

NEWPORT BEACH HARBOR COMMISSION REGULAR MEETING MINUTES
100 Civic Center Drive, Newport Beach, CA
Wednesday, December 8, 2021
5 p.m.

1) CALL MEETING TO ORDER

The meeting was called to order at 5:01 p.m.

2) ROLL CALL

Commissioners: William Kenney, Jr., Chair
Ira Beer, Vice Chair
Steve Scully, Secretary
Scott Cunningham, Commissioner - excused
Marie Marston, Commissioner
Gary Williams, Commissioner
Don Yahn, Commissioner

Staff Members: Paul Blank, Harbormaster
Chris Miller, Public Works Administrative Manager
Jennifer Biddle, Administrative Support Specialist

3) PLEDGE OF ALLEGIANCE – Vice Chair Beer

4) PUBLIC COMMENTS – None.

5) APPROVAL OF MINUTES

1. Draft Minutes of the November 10, 2021 Harbor Commission Regular Meeting

Chair Kenney announced that written comments were submitted by Secretary Scully, Vice Chair Beer, Commissioner Marston, Chair Kenney and Mr. Mosher.

Vice Chair Beer requested that Commissioner Marston clarify her comment regarding page 8, paragraph 4, of the minutes. Commissioner Marston suggested the language read "Secretary Scully believed the issue will be ongoing and the adjustments to Title 17 will not solve the issue".

Vice Chair Beer moved to approve the draft Minutes of the November 10, 2021 meeting with the incorporation of the written comments submitted by Secretary Scully, Vice Chair Beer, Commissioner Marston, Chair Kenney and Mr. Mosher. Secretary Scully seconded the motion. The motion carried by the following roll call vote:

Ayes: Chair Kenney, Vice Chair Beer, Secretary Scully, Commissioner Marston, Commissioner Williams, Commissioner Yahn

Nays: None

Abstaining: None.

Absent: Commissioner Cunningham

6) PUBLIC HEARING

1. Commercial Dock Reconfiguration at 503 Edgewater Place

Newport Landing ("Applicant") has applied for a permit to reconfigure the commercial dock system at 503 Edgewater Place by replacing the gangway landing, gangway, and existing floats with a new U-shaped float ("Project"). The proposed float extends beyond the pierhead line, but extends less than the existing, permitted float. Because Applicant is proposing to position the float beyond the pierhead line, staff is unable to approve the

project. Therefore, Council Policy H-1 directs the Harbor Commission to hold a public hearing for the proposed project.

Recommendation:

- 1) Conduct a public hearing; and
- 2) Find the Project exempt from the California Environmental Quality Act ("CEQA") pursuant to Section 15301 (Existing Facilities) and Section 15302 (Replacement or Reconstruction) of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3; and
- 3) Approve in concept the Project by making specific findings to allow the dock to be reconfigured pursuant to the provisions in Council Policy H-1.

Chair Kenney shared Mr. Mosher's comment questioning whether the proposed resolution should have an attachment that states, "the allowed vessel expansion past the project line, or the line established pursuant to the current permit, whichever is less". Public Works Administrative Manager Chris Miller stated that with the approval in concept, any conditions that are made by the Harbor Commission will be incorporated into the approval in concept. If the Commission wishes to include an attachment to the resolution, staff can do that.

In answer to Chair Kenney's question regarding if the Commission's conditions will be included in the resolution, Public Works Administrative Manager Miller answered yes. Staff will draft a new resolution and the Chair will sign it. Chair Kenney suggested that for future resolutions, staff's proposed conditions should be included in the draft resolution.

Public Works Administrative Manager Miller stated that the item before the Commission is a request to reconfigure a commercial dock system. Council Policy H-1 currently restricts the length of a float that extends beyond the pierhead line, but also allows the Commission to approve an extension if specific findings are made. Four neighboring docks in the vicinity have received approval from the Harbor Commission to extend beyond the pierhead line. The proposed float will extend approximately 100-feet channel ward of the bulkhead and will be 3-feet less than the existing float's extension. One finger of the proposed float will extend bayward of the project line and the east finger will extend to the project line. Staff recommends that the Harbor Commission approve the project.

In response to Secretary Scully's inquiry regarding if the dock housed a bay receiver, Public Works Administrative Manager Miller confirmed that the float used to accommodate two bait receivers but those have since been removed. In reply to Secretary Scully's understanding that boats will not be able to extend past the project line, Public Works Administrative Manager Miller confirmed that is correct.

In reply to Commissioner Marston's question regarding Finding #4, Public Works Administrative Manager Miller restated that the proposed float extends to the project line on the east side. The float does not extend beyond the project line.

In answer to Commissioner William's query regarding the neighboring docks that extend beyond the project line, Public Works Administrative Manager Miller explained that if those docks were reconfigured, they would not be allowed to extend beyond the project line.

In reply to Commissioner Yahn's question about restricting the amount of space that vessels can use, Public Works Administrative Manager Miller confirmed that the new conditions do reduce the usable space per Council Policy H-1.

Pete Swift, the representative for the applicant, acknowledged that the area in question contains a lot of blight. The proposal is to enhance the experience of folks visiting the site. The owner has agreed to restrict vessels from extending past the float, but Mr. Swift stated he did not support that condition.

In response to Commissioner Yahn's question regarding discussions with staff about allowing vessels to extend past the dock, Mr. Swift mentioned that staff proposed that restriction to make the project more approvable for the Commission. He restated that he personally did not agree with the restriction, but the owner is amendable amenable.

Commission Yahn moved to approve the staff recommendations including the CEQA declaration, the specific conditions and all the findings. Vice Chair Beer seconded the motion. The motion carried by the following roll call vote:

Ayes: Chair Kenney, Vice Chair Beer, Secretary Scully, Commissioner Marston, Commissioner Williams, Commissioner Yahn
Nays: None
Abstaining: None
Absent: Commissioner Cunningham

2. Residential Dock Reconfiguration at 3312 Marcus Avenue

Mr. Paul Cook ("Applicant") has applied for a permit to reconfigure the residential docksystemat3312 Marcus Avenue by replacing the gangway and existing float with a new gangway and float and shifting the dock system to the west ("Project"). The proposed float will not extend bayward any further than the existing float. This residential float is located in the West Newport area where pierhead lines do not exist. The Project does not meet the criteria for staff review and approval under Section II of Council Policy H-1 and thus shall be reviewed in accordance with the applicable provisions of Title1 7 (Harbor Code) of the Newport Beach Municipal Code (NBMC).

Recommendation:

- 1) Conduct a public hearing; and
- 2) Find the Project exempt from the California Environmental Quality Act ("CEQA") pursuant to Section 15301 (Existing Facilities) and Section 15302 (Replacement or Reconstruction) of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3; and
- 3) Approve in concept the Project by making specific findings to allow the dock to be reconfigured pursuant to the provisions for a harbor development permit.

Public Works Administrative Manager Miller reported that the dock is located west of Newport Boulevard Bridge. In this area, pierhead and bulkhead lines do not exist. The existing permit dates back to 1950 and shows that the float is rectangular and parallel to the bulkhead line. The current configuration has the float perpendicular to the bulkhead line. Council Policy H-1 does address areas where there is no pierhead or bulkhead line. Staff has the authority to approve dock projects within these areas if very specific findings can be made. One of the findings is that the existing configuration must match the existing City-issued permit on file. Staff determined that the existing dock does not substantially match the existing permit configuration and therefore, staff could not approve the permit. The proposed dock will extend the same distance bayward as the existing dock. The proposal is to shift the dock system to the left and eliminate the jog on the lower right side of the float. Staff recommends that the Harbor Commission approve the application with the findings listed in the resolution.

In answer to Secretary Scully's understanding that staff could not make the finding because the existing structure does not match the existing permit, Public Works Administrative Manager Miller answered that is correct.

In response to Commissioner Marston's question regarding what Rivo Alto means, Public Works Administrative Manager Miller remarked that it is the name of the channel.

In answer to Vice Chair Beer's query regarding a vessel tying parallel to the bayward end, Public Works Administrative Manager Miller explained that the rules of Title 17 allow a vessel to extend beyond the end of the float by its beam width. Also, the nearby bridge limits the size of the vessel that can travel under it.

Pete Swift, the representative for the applicant, confirmed that the area has always been restricted to 30-feet for docks. He agreed that a large vessel cannot traverse the area. The proposed configuration has less square footage than the existing dock and does not change the use of the dock.

In reply to Chair Kenney's question regarding the layout of the existing dock not matching the permit, Mr. Swift answered he did not know why they do not match.

Secretary Scully moved to approve the dock reconfiguration at 3312 Marcus Avenue, that the project is exempt from CEQA and that all recommendations from staff are included. Commissioner Williams seconded the motion. The motion carried by the following roll call vote:

Ayes: Chair Kenney, Vice Chair Beer, Secretary Scully, Commissioner Marston, Commissioner Williams, Commissioner Yahn

Nays: None

Abstaining: None.

Absent: Commissioner Cunningham

3. Appeal of Harbor Development Permit No. 2261 - 2021 at 515 Harbor Island Drive

Mr. Peter Spataro ("Appellant") at 507 Harbor Island Drive has filed an appeal of the Harbor Development Permit No. 2261-2021 ("Permit") for dock construction at 515 Harbor Island Drive. Mr. Ned Wallace ("Permittee") is proposing to replace the existing piles with pipe piles to accommodate a larger vessel which would be berthed parallel to the shoreline and within the prolongation of the Permittee's property lines ("Project"). The overall basis for the appeal is the ability of the Permittee to berth a larger vessel at his dock.

Recommendation:

- 1) Conduct a public hearing; and
- 2) Find the Project exempt from the California Environmental Quality Act ("CEQA") pursuant to Section 15301 (Existing Facilities) and Section 15302 (Replacement or Reconstruction) of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3; and
- 3) Deny the appeal of the Permit by making specific findings.

Chair ~~Kenny~~ Kenney announced that the Commission has received five letters from neighbors who recommend that the Commission deny the appeal.

Public Works Administrative Manager Miller mentioned that most of the nearby floats are positioned parallel to the shoreline and vessels side tie to the channelward facing side. The applicant proposes to replace 12-inch piles with 14-inch pipe piles in the same location. The proposal does not include a request to reconfigure the dock. The 14-inch piles would allow for the permittee to berth a 60-foot vessel which is allowed within the permittee's 70-foot frontage area. On September 28, 2021, staff approved the project based on the Harbormaster's review and ~~determination~~ determined that a 60-foot vessel can be accommodated in the channel. Staff posted the decision on the City's website and an appeal was filed on October 8, 2021. The appeal is based on safety concerns regarding the large vessel. The appellant believes that a large vessel will impede egress and ingress in the canal as well as impede access to the interior inside side tie of the appellant's dock. When the agenda was posted, staff received four public comments who support the permittee at 515 Harbor Island Drive. Staff recommends that the Harbor Commission uphold the Harbor Development Permit and deny the appeal. The permit will include a condition establishing a single hull length overall (LOA) vessel limit at the permittee's dock. He concluded that the use of the neighbor's water space for access to a slip must not be relied upon.

Vice Chair Beer noticed that there is 7 feet between the edge of the float and the property line on the shorter side. He presumed that if a vessel is berthed there, the stern of the vessel will go to the edge of the float and then protrude out the other side. In answer to his question regarding if the 5-foot setback rule is restricted to the structure or the vessel, Public Works Administrative Manager Miller noted that the setback rule only applies to structures.

Peter Spataro, the appellant, believed that the City in prior years required parallel docks to supply ~~ample~~ ample waterway between the docks to access inside slips. Staff has indicated that he is allowed only 5-feet of the waterway which he understands as being the 5-foot setback between his dock and the property line. He mentioned that he has relied upon the use of his neighbor's waterway to access his slip for over 50-years. He argued that allowing a 60-foot vessel to be berthed at the dock would block 15-feet of the 20-feet of waterway. Presently, there is a 35-foot vessel length restriction and allowing a larger vessel would render his inside slip useless.

Shawna Shaffner, the representative for the permittee, restated that the proposal is to replace the 12-inch piles with 14-inch piles. The dock shape and size will not change. After submission of the application, the Harbormaster visited the channel twice and confirmed that the channel has adequate distance of navigation to accommodate larger vessels. There is 95-feet of navigational space between dock to dock and some of the neighbors have 60-foot boats berthed at their docks. The proposal follows the Harbor Code by not having the dock, or boat, extend beyond the prolongation of the property lines. Historically, a 55-foot boat has been berthed at the subject dock until 2005 when the applicant purchased a larger boat. In conclusion, per Harbormaster's letter, there are no safety concerns regarding berthing a larger vessel at the dock. The maneuverability analysis shows that there is 13-feet of clear access space to the back of the slip. The neighboring property has only 55-feet of frontage space and per the code, neighbors do not have the right to cross property lines to maneuver their boats. She requested that the Commission deny the appeal and uphold staff's approval.

In answer to Vice Chair Beer's question regarding the 35-foot vessel length restriction, Ms. Shaffner announced that through her research there were no supporting details on why the restriction was placed on specific docks in the area. Public Works Administrative Manager Miller added that usually restrictions are based on calculations of the time. Also, the shorter 12-inch piles may have been the reason for the restriction on vessel length.

In reply to Commissioner Yahn's query regarding shifting the vessel over to provide more space to the right side of the opening, Public Works Administrative Manager Miller answered yes that is an option. He restated that access through another person's water space should not be relied upon. In answer to Commissioner Yahn's inquiry regarding the historical non-conforming larger boat berthed at the dock, Public Works Administrative Manager Miller answered that there have been varying forms of enforcement over the years.

Jim Mosher mentioned that the post on the City's website disclosing staff's decision was posted in an obscure place. He wanted to understand the process that the City follows regarding noticing neighbors that there is an application submitted to the City that may affect them.

Chair Kenney remarked that if there is a public hearing, notice is sent out to a 300-foot radius. In answer to his question regarding noticing requirements when applications are filed, Public Works Administrative Manager Miller confirmed that there is a requirement that noticing must be provided when an application is submitted.

Mr. Spataro agreed that the applicant's property is 70 feet wide but allowing a 60-foot vessel would encroach into the 5- to 7-foot setback. He stated that the diagram showing the property's configuration is misleading.

Ms. Shaffner restated that the City requires that the dock cannot be built within 5 feet of the property line. The City does not require applicants to provide 5 feet, or any setback, from the property line for the boat.

Commissioner Williams moved to deny the appeal as it conforms with CEQA. Vice Chair Beer seconded the motion. The motion carried by the following roll call vote:

Ayes: Chair Kenney, Vice Chair Beer, Secretary Scully, Commissioner Marston, Commissioner Williams, Commissioner Yahn

Nays: None

Abstaining: None.

Absent: Commissioner Cunningham

7. CURRENT BUSINESS

1. Review of Harbor and Beaches Master Plan Projects

Staff will provide an overview of the 2022 Harbor and Beaches Master Plan Projects. The Harbor Commission is requested to review the plan and provide comments.

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

Public Works Administrative Manager Miller announced that the project list is reviewed by the Harbor Commission on an annual basis. The project list represents the long-range, large capital projects that the City has planned for. The list is designed to be flexible and is considered to be a living document. Staff requests that the Harbor Commission review the document and then agendaize a discussion for a future meeting. One highlight is the design start year and construction start year which shows a priority among the various projects. Graph 4 explains the debt service and shows that the Tidelands Fund does not have adequate funds to support all of the projects listed. The City transfers \$4.5 million annually from the General Fund to supplement the Tidelands Fund for the projects. After review from the Harbor Commission, the Finance Committee will consider sending the list to Council. Recently added projects included the replacement of the Newport Pier and Balboa Pier. Both projects carry large funding amounts ranging between \$20 to \$25 million. He stressed that the document is not a budgetary document but will be used for future planning.

Secretary Scully agreed that the debt as a percent to revenues, and master plan funding balances has changed drastically since the previous year's list. Public Works Administrative Manager Miller commented that finance staff analyzed the spreadsheet, and they know the specifics regarding the change in the numbers. The percentages may have changed because revenues are higher, or that some projects have been completed. In answer to Secretary Scully's question regarding the 29th street pier, Public Works Administrative Manager Miller confirmed that the project is included in the list. In reply to Secretary Scully's query regarding the process in which Commissioners can suggest additional projects, Public Works Administrative Manager Miller restated that the review is to allow the Harbor Commission to suggest projects. He encouraged the Commission to think of larger projects that may be added to the list. Secretary Scully recommended that an Ad Hoc Committee be formed to discuss potential projects.

In response to Commissioner Marston's query regarding what the pie chart containing expenditure figures represent, Public Works Administrative Manager Miller answered that the pie chart represents reasonable estimates. In answer to Commissioner Marston's inquiry regarding future dredging projects, Public Works Administrative Manager Miller recommended that the Commission add future dredging projects to the list. In response to Commissioner Marston's question about what the definition is for "current age", Public Works Administrative Manager Miller answered that the double-asterisk means the current age is unknown. Commissioner Marston suggested that the definition be added to the legend at the bottom of the table. In answer to Commissioner Marston's question regarding Lower Castaways launch area improvements, Public Works Administrative Manager Miller remarked that the project may be too small to be included on the list. Commissioner Marston suggested adding Lower Castaways improvements to the list.

Public Works Administrative Manager Miller encouraged the Commission to be specific about the projects that they wish to add to the list.

Vice Chair Beer appreciated that the City is moving forward on the enhancements to the public piers.

In answer to Commissioner Yahn's question regarding bulkhead work on Balboa Island, Public Works Administrative Manager Miller clarified that the bulkhead work on Balboa Island that was completed 5- to 6-years ago was an intermediate step to replacing all of the bulkheads on the island. In reply to Commissioner Yahn's question regarding the other seawall heights throughout the Harbor, Public Works Administrative Manager Miller explained that the seawalls and bulkheads are increased by height in a piecemeal fashion. Certain bulkheads and seawalls have required special attention. Commissioner Yahn noticed that there is not a public bay beaches sand nourishment project until 2028. In reply to his

understanding that sand nourishment happens more frequently, Public Works Administrative Manager Miller remarked that annual sand nourishment projects are not listed in the document. In response to Commissioner Yahn's query regarding where the sand comes from that is installed on Balboa Island, Public Works Administrative Manager Miller stated that the sand comes from Balboa Island and is just shifted around.

Commented [MM1]: Needs better explanation

In response to Vice Chair Beer's request regarding what the current requirement is for the elevation of seawalls, Public Works Administrative Manager Miller answered it is 10.5-feet and every 3-years the requirement is increased. In reply to Vice Chair Beer's query regarding the current elevation for the Balboa Island projects that will begin soon, Public Works Administrative Manager Miller commented that many of the seawalls on Balboa Island are less than 9 feet. Vice Chair Beer pointed out a typographical error in Item 46 of the document.

In answer to Chair Kenney's inquiry regarding the location of Surf Side/Sunset Beach, Public Works Administrative Manager Miller explained that Surfside/Sunset Beach is located on the far west end of Huntington Beach. In reply to Chair Kenney's question of why the City is funding that sand replenishment project, Public Works Administrative Manager Miller shared that the United States Army Corps of Engineers (USACE) has a project called Surfside/Sunset where they replenish sand in the Surfside/Sunset Beach area. The theory is that the sand placed at Surfside/Sunset Beach will move down to Newport Beach. In reply to Chair Kenney's question regarding revenues flowing into the Tidelands Fund, Public Works Administrative Manager Miller announced that he would have to supply an accurate answer to the Commission at a later time. He mentioned that the General Fund supplements the ~~Tidelands~~-Tidelands Fund. Chair Kenney stated that the goal is to increase Tideland Fund revenues in order to allocate the revenue back to Harbor improvements. Public Works Administrative Manager Miller agreed.

2. Propose and Discuss Potential Revisions to the On-Shore Mooring Permit

The subcommittee responsible for 2021 Harbor Commission Objective 1.3 is proposing potential revisions to the existing On-Shore Mooring Permit. Specifically, the subcommittee would like to discuss and consider the existing length limit and adding a limit for the beam (width) of vessels permitted on onshore moorings.

The recommend changes are intended to assist staff and the Harbor Commission when considering operations, permitting, and code enforcement in Newport Harbor.

Recommendation:

- 1) 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, Chapter 3, because it will not result in a physical change to the environment, directly or indirectly; and
- 2) Review, modify, and/or approve changes proposed for the On-Shore Mooring Permit by the Harbor Commission subcommittee and direct staff to update and use the new version for future mooring permit transfers and sub-permits.

Harbormaster Paul Blank announced that Vice Chair Beer and Commissioner Cunningham are on the Ad Hoc Committee that requested the Commission discuss the proposed revisions to the On-Shore Mooring Permit. The current On-Shore Mooring Permit has language that states that the vessel length limit on an on-shore mooring is 18-feet. The Ad Hoc Committee suggested that the Commission consider a clearer definition that includes swim steps, out-board motors, extensions, and other various attachments. Also, to establish a beam limit that will be incorporated into the permit. Staff advised that any changes to the On-Shore Mooring Permit only apply to new permittees or for use when the Harbor Department writes a sub permit.

Vice Chair Beer acknowledged the Ad Hoc Committee that is reviewing floats and lifts within the Harbor. He understood that the current On-Shore Mooring Permit does not restrict folks from putting a float on an on-shore mooring. If the 18-foot vessel length restriction and 8-foot beam is applied to floats, that is a very large footprint for a float. He recommended that the Ad Hoc Committee and

Commission discuss placing restrictions on floats. Harbormaster Blank mentioned that what is being proposed is not in conflict with what is drafted for the Title 17 updates related to axillary floats.

Chair Kenney remarked that the Commission should strongly consider addressing the issue of a limitation on vessel length and beam in Title 17. He recommended that the Title 17 Ad Hoc Committee amend Title 17 and place in the code the limitation. He proposed that the Title 17 Ad Hoc Committee meet with the City Attorney's Office and discuss what language can be included in Title 17.

Jim Mosher agreed with Chair Kenney and supported that approach rather than changing the language in the On-Shore Mooring Permit. He mentioned that the 18-foot limitation is included in Title 17 but it applies to one area.

Chuck South thanked Harbormaster Blank for notifying all the current permittees about the changes. He wanted to understand if there is language in the ordinances that allow floats to be tied to on-shore moorings. He stated that he is under the impression that folks are not allowed to have floats tied to on-shore moorings.

Chair Kenney noted that nowhere in Title 17 does it say that folks are allowed to have floats attached to on-shore moorings. Also, nowhere in Title 17 does it say that floats are prohibited to be tied to an on-shore mooring.

Vice Chair Beer recalled that there is language in Title 17 that says that anything tied to an on-shore mooring has to be a vessel with CF numbers. Chair Kenney could not recall such language. Harbormaster Blank confirmed that there is no such language in the code that requires a vessel to be tied to an on-shore mooring. An On-Shore Mooring Permit allows for a variety of things and has limited restrictions.

Commented [MM2]: Should be better explained

Chair Kenney restated his concern is that if there are no limitations contained in the City's Municipal Code. It would be simple for a permittee to argue that they have a right to have non-vessels tied to an on-shore mooring.

Mr. South agreed with Chair Kenney that the restrictions should be codified. He understood why folks would want to have a float to place kayaks or small vessels on and he supported that type of use. He did not support a float housing a large vessel.

Chair Kenney encouraged Mr. South and other mooring permittees to attend any future stakeholder meetings that discuss floats in the Harbor.

Harbormaster Blank clarified that the current definitions in Title 17 are consistent between on-shore and off-shore moorings. He remarked that what Chair Kenney is proposing is unique to on-shore moorings in Title 17. Chair Kenney stated that is correct.

In answer to Chair Kenney's question regarding should the Commission take action or delay action, Harbormaster Blank summarized that there is no appetite from the Commission to modify the current On-Shoring Mooring Permit. He remarked that there is a recommendation to direct staff to consult with the City Attorney about modifying Title 17 to include the Ad Hoc Committee's restrictions for on-shore moorings. Also, he recommends to wait until to receive a more fully vetted findings and recommendations from the Ad Hoc Committee on floats and lifts before making modifications to Title 17 is received.

Secretary Scully recommended that any modifications to Title 17 and the On-Shore Mooring Permits be delayed until the Ad Hoc Committee charged with floats and lifts can present their findings.

Harbormaster Blank commented that if there are going to be modifications to the definitions in Title 17. Then there is no need to modify the On-Shore Mooring Permit. Chair Kenney agreed.

Commissioner Marston, Vice Chair Beer and Commissioner Yahn agreed with Secretary Scully.

Chair Kenney announced that no action will be taken on the item at this time.

3. Proposed Harbor Commission 2022 Objectives

The Harbor Commission periodically conducts a review and updates their Objectives. An ad hoc committee was recently appointed to conduct the review for the 2022 Objectives and recommend changes and modifications for the review of the entire Harbor Commission. Once the Harbor Commission has provided input and finalizes the 2022 Objectives, they will request staff present the 2022 Objectives to the City Council for their review and consideration.

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, Chapter 3, because it has no potential for resulting in physical change to the environment, directly or indirectly; and
- 2) Approve the proposed Harbor Commission Objectives for 2022 and request staff present to the City Council in the near future for their consideration and review.

Secretary Scully announced that the 2022 Objectives were approved at the prior meeting. The changes that were proposed at the meeting were included in the motion and incorporated into the document. A modification was made to Functional Area 4.3 where the objective was expanded to include evaluating the total number of vessels for hire in the Harbor, maximum passenger capacity of each vessel and overall height of the superstructure of the vessels within the Harbor.

Chair Kenney understood that the Commission did not take action to finally approve the 2022 Objectives. Harbormaster Blank agreed.

Jim Mosher reviewed Title 17 and concurred with the comment that the definition of mooring, both on-shore and off-shore, is therefore a mooring for a vessel, which is defined as an object that moves. He mentioned that there is language in Title 17 that reads "anything that is not explicitly allowed is prohibited".

In answer to Chair Kenney's request for the specific section, Mr. Mosher answered that the language is located in the section called General Provisions under Applicability. Chair Kenney clarified that the Section is 17.10 under Applicability.

Vice Chair Beer moved to adopt the 2022 Harbor Commission Objectives as proposed by the Ad Hoc Committee and that the action is exempt from CEQA. Commissioner Williams seconded the motion. The motion carried by the following roll call vote:

Ayes: Chair Kenney, Vice Chair Beer, Secretary Scully, Commissioner Marston, Commissioner Williams, Commissioner Yahn

Nays: None

Abstaining: None.

Absent: Commissioner Cunningham

4. Ad Hoc Committee Updates

Several ad hoc committees have been established to address short term projects outside of the 2021 Harbor Commission objectives. 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, Chapter 3, because it has no potential for resulting in physical change to the environment, directly or indirectly; and
- 2) Receive and file.

Chair Kenney announced that there are two Ad Hoc Committees that have been tasked with studying various Harbor-related issues. The third Ad Hoc Committee tasked with the 2022 Harbor Commission Objectives has completed its work.

Commissioner Marston reported on the work done by the Ad Hoc Committee tasked with studying floats attached to docks, piers and moorings. The Ad Hoc Committee has made recommendations that have been incorporated into Title 17. The Ad Hoc Committee will likely be reconvening for another meeting to review whether the items incorporated into Title 17 completely address the findings based on the previous conversation.

Chair Kenney suggested that a stakeholder meeting be held to discuss floats and lifts. Harbormaster Blank requested that the Commission define what material will be covered at the stakeholder meeting. Chair Kenney recommended that the stakeholders discuss both the Ad Hoc Committee's findings regarding floats and lifts as well as revisions to Title 17. He mentioned that the biggest issue to discuss is should whether the City should add future restrictions on floats either on moorings and/or on docks and piers. Harbormaster Blank clarified that there are revisions to Title 17 that are not relevant to the discussion regarding axillary floats and lifts. Chair Kenney suggested those components be removed for separated and taken action on separately.

Secretary Scully supported separating the two and taking separate action.

Commissioner Marston agreed and recommended that the Ad Hoc Committee meet again before the stakeholder meeting.

Chair Kenney encouraged the Ad Hoc Committee tasked with floats to draft well-defined recommendations that will then be reviewed by the general public.

Commissioner Williams, Commissioner Yahn and Vice Chair Beer agreed that the topics should be separated.

Harbormaster Blank requested clarification on if there will be a stakeholder meeting for floats that pertain to Title 17 and then a separate stakeholder meeting to discuss other changes to Title 17. Chair Kenney clarified that there shall be no stakeholder meeting for the other changes to Title 17.

Chair Kenney asked if a public stakeholder meeting should be held for the proposed beam restriction. Vice Chair Beer answered no.

Secretary Scully announced that the Ad Hoc Committee tasked with affordable boating and storage continues to explore public marinas that are owned by the State of California but operated by cities or counties in California. He predicted that the work will be completed by the next meeting.

Rob Warner recalled that Section 17.10.20 defines a lift as a mechanical device affixed by rope or line to a permitted dock. If a lift is not affixed by a rope or a line, it does not fall under the definition of a lift. He recommended that the definition of a lift be clarified and reflect that a lift is a lifting device attached by any means to a dock.

5. Harbor Commission 2021 Objectives

Each ad hoc committee studying their respective Functional Area within the Commission's 2021 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, 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: Chair Kenney reported with respect to Objective 1.1, the object is in process. With respect to Objective 1.2, no changes need to be made at this time. With respect to Objective 1.3, action was taken earlier in the meeting to delay any changes to the On-Shore Mooring Permit. With respect to Objective 2.4, there is no update at this time. With respect to Objective 1.5, the appraisal for the market-rate On-Shore Mooring Permits will be reviewed by the Harbor Commission in January 2022.

Functional Area 2: Vice Chair Beer disclosed that there are no new reports of Functional Area 2 other than what was previously reviewed in the meeting.

Functional Area 3: Chair Kenney announced that there is no report for Functional Area 3 due to the absence of Commissioner Cunningham.

Functional Area 4: Secretary Scully reported that Objective 4.1 and 4.2 have been completed. With respect to Objectives 4.3 and 4.4, the Ad Hoc Committee continues to work on the objectives.

6. Harbormaster Update – November 2021

The Harbormaster is responsible for the management of the City's mooring fields, the Marina Park Guest Marina, a variety of Harbor activities, and Harbor on-the-water City code enforcement. This report will update the Commission on the Harbor Department's activities for November 2021.

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, 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 announced that the Harbor Department has begun filming a safety video for rental company operators and rental customers. Code enforcement provided a cooperative effort with counterpart agencies to investigate an incident where a YouTube influencer jumped from a moving van into a floating basketball hoop. The violator received two Notices of Violation which included a \$1,000 fine per notice and was required to remove the four videos of the incident. Code enforcement was dispatched to a situation where a large vessel attempted to traverse under Lido Island Bridge and dislodged an electrical line. Another incident happened when code enforcement was returning from patrol, and they encountered a vessel that was in distress. Upon further investigation, code enforcement discovered that the vessel had been stolen and the occupant was a parolee. Code enforcement contained the vessel until law enforcement came to remove the parolee from the vessel. Per the request of a Council Member, the Harbor Department has installed better markings on its patrol vessels. The Harbor Department is providing support for the Christmas Boat Parade and will hold a boat auction in January 2022. The Harbor Department prevailed in two appeals related to the incidents that happened over the 2021 Labor Day weekend. With respect to statistics, there is a dramatic increase in the total number of cases closed by code enforcement for the month. In terms of year over year, code enforcement has seen double the activity compared to November 2020.

Secretary Scully mentioned that he witnessed kids jumping off the bridge at Balboa Island. He reported it and code enforcement was dispatched immediately.

Commissioner Marston shared that the Outrigger Club ~~witnessed an attempted~~ handled a boat launching from a trailer at Lower Castaways. Chair Kenney recommended that Commissioner Marston tell the Outrigger Club to call the Harbor Department if it happens again. Harbormaster Blank remarked that the Harbor Department would be happy to collaborate with Newport Beach Police and Fish and Wildlife in apprehending any violators.

Vice Chair Beer commended the Harbor Department on its large number of closed code enforcement cases.

Chair Kenney strongly supported and appreciated the Harbor Department for making a safety video.

8) MOTION FOR RECONSIDERATION

None.

9) COMMISSIONER ANNOUNCEMENTS (NON-DISCUSSION ITEM)

Commissioner Yahn announced that on December 4, 2021, Harbormaster Blank became the commodore of Balboa Yacht Club. The 107th Annual Christmas Boat Parade will be held between December 15 and December 17, 2021, and over 80 boats have signed up.

Chair Kenney shared that Council has moved the hearing on the Commission's recommendation not to pursue any further alternatives to the confined aquatic disposal (CAD) to January 2022.

10) QUESTIONS AND ANSWERS WITH STAFF ON HARBOR-RELATED ISSUES

None.

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

Secretary Scully suggested that an Ad Hoc Committee be created to discuss possible projects to be included in the Newport Beach Harbor and Beaches Master Plan.

In answer to Chair Kenney's question regarding a joint meeting with the Water Quality-/Coastal Tidelands Committee (WQCTC), Harbormaster Blank suggested that Commissioners attend WQCTC's next two meetings. Chair Kenney requested that staff provide the Commission with the dates for those meetings.

12) DATE AND TIME FOR NEXT MEETING: Wednesday, January 12, 2022, at 5 p.m.

13) ADJOURNMENT

There being no further business to come before the Harbor Commission, the meeting was adjourned at 7:42 p.m.