing concerns with the proposed increase in rates, including that the additional costs to live aboards will prohibit them from being able to afford living in Newport Beach, as the increases compound their other expenses, such as parking permits.

Wade Womack commented expressing concerns with the proposed increase in rates, including that the Netzer appraisal switched methodologies to the mooring to slip ratio. He submitted a document for the record. He expressed concern that the proposed rate increases are incorrectly tied to the Balboa Yacht Basin slip rates.

Jordan Klinger commented expressing concerns with the proposed increase in rates, including that lack of transparency in the process could be mitigated by adjusting the rent of only those individual permits that transfer ownership following each appraisal.

Carter Harrington commented expressing concerns with the proposed increase in rates, including those comparisons to the Balboa Yacht Club moorings are not appropriate, as they have other amenities included in the price.

Mike Fleming commented expressing concerns with the proposed increase in rates, including that speakers were told they would receive answers to their questions, discrimination against those who cannot rent out their moorings, and that decision-making on this item is pre-meditated.

A member of the public commented expressing concerns with the proposed increase in rates, including that there are allegations of corruption by those involved in this process.

Jim Palmer commented expressing concerns with the proposed increase in rates, including that he continues to disagree with the activities taking place during this process.

Seeing no others, Chair Scully closed public comments.

Chair Scully commented that with regard to public records requests mentioned by speakers, the Harbor Commission reviewed the draft report produced by Netzer & Associates and made recommendations accordingly. He stated he made a recommendation related to changing the rates from a single rate limit to a scheduled rate limit, just as the marinas do.

There was no further action taken on this item.

At 6:50 p.m., Chair Scully called for a five-minute break in the meeting.

At 6:55 p.m., the Harbor Commission meeting reconvened.

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.

There were no updates on this item.

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.

3. Harbor Commission 2024 Objectives

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: *There is currently no scheduled review of Title 17 language at this time.*
 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:
 3. Successful implementation of the mooring reconfiguration initiative, including design, testing, permitting, execution, and monitoring (Commissioner: Beer).
Update: *This item is currently at the Coastal Commission and the City is waiting on a response; Harbormaster Blank reported last Wednesday was the deadline for the Coastal Commission to either respond or indicate the application was deemed complete; The only outstanding item has to do with the eelgrass survey for the C mooring field.*
 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: *This objective is likely on hold due to the formation of the City Council Ad Hoc Committee.*
 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:
 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: *Chair Scully has reached out to request a meeting in Mid-April and waiting on responses.*

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: *The recent mass casualty drill conducted at Marina Park with the Fire Department, Harbor Department and other external agencies was successful and impressive.*
8. Work with City Staff on an update of the market rent to be charged for onshore and offshore moorings (Commissioner: Cunningham, Beer).
Update: *Item was discussed during this meeting in a separate agenda report.*
9. Evaluate establishing day moorings off Big Corona Beach (Commissioner: Williams).
Update:
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:

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 – February 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 required water elements which may impact the conductivity and corrosion of the data pods, vacancies and checks concerning the utilization rate of moorings and confirmation of the lifeguard boat in service for Laguna Beach.

Chair Scully opened the floor to public comments.

Adam Leverenz apologized for lack of decorum earlier in the meeting and thanked Harbormaster Blank for his assistance in finding state information on the City's website. He inquired concerning whether the water measurements were related to water in the Harbor and requested the Commission consider the potential for artificial inflation of permits available under the mooring lease program due to the high volume of applicants.

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)

None.

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

Vice Chair Beer requested consideration of the formation of an ad hoc committee to review the backside of these public piers and making them permissible as long-term dinghy storage specifically for access to offshore moorings.

Chair Scully requested placement of the review of mooring appraisals on the next agenda.

10. DATE AND TIME FOR NEXT MEETING:

The next meeting was scheduled for Wednesday, April 10, 2024, at 5 p.m.

11. ADJOURNMENT

There being no further business to come before the Harbor Commission, the meeting was adjourned at 7:21 p.m.

DRAFT