

NEWPORT BEACH HARBOR COMMISSION REGULAR MEETING MINUTES
City Council Chambers – 100 Civic Center Drive, Newport Beach, CA
Wednesday, July 13, 2022
5 p.m.

1) CALL MEETING TO ORDER

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

2) ROLL CALL

Commissioners: Steve Scully, Chair
Ira Beer, Vice Chair
Don Yahn, Secretary
Scott Cunningham, Commissioner
Marie Marston, Commissioner
Rudy Svrcek, Commissioner

Excused: Gary Williams, Commissioner

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

3) PLEDGE OF ALLEGIANCE – Commissioner Yahn

4) PUBLIC COMMENTS

Chuck Fancher, Water Quality Coastal Tidelands Committee (WQCTC) Member, shared that there have been discussions with staff and Secretary Scully about topics both the Harbor Commission and the WQCTC are interested in. Both groups are interested in the floating restrooms as well as sea level rise.

5) APPROVAL OF MINUTES

1. Minutes of June 8, 2022, Harbor Commission Regular Meeting

Vice Chair Beer noted that written comments were received from Secretary Scully and Commissioner Marston.

Commissioner Marston moved to approve the draft Minutes of the June 8, 2022 meeting as amended. Secretary Scully seconded the motion. The motion carried by the following roll call vote:

Ayes: Vice Chair Beer, Secretary Scully, Commissioner Cunningham, Commissioner Marston,
Commissioner Yahn

Nays: None

Abstaining: Commissioner Svrcek

Absent: Commissioner Williams

6) ELECTION OF OFFICERS

1. The Harbor Commission will Elect Officers for the 2022-23 Year

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 in direct 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 in indirectly; and
- 2) Elect Chair; and
- 3) Elect Vice Chair; and
- 4) Elect Secretary

Vice Chair Beer summarized the process in which the Harbor Commission holds its elections.

Vice Chair Beer nominated Secretary Scully as Chair. Commissioner Cunningham seconded the motion. The motion carried by the following roll call vote:

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

Commissioner Cunningham nominated Vice Chair Beer for the position of Vice Chair. Chair Scully seconded the motion. The motion carried by the following roll call vote:

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

Chair Scully nominated Commissioner Yahn for the position of Secretary. Vice Chair Beer seconded the motion. The motion carried by the following roll call vote:

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

7) CURRENT BUSINESS

1. Floating Restroom Proposal

Several concerns and complaints about public urination and private property trespass, mostly from boaters inexperienced with Newport Harbor have been voiced by harbor constituents, nearby residents, and community leaders. Efforts to improve education about the location and availability of public restrooms adjacent to the harbor have been somewhat successful. Challenges remain, especially with casual or experienced mariners on utilization of available tools for locating suitable facilities. Grant funding from the State is available for constructing, installing, and maintaining a floating restroom in Newport Bay. If awarded, the City match requirement is 25 percent.

Recommendation:

- 1) Determine the need and priority for additional public restroom facilities in Newport Harbor; and
- 2) If desired, formulate a recommendation on the pursuit of this project and funding to be considered by the City Council; and
- 3) 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.

Harbormaster Paul Blank acknowledged the complaints that have been received from residents regarding public urination and public discharge into the Harbor. There has been limited adoption of the My Newport Beach app Harbor layer which highlights where public restrooms are located. There are examples of successful floating restrooms on several lakes and rivers in the State of California as well as in the States

of Oregon and Washington. Grant funding is available to the City to install and assist with maintaining a floating restroom. The options that are available for a floating restroom are an Americans with Disabilities Act (ADA) compliant restroom that is attached to a public pier and the other is a free-floating restroom. Staff will provide signage indicating where the restroom is located, and an authorized local provider will provide service and maintenance to the restroom. Staff is seeking feedback from the Commission as well as the public on the locations of the floating restroom. Staff suggested the Commission consider a restroom be located either at the Central Avenue Pier, inside the H Mooring Field on a City permitted mooring, the Washington Street Pier or in the A Mooring Field on a City permitted mooring. If approved, the project will be added to the Capital Improvement Program (CIP). The recommendation will be presented to City Council who will enact the project be included in the CIP and direct staff to pursue eligible grant funds. The project will then go through a full City public hearing process. Staff has received concerns about having the restroom near residential homes. Folks have also recommended that more education and enforcement take place for Marine Activity Permit (MAP) holders. Concerns about cleanliness and security also has been raised.

[The Commission watched a short video showing evidence of folks using the Harbor as a restroom.]

In answer to Commissioner Cunningham's questions, Harbormaster Blank answered there are six public restrooms adjacent to the Harbor. Public urination and unlawful discharge into the Harbor are two separate violations. The fine for public urination is \$542 and unlawful discharge into the Harbor is \$2,000. Harbor Department staff has to witness the action in order to issue a citation. Photographic evidence provided by Harbor users is not substantial evidence to issue a citation, but a Notice of Violation can be issued. Commissioner Cunningham commented that a restroom on the Harbor will be convenient for some folks but he predicted the lude acts would continue without more education. In response to Commissioner Cunningham's inquiry regarding if the problem mainly resides with rental boats, Harbormaster Blank confirmed yes but he has witnessed private boats doing it as well. Commissioner Cunningham recommended having more public restrooms available, better signage, more education and stiffer fines. He disclosed he has seen many violators in the act from his own home.

Secretary Yahn noted if a violator is caught in the act on Avalon Harbor, the boat is not allowed back in the Harbor for a year. In reply to Secretary Yahn's question regarding how many violations have been issued in the last year, Harbormaster Blank answered there has been a 50 percent increase in incidents from the year 2021 to 2022. The reason why the staff is exploring a floating restroom is that folks are trespassing on private property to access the public restroom on Lido Island. Secretary Yahn understood that Title 17 did not cover public urination and Harbormaster Blank clarified Title 17 covered human effluent discharge. In response to Secretary Yahn's inquiries regarding the net cost of the project and maps with the restrooms highlighted, Harbormaster Blank explained the project costs \$200,000. The grant will cover 75 percent or \$150,000 and the City will cover \$50,000. For ongoing maintenance, the cost is \$12,000 annual but the grant will cover \$9,000 with the City being responsible for \$3,000. If the City is awarded the grant, the City is obligated to provide the restroom for 10 years. Every MAP holder has charts of the Harbor that identify where the restrooms are located. Availability of resources has hindered the Harbor Department's ability to provide more education to MAP holders and their users.

In answer to Vice Chair Beer's question regarding did the \$200,000 apply to the free-floating restroom or the ADA-compliant restroom, Harbormaster Blank answered the amount is for the free-floating restroom. Vice Chair Beer suggested placing a restroom on the north side of the Federal Channel, possibly in the C or G Mooring Fields.

In response to Commissioner Marston's questions, Harbormaster Blank explained incidents are listed under illegal discharges, incidents or in the code enforcement statistics. With respect to areas that had higher incident activity, the top area is west Lido Reach between the east end of Lido Isle and the West Anchorage. Another is near the Harbor entrance between the ferry crossing and the Harbor entrance. Commissioner Marston commented that there are six public restrooms around the Harbor and there are no statistics that indicate that a floating restroom will solve the problem. She agreed the public is not aware of the restrooms that are available now. Harbormaster Blank assumed a floating restroom will be more obvious to folks not familiar with the existing restrooms.

Commissioner Svrcek shared he stopped at four public rental shops and inquired if they had maps identifying where the public restrooms are around the Harbor. One stated they did not have a map, the second one stated there are no public restrooms in the Harbor, the third had a map but it was not at the beach rental station and the fourth suggested he ask the dock staff.

In reply to Chair Scully understanding that staff is suggesting the Harbor have a free-floating restroom, Harbormaster Blank clarified it depended on the location of the restroom. It did not make sense to place an ADA-compliant restroom on a mooring. In answer to Chair Scully's questions, Harbormaster Blank answered the City will not be subject to a fine if there is no ADA-compliant restroom. There is a restroom at Balboa Yacht Basin and there is a place to park. The project is a joint effort between Public Works, Community Development, the Harbor Department and Public Works will be writing the grant. Chair Scully suggested the Harbor Department explore a sticker that can be attached to rental boats that advertises the Harbor App.

Hein Austin strongly supported the proposal and was happy to see the City addressing the problem at a human level instead of at a legal level. He believed the money will be better spent if the City uses portable toilets instead of placing one floating restroom in the Harbor. He suggested placing the portable toilets near the pump-out stations. He expressed concern about wakes tossing the floating restroom around while folks are using it.

Nancy Scarborough suggested staff consult the City attorney before placing an ADA non-compliant restroom on the Harbor. She encouraged staff to share the project with the Coastal Commission.

Wade Womack recommended Bayside Drive at the Orange County Park as well as the Fire House Station be added to the list of available restrooms. He recommended providing more outreach at the folks using the public launch at the Dunes. He mentioned the Boating Infrastructure Grant can be used for landside restrooms and he recommended staff explore adding more Harborside restrooms. One option is Lower Castaways and the other could be at the pending public pier at 29th Street and Lafayette Avenue. He echoed the concern about liability and ADA compliance.

Jim Mosher recalled it was mentioned at the WQCTC that someone in the San Bernardino Mountains was offering to give away several functional floating restrooms if the City arranged transportation. He suggested a restroom be placed at The Wedge near the Harbor entrance and a floating restroom be placed at West Jetty Park at the end of Channel Road with a gangway to it from the land.

Chuck Fancher suggested staff check with John Kepler and Robert Stein in the Public Works Department about information regarding the free restrooms Mr. Mosher mentioned. He agreed boaters have to be educated on where the restrooms are located and that folks cannot urinate in the Harbor. He asked if rental companies are aware that they are responsible to pay the fine if a renter is issued a citation.

Commissioner Cunningham suggested using the buoys near public piers to identify the nearby restrooms. He recommended an educational meeting be held with the owners of the rental companies. He agreed having more public restrooms in or around the Harbor will be useful.

Secretary Yahn appreciated Commissioner Svrcek's investigation and noted it indicates that there is a lack of education on where the public restrooms are in the Harbor. He liked the idea of using a sticker and suggested it include a QR code that takes you to a map that locates all the restrooms in the Harbor. He supported Mr. Austin's suggestion of placing the restrooms at the public piers.

Vice Chair Beer concurred that education is the biggest issue as well as enforcement of the fine to the rental agencies. He encouraged staff to explore drafting a new map that shows all the possible locations for a floating restroom. He commented that moorings are made to side-tie a vessel, not a floating restroom. He recommended engineering staff review the stability the restroom will have if it is tied to a mooring.

Commissioner Marston agreed there are many restrooms currently available, but they are not well used. She wanted to see their use maximized before locking the City into a 10-year grant.

Commissioner Svrcek mentioned the maps that rental companies use are multi-purpose which makes it hard to identify restrooms. He recommended drafting a map that only identifies public restrooms and include on the map the fines folks will be subject to if they do not use the available restrooms.

In answer to Chair Scully's inquiry regarding only code enforcement has the ability to write citations, Harbormaster Blank explained evidence collection can come from anyone within the Harbor Department but only personnel with special classifications can write citations. Chair Scully commented the Harbor Safety Committee may be able to help find a solution to the problem and he supported the idea of using a QR code. He asked the other Commissioners if they supported having two floating restrooms in the Harbor.

Commissioner Cunningham was not supportive of having a floating restroom.

Secretary Yahn, Vice Chair Beer and Commissioner Marston echoed Commissioner Cunningham's comment.

Commissioner Svrcek recommended starting an educational program.

Chair Scully proposed floating restrooms be an objective for the year 2023.

2. Create and Appoint Members to a Proposed Subcommittee for the Harbor and Beaches Master Plan

At the January 12, 2022 Harbor Commission meeting, the Commission deferred forming a subcommittee to review the Harbor and Beaches Master Plan ("PLAN") until at least mid-2022. Once convened, it is anticipated that the subcommittee will review the current Plan and make recommendations on potential changes, additions, deletions, and priorities in advance of the Harbor Commission review cycle.

Recommendation:

- 1) Determine this action is exempt from the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(2) and 15060(c)(3) of the CEQA Guidelines because this action will not result in a physical change to the environment, directly or indirectly; and
- 2) Establish a subcommittee and appoint Harbor Commissioners to review and recommend revisions to the current Harbor and Beaches Master Plan. Identify up to three Harbor Commissioners to serve on the subcommittee.

Public Works Administrative Manager Chris Miller recommended the Harbor Commission establish a subcommittee to review the Harbor and Beaches Master Plan. The subcommittee will make their recommendation to the Harbor Commission in the fall of 2022.

Chair Scully reminded the Commission that when staff brings the Harbor and Beaches Master Plan to the Harbor Commission there is no time to adjust or make changes to it. Having a subcommittee review the program will allow time for staff to make changes.

Secretary Yahn requested to be on the subcommittee.

Commissioner Cunningham announced he'd like to be on the subcommittee as well.

Public Works Administrative Manager Miller commented that the Commission can utilize several meetings to discuss the plan if it is needed.

Chair Scully noted that during Harbor Commission meetings, Commissioners can provide recommendations to the subcommittee. Public Works Administrative Manager Miller confirmed that is correct.

Commissioner Svrcek expressed his interest to be part of the subcommittee.

Wade Womack asked if the subcommittee meetings can be made public.

Chair Scully restated the topic will be discussed every month at the regular Harbor Commission meetings and he invited the public to provide comments at that time.

Mr. Womack wanted to see more transparency and public involvement.

In reply to Commissioner Marston's question regarding a record of the comments made on the program at a prior Harbor Commission meeting, Public Works Administrative Manager Miller confirmed he could provide those comments to the subcommittee. In answer to Commissioner Marston's question regarding if the subcommittee will be evaluating the fiscal year of implementation, Public Works Administrative Manager Miller explained the document assigns values to an infrastructure project that needs to be replaced. Those figures are reviewed and worked into the budget.

Commissioner Yahn moved the matter is exempt from CEQA and proposed the three members of the newly created Ad Hoc Committee, Commissioner Cunningham, Secretary Yahn and Commissioner Svrcek, be now formed. Vice Chair Beer seconded the motion. The motion carried by the following roll call vote:

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

3) Ad Hoc Committee Updates

Several ad hoc committees have been established to address short term projects outside of the Harbor Commission objectives. This is the time the ad hoc committees will provide an update on their projects.

Recommendation:

- 1) Find this action exempt from the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment) and 15060(c)(3) (the activity is not a project as defined in Section 15378) of the CEQA Guidelines, California Code of Regulations, Title 14, Division 6, Chapter 3, because it has no potential for resulting in physical change to the environment, directly or indirectly; and
- 2) Receive and file.

Secretary Yahn announced the community meeting at Marina Park was well attended and the community provided good feedback. The next step is to share the feedback with the Harbor Department and then report to the Commission.

Chair Scully shared the Ad Hoc Committee tasked with reviewing City Council Policy H-1 is working on blending Public Works Administrative Manager Miller and Harbormaster Blank's draft versions with the existing policy. The Ad Hoc Committee has provided a rough draft to Public Works Administrative Manager Miller with the request he provide his thoughts and comments on it.

4) Harbor Commission 2022 Objectives

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: Secretary Yahn stated the only Title 17 revision update under consideration concerns floats and lifts.

Functional Area 2: Vice Chair Beer stated there is no report with respect to Objective 2.1 and Objective 2.4. With respect to the mooring field initiative, Vice Chair Beer received feedback from the engineering firm and will provide a more comprehensive update at the next meeting.

Functional Area 3: Commissioner Cunningham announced there is no report.

Functional Area 4: Chair Scully remarked the ad hoc committee is focused on the floating restrooms. With respect to Lower Castaways, the ad hoc committee will make a presentation to City Council Members to encourage more interest in moving forward with a plan. Commissioner Marston shared she discussed Lower Castaways with the Parks, Beaches and Recreation Commission (PB&R) and confirmed PB&R has no future projects for the site. She recommended a joint effort be made between the Harbor Commission and the PB&R Commission on the matter. With respect to Objective 4.3, Chair Scully informed that Commissioner Williams and himself discussed the item with code enforcement supervisor Matt Cosylon. Also, they reviewed all the maps that identify the different types of business on the Harbor that should be involved in the Newport Harbor Safety Committee. The goal is to hold the first meeting of the Newport Harbor Safety Committee in the third quarter of 2022. With respect to 4.3.2, Chair Scully indicated he fixed his errors regarding the heights of several vessels and the final report will be placed on the Harbor Department's website.

Wade Womack asked what Lower Castaways is zoned for and what the plan for the site is. Chair Scully answered it is zoned as commercial marina and there is no plan at this time.

Commissioner Cunningham invited Commissioner Svrcek to help him with Objectives 3.1 and 3.2.

Harbormaster Blank interjected that because the objectives were established by a motion and public discourse. Any reassignment of the objectives will require a motion and will have to happen at the next Harbor Commission meeting.

Chair Scully agreed to review the objectives where Commissioner Kenney was involved and realign the objectives to include Commissioner Svrcek. He encouraged the Commission to consider how the current objectives are written and if there are objectives that need to be removed or included.

5) Harbormaster Update June 2022 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 Blank reported in June a large amount of pump-out dock maintenance happened. Harbor staff received training from the Office of Spill Response on the use of spill response materials. The department is low on sorbent booms and sorbent pads but the Office of Spill Response will provide a grant to replenish these items. Recruitment and hiring in the department has gone well and the department is nearly fully staffed. Code enforcement traversed the Harbor looking for unpermitted construction and issued six to 10 Notices of Violation. Harbor services workers were dispatched to rescue several wayward

paddleboarders. Harbormaster Blank noted on two occasions he received complaints from one Balboa Yacht Basin tenant regarding the lack of amenities at Balboa Yacht Basin. He investigated the complaints and responded to the tenant. The other complaint received from the tenant pertained to the underwater growth adjacent to the tenant's slip. A diver was hired to remove the natural growth and an email was sent to the tenant explaining that the vegetation is non-invasive and found throughout the Harbor. Significant rate increases were imposed on Balboa Yacht Basin tenants and three out of 172 tenants filed complaints. Revenue for the calendar year continued to outpace the revenue from previous years. The increase in revenue was due to the increased occupancy and utilization of the Harbor. The human lift was requested to be used four times in May and four times in June. Paddle board and kayak rescues have doubled since 2021, public contact has tripled compared to previous years, public dock enforcement has almost doubled and speeding in the Harbor has decreased. Of the 929 permit updates that have to be converted to the new format, only 25 are left in process and 859 have been fully converted over.

Commissioner Cunningham believed the Balboa Yacht Basin tenant should have called the Balboa Yacht Basin management team. Harbormaster Blank remarked the tenant is a friend of the former operator and does not have a good relationship with the current operator.

In answer to Chair Scully's query regarding the increased rates at Balboa Yacht Basin, Harbormaster Blank stated the average increase across all sizes was 13 percent. The increase is a function of the audit of other marinas in the Harbor. In reply to Chair Scully's questions regarding walking Balboa Yacht Basin and discussing the rescues with the rental companies, Harbormaster Blank responded he does not walk the property, but he will start. Harbor services workers are adept at providing a friendly level of reprimand to rental companies when they have to perform a rescue without inflicting a penalty. Chair Scully requested that incidents and concerns on the Harbor be shared with the Newport Harbor Safety Committee.

Lens Bose asked if rental companies allow folks to go back into the water if they are rescued. Harbormaster Blank answered that the City does not want to interfere in these businesses and is not placing restrictions on the rental companies. The department does issue notifications when there will be severe weather.

8) MOTION OF RECONSIDERATION

None

9) COMMISSIONER ANNOUNCEMENTS (NON-DISCUSSION ITEM)

None

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)

None

12) DATE AND TIME FOR NEXT MEETING: Wednesday, August 10, 2022 at 5 p.m.

None

13) ADJOURNMENT

There being no further business to come before the Harbor Commission, the meeting was adjourned at 6:52 p.m.