

NEWPORT BEACH HARBOR COMMISSION REGULAR MEETING MINUTES
City Council Chambers – 100 Civic Center Drive, Newport Beach, CA
Wednesday, October 11, 2023
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
Don Yahn, Commissioner

ABSENT: None

Staff Members: Paul Blank, Harbormaster
Matt Cosyion, Deputy Harbormaster
Jeremy Jung, Deputy City Attorney
Chris Miller, Public Works Administrative Manager
Jeff Goldfarb, Code Enforcement Officer
Jennifer Biddle, Administrative Assistant

3. PLEDGE OF ALLEGIANCE – Led by Commissioner Cunningham

4. PUBLIC COMMENTS

Chair Scully outlined the meeting rules of decorum and opened the floor to public comments on non-agenda items.

Wade Womack expressed concern that notification related to potential mooring revocations was not being sent via certified mail to the applicable parties and requested the City to proactively attempt to contact mooring permittees in this manner.

There were no other members of the public who elected to make public comments on non-agenda items. Chair Scully closed the floor to public comments.

5. APPROVAL OF MINUTES

1. Draft Minutes of the September 13, 2023 Harbor Commission Regular Meeting

Chair Scully opened the floor to public comments. Noting there were no other individuals requesting to speak, Chair Scully closed the floor to public comments.

Chair Scully referenced an email from Mr. Lee Pearl requesting the Commission reconsider the July 2023 meeting minutes for purposes of changing ~~the~~ Mr. Pearl's comments on the topic of potentially removing mooring lines from Ruby Beach that was reflected in the record. There was general Commission consensus to let the July 2023 minutes stand as originally approved and add his emailed comments for the record.

Commissioner Marston moved to approve the minutes of the September 13, 2023, as amended. Seconded by Commissioner Williams. The motion carried by the following roll call vote:

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

6. PUBLIC HEARING

1. Appeal of Harbormaster's Decision to Revoke Mooring Permit J-0107

Newport Beach Municipal Code ("NBMC") Section 17.70.020 provides that a mooring permit may be revoked upon a determination of the Harbormaster that a permittee has failed to comply with the terms and conditions of the mooring permit and other relevant sections of Title 17. The Harbormaster revoked the permit for Mooring J-0107 on August 31, 2023, and the permittee is appealing the revocation to the Harbor Commission.

Recommendation:

1. Hold a revocation appeal hearing and, if justified under NBMC Section 17.20.020(A) (3), affirm the Harbormaster's decision to revoke the permit for Mooring J-0107 based on the following:
 - a) The permittee failed for a period of sixty (60) days or more to pay the mooring fees for J-0107 in violation of NBMC Section 17.70.020(A)(1)(e) and Conditions 4 and 5 of the mooring permit signed on August 29, 2022.
 - b) The permittee failed to provide proof of insurance for the vessel on Mooring J-0107 naming the City as an additional insured as required by NBMC Section 17.60.040(B)(2)(f) and Condition 12 of the mooring permit signed on August 29, 2022.
 - c) The permittee has breached and failed to comply with the terms and conditions of the mooring permit in violation of NBMC 17.70.020(A)(1)(h).
- OR
2. Hold a revocation appeal hearing and rescind the Harbormaster's decision to revoke the permit for Mooring J-0107.
- AND
3. Determine that the project is exempt from the California Environmental Quality Act ("CEQA") pursuant to Sections 15060(c)(2) and 15060(c)(3) of the CEQA Guidelines, California Code of Regulations, Title 14, Division 6, Chapter 3, because it will not result in a physical change to the environment, directly or indirectly.

Deputy Harbormaster Matt Cosyion stated for the record, the City's policy as it relates to revocations ~~and the policy of the City to the Harbor Department, of the stance are~~ that revocations are the last step in the enforcement process. The Department attempts to exhaust every opportunity to obtain voluntary compliance.

Code Enforcement Officer Jeffrey Goldfarb provided a summary of the publicly noticed agenda report. A PowerPoint presentation was displayed. A summary of the violations was presented, including failure to pay mooring fees, which were more than 120 days past due when the notice of revocation was issued. The fees were ultimately paid after the notice of revocation was issued. The second reason for the revocation was the failure to provide insurance as required by the City's municipal code and as outlined in Mr. MacNeil's executed Mooring Permit, the permittee's signed agreement; the insurance had expired on May 25, 2023. Four notices were sent between April 4 and August 17, 2023 with requests for insurance. Ultimately, the insurance was submitted after the notice of revocation was served. In summary, failure to provide the insurance and failure to timely pay mooring fees were grounds for revocation of the permit.

Mr. Goldfarb provided a summary of the relevant municipal code sections as they related to the subject mooring revocation, citing the permittee's history of delinquent mooring fees. Several notices were issued regarding the subject mooring in 2020 and 2021 for failure to remit timely payment. Mr. Goldfarb provided a summary of the courtesy and regular noticing provided to the permittee regarding failure to remit insurance. After the third notice, an administrative citation was issued with no response and another issued without response, as well. A \$500 administrative citation was subsequently issued. A letter requesting a meeting with the permittee was then sent, notifying the permittee that if there is no response to set up a meeting with the City, the City would have to revoke the mooring permit. After no response from the permittee, the City issued the notice of revocation for the subject permit. Mr. Goldfarb also provided detail regarding the historical actions taken regarding the subject permit since 2019, including eight issued notices for delinquent mooring overhauls, two notices for delinquent registration and documentation for the vessel, 16 notices for delinquent vessel insurance, and five notices for having multiple vessels on the mooring.

Commissioner and staff discussion ensued with Mr. Goldfarb confirming the following information in response to inquiries from Commissioners. The revocation notice was sent via email and personally served by himself to the permittee on his vessel, as well as by certified mail.

Commissioner Yahn inquired if the revocation notice was sent via registered mail. Mr. Goldfarb noted it was sent via email and it was personally hand-served by himself to the permittee while the permittee was on his vessel on August 21, 2023, as well as sent via certified mail. The Department's standard practices were followed with certainty of the applicable addresses. The delinquent mooring fee and proof of insurance were provided subsequent to the issuance of the notice of revocation. Payment was made on September 11, 2023. Staff sent out administrative citations, but does not have confirmation that those payments were made.

Mr. Goldfarb further stated that once moorings are revoked, the permittee is given 30 days to remove the vessel from the mooring. The permittee can keep the ground tackle the permittee owns and the mooring reverts to the City. He stated his understanding that the subject permittee could reapply after a year, but another individual could apply prior to the end of that year-long period. Mr. Goldfarb confirmed the subject vessel was not a live-aboard.

Chair Scully opened the public hearing and public comments.

Thomas MacNeil, appellant, provided detail regarding his poor health condition as the primary cause for his inability to adhere to the conditions of his issued mooring permit. He stated he could have communicated more effectively with the Harbor Department regarding this matter, but had been struggling with his stated health conditions. He stated he has complied with all requirements, paid the requisite fees, and will not put himself in this position again. He further noted his experience running a company in the City for the last twenty years.

A friend of Mr. MacNeil reported on his good character and stated his awareness of the subject violations and noted their significant impact. He inquired if the Commission would be amenable to his taking over payment of the subject mooring fees and insurance from this point forward, even offering a direct withdrawal from his bank account.

Vice Chair Beer offered his sympathy for the health concerns of the appellant, and also inquired as to how the City can be assured, given the long history of payment and documentation delinquency, of the appellant's ability to comply with requirements in the future. The appellant acknowledged his culpability and noted his complete understanding of the current and future requirements.

Secretary Marston noted the appellant's delinquencies commenced almost immediately after the initial issuance of the subject mooring permit. The appellant noted the challenges involved with insuring the

subject vessels, including hauling and surveying processes that must be completed. Discussion ensued regarding the obligations upon which permit holders enter upon their receipt of a mooring permit.

Harbormaster Blank confirmed the Commission can recommend or take action to direct staff as they deem appropriate and if the revocation is not upheld, then a condition can be applied reversing the revocation such that an additional permittee can be added to the permit and title of the vessel, or any other condition the Commission may deem necessary. Mr. Blank confirmed that approximately 200 hours of staff time has been spent on the subject delinquencies as related to this mooring permit and permittee.

Wade Womack requested the Commission extend grace to the appellant and acknowledged a prior speaker's offer to take over payments on the subject mooring permit.

Chuck South, South Mooring Company, spoke to the appellant's dedication to maintaining the subject vessel and noted the appellant pays him for his services on time.

Seeing no others who wanted to speak, Chair Scully closed public comments and the public hearing.

Commissioner Cunningham inquired whether conditions could be applied if the permit was not revoked and memorialized in such a manner as to automatically revoke the permit if the subject conditions were not met. Harbormaster Blank responded an additional permittee could be added and that payment may be made by automated clearing house but the municipal code, Title 17, cannot be violated. The process for revocation cannot be subverted.

Commissioner Yahn inquired regarding the City's process and hours dedicated to collecting the delinquent and administrative fees. Harbormaster Blank responded stating the Department has a budget line item that accounts for or pays for collection services by third party vendors, but the Department is not aware of status of payments until delinquencies or deficiencies reach levels such as those under consideration during this public hearing.

Commissioner Yahn acknowledged the health concerns expressed by the appellant and also the processes and steps taken by the Harbor Department concerning this matter. He also stated the Commission could not institute a condition that resulted in an automatic revocation.

Commissioner Williams moved to affirm the Harbormaster's decision to revoke the permit for Mooring J-0107 based on the following:

- a) The permittee failed for a period of sixty (60) days or more to pay the mooring fees for J-0107 in violation of NBMC Section 17.70.020(A)(1)(e) and Conditions 4 and 5 of the mooring permit signed on August 29, 2022.
- b) The permittee failed to provide proof of insurance for the vessel on Mooring J-0107 naming the City as an additional insured as required by NBMC Section 17.60.040(B)(2)(f) and Condition 12 of the mooring permit signed on August 29, 2022.
- c) The permittee has breached and failed to comply with the terms and conditions of the mooring permit in violation of NBMC 17.70.020(A)(1)(h).

Seconded by Vice Chair Beer. The motion carried by the following roll call vote:

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

2. Variance Request: Vessel Berthing at 1324 E. Balboa Blvd.

Tom LeBeau ("Applicant"), property owner of 1324 E. Balboa Blvd ("Property") has applied for a variance, Variance No. HCVAR2023-002 ("Variance"), from the conditions of Harbor Permit/Approval in Concept 109-1322 ("Permit") restricting the size of the vessel that may be berthed on the east side of the single-finger float adjacent to F Street end in order that he may be able to berth a larger vessel.

Recommendation:

1. Conduct a public hearing;
2. Find that the denial of the variance is not subject to 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
3. Adopt Resolution HC2023-011 of the Harbor Commission of the City of Newport Beach denying Variance No. HCVAR2023-002 requesting modification of Harbor Permit 109-1322 in order to berth a vessel that exceeds a length of 55-feet and a width of 15-feet on the east side of the float and into F Street end.

This item was postponed to a future meeting pursuant to a request by the applicant.

There was no further action taken on this item.

7. CURRENT BUSINESS**1. 2024 Harbor and Beaches Master Plan - Review**

Staff will provide an overview of the 2024 Harbor and Beaches Master Plan ("Plan"). The Harbor Commission is requested to provide an initial Plan review this evening, then consider it for approval at the November meeting.

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

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

Commission and staff discussion ensued including suggestions and comments regarding correlating the potential project "Mooring Field Realignment/Optimization" associated budget number of \$320,000 with City Council approval for the item, whether design start years on the list have been updated, acknowledgement of the Finance Committee's review of the list in February, categorizing the list by project status including completed, potential, other, and ongoing, the embedded nature of the data in the spreadsheet as maintained by the Finance staff as related to making any formatting changes, having a column that denotes "ongoing" projects, and providing updated estimates on the list at the next meeting.

Commission and staff discussion ensued on the matter of the ferry restrooms, including confirmation by staff that the ferry, including restrooms, were slated to be rebuilt eventually. It was affirmed that the matter of floating restrooms has been an item under consideration by the Water Quality and Coastal Tidelands Committee, and that the Harbor Commission previously "turned down" the option to take that item on as a goal.

Commission and staff discussion ensued including comments affirming the costs listed for various projects on the subject spreadsheet, the potential of including a significant investment into Balboa Island for drainage projects, providing clarification regarding the debt service as a percentage of dedicated revenues at an upcoming meeting, clarification of past decisions to earmark incremental revenues toward Harbor-related costs, and a request that the replacement values for the slips at Marina Park and Balboa Yacht Basin slips be the same for consistency purposes.

Chair Scully opened the floor to public comments.

Jim Mosher stated the subject document is modeled over an older document called the "Facilities Financial Plan" which still exists on the City's website. He suggested the Commission would benefit from clarification as to why projects are listed on a certain document and not another, and cited various projects such as the Balboa Yacht Basin buildings, Corona Del Mar beach concessions and lifeguard headquarters, Dory Fisherman Fleet Market, and Marina Park improvements.

Seeing no others who wanted to speak, Chair Scully closed the floor to public comments.

It was noted this item would return on the next meeting agenda as updated pursuant to Commission discussion for further review and consideration.

There was no further action taken on this item.

2. Discussion of History, Current Status and Opportunities for Lower Castaways

As part of their current objectives, a subcommittee of the Harbor Commission is reviewing the history and current uses of the Lower Castaways facility. The subcommittee has conducted field studies observing current uses, met with various constituents as well as staff, and documented their findings and conclusions.

This report and presentation will update the Harbor Commission on the ad hoc committee's process, research and findings. The ad hoc committee seeks input from the full Commission and the public to further refine their recommendations related to improving the use of the facility. The subcommittee expects to present finalized recommendations for adoption by the full Commission at a meeting in the near future.

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 the recent history of Lower Castaway uses and previously considered potential uses; and
- 3) Discuss additional opportunities for use of Lower Castaways and, if desired, formulate a recommendation to be forwarded to the City Council on a plan to develop possible uses and designs.

Harbormaster Paul Blank noted the publicly noticed agenda report provided background history and status regarding Lower Castaways.

Secretary Marston provided an overview report on Lower Castaways and a PowerPoint presentation was displayed. General information was provided on the location, size, ownership, prohibitions, development, uses, zoning, policies, deed restrictions, traffic implications, easements, and CEQA requirements applicable to the subject site. Secretary Marston reported the Harbor Commission's objective in 2012 to complete development of recommendations for the best public use of the subject property. The project was assigned as a collaborative effort via a subcommittee formed consisting of representatives from both the

Harbor and Parks, Beaches, and Recreation Commission. As a result, a report was generated in 2013 and it was determined that the bulkhead needs to be reconstructed.

Secretary Marston continued, noting a landscape architect was hired to develop concept plans for the site, resulting in three concepts, which were displayed in the PowerPoint presentation along with a video. The summary of the subcommittee recommendation at that time was to utilize the site to provide for recreational biking, including a bike hub, a ride-to space for hiking and boating activities with 0 to 90 parking spaces, public restrooms, and a stairway connecting to Upper Castaways. It was her recollection, the Council at the time preferred to not include the stairway connection, as a sidewalk was already available on Dover, and there was the potential for other environmental issues due to construction. The project would be built in phases, however, there were concerns at the time regarding gaining the necessary approvals from the Coastal Commission. Other information regarding protected environmental areas was reported. Opportunities for community feedback were provided which resulting in support for use of the property as a revenue producing asset, commercial marine uses, parking mix, bicycle parking, low levels of light in order not to spill over to Kings Road homes, small craft access, and other accommodations.

Secretary Marston continued, noting in 2020 the idea for a swimming pool was suggested by Evelyn Hart and various locations were reviewed as potential sites, including Lower Castaways, with the size to be determined. Subsequent to that time, the Harbor Commission has placed Lower Castaways on their objectives, but since then, she was mostly talking to the Outrigger Club monthly, who was performing volunteer clean-up and maintenance work at the location. The pending question at this juncture is to discuss actual opportunities for the site, as it is the only remaining City-owned parcel that has access to the Harbor. The site is outdated looking and appears to require bulkhead maintenance. Her initial recommendation was to request the City Council set-aside funds for the conduct of a highest and best land-use study from which ideas could be generated. She requested input from the Harbor Commission.

Discussion ensued included comments related to City Council support for the Harbor Commission and Parks, Beaches, and Recreation Commission (PBR) to work jointly on development of a concept for Lower Castaways, creation of a joint ad hoc subcommittee comprised of members from both public bodies, prioritizing continued public access to the Harbor from the subject site, lack of previous momentum on the PBR Commission to move forward on this project, and obtaining further definition of previous studies instead of conducting a new highest and best land-use study.

It was stated that the Harbor Commission could not take formal action on to forward a recommendation to the City Council as the consideration with that level of specificity was not noticed as part of this agenda. Direction can be provided to staff and the item can be agendaized for the next meeting with the appropriate agenda title language and noticing.

Discussion ensued concerning the lack of support at the PBR Commission to form an ad hoc subcommittee on this subject matter, the need for a centralized position on Lower Castaways, obtaining PBR Commission support once the Harbor Commission has more fully formulated a concept for the site's use, potential for discussion with the appropriate regulatory agency on moving the southern boundary line, consideration of options for reconstruction of the bulkhead, exploration of the marine protected area boundary, a proposal to focus on concepts that did not have existing or regulatory restrictions that could prevent a project from moving forward, continued support for a project that would continue to allow for human-powered vessels and outrigger access to the Harbor, support for the park concept with public educational opportunities, including information regarding the site's flora, the challenges with proposing concepts which exceed the site's existing 2000 square foot development restrictions, support for a project that preserves the City's last waterfront site and that a park concept may result in underutilization of the site's value, and support for a larger scale educational venue, such as a research and learning center or aquarium with various active amenities beyond a passive park use.

Discussion ensued regarding the limitations of the MPA, whether the Irvine Company had been engaged for input, previous discussions held with the Department of Fish and Wildlife concerning the boundary for the MPA and what is prohibited and allowed, the nature of existing deed restrictions which serve to limit economic competition in certain cases, the potential to negotiate with the Irvine Company regarding the existing deed restrictions, the potential negative impact of increased traffic as a result of certain types of tourism-driven projects, and the potential to develop a concept that combines active park use with educational components while simultaneously preserving public Harbor access and scaling the project up or down based upon input received.

Chair Scully opened the floor to public comments.

Jim Mosher offered historical information regarding the movement of the monument sign across Coast Highway by the entry of Bayshores. He noted it would be more historically correct to site the monument at Lower Castaways rather than at Bayshores. He did not recall the PBR Commission ever promoting the concept of a swimming pool at the site, but did know that Evelyn Hart promoted such. He stated a rumor was circulating the Council considered a proposal from the YMCA in Closed Session to move their facility to Lower Castaways, which would include a swimming pool and other recreation. He further stated his understanding that the Irvine Company's plan was for a commercial marina, as related to the 2000 square foot building restriction. He also noted the PBR Commission's charter per the City Council makes them the public body to make recommendations regarding recreational facilities and he is hopeful they will be engaged in this process. He cited his review of the study session conducted on May 27, 2014, which seemed to memorialize support for the presentation on Lower Castaways, but nothing followed after that meeting. He is hopeful that this process will move forward.

Wade Womack suggested the Commission reach out to the public for input to narrow the top three or other suggested concepts for the site as well as preserving the site's public access to the Harbor. He believed the State would be on board with a proposed municipally-owned marina as the Coastal Commission has already approved the local coastal program, the City could generate revenues, and it would create additional boat slips.

Seeing no others who wanted to speak, Chair Scully closed the floor to public comments.

Discussion ensued concerning formalizing a recommendation from the Harbor Commission to the City Council or at least begin conversations with members of the City Council, prior to suggesting projects which require funding, determining whether it should be a passive or non-passive use, creation of recommendations the ad hoc committee could be working towards, establishing a clearer direction before approaching City Council for support, adding to the existing historical plan to make it a more active center which ultimately will be driven by community input, City Council-approved funding would also impact the actual scale of the ultimate product, and development of an organically grown concept with Harbor Commission objectives behind it that was focused on the Bay with educational and research opportunities.

Further discussion ensued including prioritizing projects that could gain funding support, appointment of an ad hoc committee to conduct an internal study amongst themselves and return to the Harbor Commission within 30 to 60 days with their findings. Based on those findings, a vote could be taken on what concept to forward to the City Council for funding consideration.

In response to a request for clarification on his public comments, Mr. Mosher responded he believed the City Council Closed Session he referenced in his earlier comments was conducted approximately one year ago.

Discussion ensued including comments on utilizing City staff to confirm what resources are available for consideration of existing concepts without having to ask for additional funding from the City Council, determining what can be accomplished at the site at this time realistically, focusing on a project or concept

that can pass effectively through the Coastal Commission, MPA review process, and Department of Fish and Wildlife review processes, the potential to expand on a park-based concept with larger, educational and recreational amenities, including a potential aquarium, and gauge the level of support for same, and engaging the services of Jim Campbell from Community Development as a resource for what can be accomplished in the subject site from a land-use perspective.

There was general Commission consensus to have the ad hoc committee discuss the concepts offered at this meeting via discussion, meet with City staff to determine available resources, and report back to the Harbor Commission at a future meeting.

There was no further action taken on this item.

3. Review and Approve Recommended Harbor Commission Objectives for 2024

The Harbor Commission periodically conducts a review and updates its Objectives. This year they decided to continue working on the 2022 Objectives instead of creating new ones for 2023, as there was still much work to be done and it would allow the new City Council Members to settle in and learn about the Harbor Commission. At a previous Harbor Commission meeting, the Commission formed an ad hoc subcommittee to recommend 2024 Objectives. That subcommittee sought guidance and feedback from the Commission at the September 2023 meeting. The subcommittee has prepared a list of proposed Objectives for 2024 and seeks the full Commission's approval of their recommendations. If approved, the recommended 2024 Objectives will be forwarded to the City Council for review and consideration.

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 recommended 2024 Harbor Commission Objectives and forward them to the City Council for review.

Chair Scully provided a summary of the publicly noticed agenda report. He noted he had added the responsibilities of the Harbor Commission as memorialized in the City Charter and ~~added-outlined~~ the ten objectives. If approved by the Harbor Commission tonight, the 2024 Harbor Commission objectives would be forwarded to the City Council for review and consideration.

Chair Scully opened the floor to public comments. Seeing no one who wanted to speak, Chair Scully closed the floor to public comments.

Vice Chair Beer moved to:

- 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 recommended 2024 Harbor Commission Objectives and forward them to the City Council for review.

Seconded by Secretary Marston. The motion carried by the following roll call vote:

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

4. Report on Progress of Converting Mooring Permits to New City Form and Action on Those Still Outstanding

The City took over management of nearly 1,200 moorings in Newport Harbor on July 1, 2017. Records associated with the mooring permits were transferred from the Orange County Sheriff's Department Harbor Patrol to the City at that time. Subsequently, the mooring permit form was updated and all permittees were asked to sign the new City issued form. There are 991 individual mooring permits not held by the Balboa Yacht Club, Lido Isle Community Association or the Newport Harbor Yacht Club. The process of converting those 991 individual permits to the new City form has been slower than anticipated.

This report will update the Harbor Commission on the process and progress for converting the 9 permits that remain unexecuted on the new City permit form. The Commission is asked to affirmatively recommend that staff proceed with revocations of those that remain outstanding or recommend other appropriate action.

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) Direct staff to proceed with Notice of Violations and revocations of the mooring permits that have not yet been executed on the new City permit form.

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

Commission discussed ensued regarding consistency with the application of the revocation process, including the wording "final notice" in bold on the letter prior to issuing the revocation notice, and clarifying the Commission is not in a position at this point in time to revoke the four subject permits referenced in the presentation.

Chair Scully opened the public comment period.

Wade Womack expressed support for the issuance of certified letters regarding official mooring permit notices.

Sally Peterson commented that many mooring permit holders may not be receiving the notices and that she could assist with contacting those she was acquainted with. She suggested offering more time to ensure individuals are contacted.

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

Vice Chair Beer motioned to:

- 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) Direct staff to proceed with Notice of Violations and revocations of the mooring permits that have not yet been executed on the new City permit form.

Seconded by Commissioner Williamson. The motion carried by the following roll call vote:

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

5. 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.

Staff was directed to place an item on the next meeting agenda for Commission consideration of disbandment of the ad hoc committee related to the 2024 Harbor Commission objectives.

General Plan Vision Statement ad hoc committee report

No update at this time.

Balboa Ferry ad hoc committee report:

~~A call was~~Chair Scully received a call from the owner of the Balboa Ferry requesting a letter from the City supporting the need for charting at grant funding for the ferries. City staff was consulted and were already in process of directly assisting the Beeks unable to commence work on obtaining potential grant funding for converting the ferry's to electric power and for electric charging ~~at the Ferry~~. ~~It does appear the~~The City is working with the ferry to be prepared for an alternative energy plan.

Chair Scully opened the floor to public comments.

Jim Mosher commented that the General Plan project appears to be on hold at the moment as the City's consultant asked for a pause from the General Plan Advisory Committee to get themselves organized. It may be several months before the project starts up again. This will allow more time to develop outreach efforts and coordination with City staff.

Seeing no others who wanted to speak, Chair Scully closed the floor to public comments.

There was no further action taken on this item.

6. Harbor Commission Current 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: Harbor Operations (Yahn)		
Matters pertaining to the Management, Policies, Codes, Regulations and Enforcement		
Objective		Report
1.1	Conduct an annual review of Title 17 and recommend updates to the City Council where necessary (Yahn)	Work has been conducted with Matt Cosylion on revisions, with approximately 6 topics identified. Redlined documents with proposed wording has been provided to legal staff; once legal review is completed, the item will return to the Commission for review in approximately 30 to 60 days from this meeting.
1.2	Conduct an annual review of the Marine Activities Permits and recommend updates thereto as necessary.	Nothing to report
1.3	Work with City Staff to bring all onshore and offshore Mooring Permittees permit forms current and properly on file. (Beer, Cunningham)	Nothing to 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.	Nothing to report
Functional Area 2: Harbor Viability (Beer)		
Matters pertaining to Assets, Amenities, and Access		
Objective		Report
2.1	Study and provide recommendations to the transfer permit policy for onshore and offshore moorings. (Beer, Cunningham)	Nothing to report
2.2	Work with City Staff on an update of the market rent to be charged for onshore and offshore moorings. (Beer, Cunningham)	Vice Chair Beer reported they are in the process of obtaining the appraisal for the offshore moorings; timeline is approximately 30 days; will update the Commission when received
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)	Vice Chair Beer reported the mooring initiative for optimization of the fields is approved, but is currently under review by the Coastal Commission

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)	Nothing to 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)	Nothing to report
2.6	Complete evaluation for establishing day moorings off Big Corona beach and harbor moorings. (Williams)	Nothing to report
Functional Area 3: Harbor Infrastructure (Cunningham)		
Matters pertaining to Sea Walls, Sea Level Rise, Dredging, Docks, and Beaches		
Objective		Report
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
Functional Area 4: Harbor Stakeholders (Scully)		
Matters pertaining to Residential, Recreational, and Commercial Users		
Objective		Report
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)	Chair Scully reported the new public dock under construction by the Irvine Company will result in additional location for handicapped or disabled individuals to access a lift to get into boats.
4.2	Evaluate and make recommendations for Lower Castaways. (Marston)	(Report was provided under an earlier agenda item by Secretary Marston)
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 No new report. 4.3.2 This objective is complete.

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 and it was received and filed.

7. Harbormaster Update – September 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.

Commission and staff discussion ensued including clarification of the use of Rhine Wharf public dock for commercial fishing activities, bridge jumping injuries, and noting the Fire Department had not reported any such incidents, residents and boaters are the main source of bridge jumping reports, and that the majority of rescues are performed on renters versus private individuals.

Harbormaster Blank briefly mentioned an incident of significance regarding wind on the Harbor affecting a kayaker and his daughter, where the tired kayaker was not wearing a flotation device and the vessel was capsizing. Discussion ensued with suggestions for rental companies to educate their customers about the wind. Additional discussion ensued regarding the Harbor Department's ability to write citations for bridge jumping as it is a violation of the municipal code. Harbormaster Blank confirmed the Department's approach to educate bridge jumpers who are seen to inform them of the hazards and fines associated with engaging in the prohibited activity.

Harbormaster Blank elaborated on recent training conducted with the Fire Department, including conduct of a survey and tour of the Harbor with one of the engine companies. He further elaborated on the process for private party impounds of boats, noting the Department now has the authority to conduct such activity. He noted the consequences of illegal parking of vessels, including the assessed impound and storage fees.

Chair Scully opened the floor to public comments.

Hein Austin commented on the number of bridge jumpers he has personally observed at the Balboa Island bridge and expressed concern regarding the lack of resources to address the issue. He suggested placement of a safety net or barrier so that individuals could not leap into the water.

Seeing no others who wished to speak, Chair Scully closed the floor to public comments.

It was affirmed that it is the Harbor Department's standard practice when issuing a notice of violation for any reason to send that by certified mail, every single notice of violation is posted on the vessel and if it can be handed to a person directly, that is also done. Additionally, City staff utilizes all forms of contact, including voice mail, email, and a hardcopy printed and placed in a sealed in an envelope that is identified with return address for the City of Newport Beach Harbor Department. The letter is also sent via certified mail.

There was no further action taken on this item.

8. MOTION FOR RECONSIDERATION

None.

9. COMMISSIONER ANNOUNCEMENTS (NON-DISCUSSION ITEMS)

Chair Scully confirmed the December meeting will be canceled.

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

The following items were discussed as matters to be placed on a future agenda:

1. Harbor and Beaches Master Plan
2. Disband 2024 Objectives Ad Hoc Committee

11. DATE AND TIME FOR NEXT MEETING: Wednesday, November 8, 2023 at 5 p.m.

The next meeting is scheduled for Wednesday, January 10, 2024 at 5 p.m.

12. ADJOURNMENT

There being no further business to come before the Harbor Commission, the meeting was adjourned at 7:54 p.m.

DRAFT