

NEWPORT BEACH HARBOR COMMISSION REGULAR MEETING MINUTES
Council Chambers – 100 Civic Center Drive, Newport Beach CA
Wednesday, March 13, 2019
6:30 PM

1) CALL MEETING TO ORDER

The meeting was called to order at 6:32 p.m.

2) ROLL CALL

Commissioners: Dave Girling, Chair (excused absence)
Scott Cunningham, Vice Chair
John Drayton, Secretary
Ira Beer, Commissioner
Paul Blank, Commissioner
Bill Kenney, Commissioner
Don Yahn, Commissioner

Staff Members: Carol Jacobs, Assistant City Manager
Kurt Borsting, Harbormaster
Chris Miller, Public Works Manager
Jennifer Biddle, Administrative Support Specialist

3) PLEDGE OF ALLEGIANCE – Commissioner Beer

4) PUBLIC COMMENTS

Mike Hewitt, Newport Marina, requested his written summary of his comments made during the January 9, 2019 meeting be incorporated into the draft minutes. He spoke with Len Bose who confirmed that the Bayshore Marina had an issue with vessels unable to get in and out at low tide.

Hoiyin Ip, Water Quality Committee for Trash Reduction, reported the committee is reviewing ordinances banning single-use plastics. The San Diego ordinance includes provisions relating to the harbor. The Harbor Commission could collaborate with the committee to draft an ordinance banning single-use plastics with provisions relating to the Newport Harbor.

Guy Forsman inquired whether the Harbor Commission is considering the expansion of offshore moorings and about the process to request an agenda item. Vice Chair Cunningham advised that the topic is not an agenda item for the current meeting, but the Harbor Commission does discuss it. Mr. Forsman can write the Harbor Department and request an agenda item.

5) APPROVAL OF MINUTES

1. Minutes of January 9, 2019, Regular Meeting

Commissioner Kenney noted the February minutes correctly reflect that the substitute motion for January 9's Item 1 (2888 Bayshore Drive), which the Harbor Commission supported, should state the project is not exempt from California Environmental Quality Act requirements.

Commissioner Blank concurred with the characterization of Item 1 contained in the draft minutes and in Mr. Hewitt's letter, but not with the characterization contained in Mr. Evertz's letter. Therefore, Mr. Hewitt's comments should be incorporated into the draft minutes.

Public Works Manager Chris Miller indicated Mr. Evertz's letter accurately reflects Public Works Manager Miller's comment that he is not a CEQA expert and that the Community Development Department would need to be consulted.

Assistant City Manager Carol Jacobs reported Deputy City Attorney Komeili had advised her that he did not understand the meaning of the comment Mr. Evertz attributed to him [Deputy City Attorney Komeili]. Consequently, Deputy City Attorney Komeili does not believe he said it, or Mr. Evertz may have misinterpreted Deputy City Attorney Komeili's verbal comment. Assistant City Manager Jacobs recommended the Harbor Commission accept Mr. Evertz addition that Public Works Manager Miller stated he is not a CEQA expert but not the comment Mr. Evertz attributed to Deputy City Attorney Komeili.

Jim Mosher assumed a recording of the January 9, 2019 Harbor Commission meeting exists somewhere as the Brown Act requires cities to maintain recordings for 30 days while the City's policy is to maintain recordings for one year. Assistant City Manager Jacobs explained that the recording does not exist, which caused the extended discussion of the draft minutes.

Commissioner Blank moved to (1) approve the January 9, 2019 minutes of the regular meeting with amendments offered by Commissioner Kenney and Mr. Hewitt and (2) concur with the final sentence from Mr. Evertz's communication. Commissioner Kenney seconded the motion. The motion carried by the following roll call vote:

Ayes: Vice Chair Cunningham, Commissioner Beer, Commissioner Blank, Commissioner Kenney, Commissioner Yahn

Nays: None

Abstaining: Commissioner Drayton

Absent: Chair Girling

2. Minutes of February 13, 2019, Regular Meeting

Commissioner Beer corrected 939 Via Lido Soud to 933 Via Lido Soud in the fifth line of the fourth paragraph on page 3.

Commissioner Kenney moved to approve the February 13, 2019 minutes of the regular meeting as amended. Commissioner Beer seconded the motion. The motion carried by the following roll call vote:

Ayes: Vice Chair Cunningham, Commissioner Drayton, Commissioner Beer, Commissioner Blank, Commissioner Kenney, Commissioner Yahn

Nays: None

Abstaining: None

Absent: Chair Girling

6) CURRENT BUSINESS

1. Presentation by National Oceanic and Atmospheric Administration Fisheries (NOAA Fisheries) Regarding Sea Lion Deterrents

As part of the City's Harbor Department, staff works closely with vessel and property owners regarding sea lion deterrents. Sea Lions have an active season within the harbor and NOAA will provide the Harbor Commission with options for sea lion deterrents.

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.
- 2) Receive and file and, if appropriate, provide direction to staff.

Laura McCue, National Marine Fisheries Service (NMFS), reported the NMFS is charged with protecting all protected species. The Marine Mammal Protection Act (MMPA) does not allow anyone to harass, hunt, capture, or harm a marine mammal. MMPA Section 101(a)(4) allows the non-lethal deterrence of nuisance animals under certain circumstances. She shared a list of deterrence methods and noted NOAA and NMFS do not advocate for or against the deterrence methods. Used appropriately, the methods can be effective.

Justin Viezbicke, NMFS, advised that NMFS receives complaints regarding nuisance animals. NMFS staff has found that a number of the animals have been injured by rubber mats or pieces of wood containing screws or nails placed on decks. Because animals have been found with screws in their bodies, information is documented and provided to enforcement. No single method of deterrence on the list is effective 100 percent of the time. The growing number of sea lions is creating challenges around the state.

Marcus Nieves, NOAA Office of Law Enforcement, stated anything that will injure an animal is unlawful. He will be working with the Harbor Department to identify vessels with unlawful deterrence devices, provide the list of deterrence methods to vessel owners, and motivate vessel owners to utilize lawful rather than unlawful devices.

Mr. Viezbicke requested the City contact his office to assist with sea lion issues.

In response to Commissioners' questions, Mr. Viezbicke indicated he and Ms. McCue are based in Long Beach. He covers the entire state for strandings and large whale entanglements. Ms. McCue covers the West Coast region, but her counterpart covers Oregon and Washington. Mr. Nieves is based in San Diego and covers the entire state. The Harbor Commission's most effective role could be communication and education so that the public will understand the issues. Sea lions have no migration pattern; however, during breeding season they inhabit the Channel Islands. With the increasing number of sea lions, they are moving into new territories. NMFS representatives will be happy to attend public meetings and provide input into revisions to Title 17. Because large numbers of sea lions inhabit the state, relocating them to one area is not feasible. Designating a space for sea lions is not practical because, once it is fully occupied, the sea lions will move to another space. Sea lions may be deterred by a coyote's physical presence or howling, but fake coyotes or coyote scent rarely deters sea lions. If Harbor users want more sea lions, they should provide space for them.

Commissioner Kenney noted many of the deterrence methods on the list conflict with the Newport Beach Municipal Code.

Commissioner Beer suggested NMFS staff work with Harbormaster Borsting to identify docks that do not comply with requirements.

Commissioner Yahn felt education is critical and suggested brochures regarding humane and harmful devices be given to the public or placed on docks.

Vice Chair Cunningham suggested City mailers to mooring owners include best practices for deterring sea lions.

Harbormaster Kurt Borsting reported staff has taken preliminary steps to increase public information. Materials provided by NMFS have been added to the Harbor Department's website. Earlier in the week, staff sent a mass email referring to informational materials to approximately 1,500 individuals who have been identified as private dock owners or mooring holders. Code Enforcement Officer Matt Cosyion regularly consults with NOAA staff regarding sea lion issues.

Mr. Graflion inquired about the number of sea lions that the area can sustain. Mr. Viezbicke reported the natural environment will regulate the number of sea lions through carrying capacity. A NOAA paper discusses the likelihood that the carrying capacity has been reached.

Keith Garrison requested methods to remove sea lions from a vessel and inquired whether the City would hire someone to remove sea lions if mooring owners paid for the service. Vice Chair Cunningham referred

Mr. Garrison to the NOAA materials, which provide removal and deterrence methods. Ms. McCue added that the materials are available on NOAA's website. Commissioner Drayton advised that sea lion removal is one of the topics that will be raised at a meeting with the Newport Mooring Association. If mooring permittees are willing to fund such a service, the Harbor Commission would listen. Mr. Viezbicke indicated NMFS staff could share best practices for removing sea lions with a person designated for removal or share tips with the public. If sea lions are consistently removed from a space shortly after their arrival, the sea lions will move to another space.

Marlene Pittman disclosed that seal stop has eliminated sea lions from her vessel for the past ten years.

John Fradkin agreed that seal stop is a great product, but it is expensive and cannot cover a large vessel. A sea lion refuge located within the Harbor will likely attract sea lions already in the Harbor but maybe not attract sea lions outside the Harbor. A trial program is needed. Noise from a concentration of sea lions may be an issue, but noise does not damage vessels.

Carter Ford suggested silently approaching a sleeping sea lion and sounding a horn or other loud noise to scare the sea lion away. He requested a NOAA representative comment regarding the statement "NOAA Fisheries has defined serious injury as any injury that is more likely than not to result in mortality." Vice Chair Cunningham understood the Federal Code has precedence over the City Code. Ms. McCue explained that any deterrence method that leads to a serious injury or mortality is not allowed. The methods on the list will deter or remove a sea lion but not kill it. Mr. Viezbicke added that a primary consideration in choosing a deterrence method is the puncture factor. The language is a bit ambiguous. The public is welcome to contact NOAA Fisheries to discuss a deterrence method. The public can call a hotline with questions, and an enforcement officer will respond within 24 hours.

2. Lower Bay Dredging – Status Update

Staff will present a current status update on the future Lower Bay dredging project.

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.
- 2) Receive and file.

Public Works Manager Miller reported dredging began in 2012, and Phase II will complete the project. The primary objective is to secure funding of approximately \$23 million. The City is acting as the Local Sponsor for the project and collaborating with the U.S. Army Corps of Engineers to dredge the Harbor to its federally authorized design depths. Staff's goal is to develop a shovel-ready project to present to the Army Corps of Engineers in approximately 12 months. Staff will provide full project support and coordination during construction. Approximately 1.2 million cubic yards of material, based on 2 feet of over-dredge, needs to be dredged from the Harbor. In early 2018 and 2019, the City conducted Harbor-wide sediment sampling. The Economic and Fiscal Impact Analysis Report helped staff quantify the value of the Harbor. According to the report, the Lower Bay generates an estimated \$86 million annually in federal taxes and an estimated \$1 billion in economic activity. The Harbor is federal waters, and the federal government is responsible for maintaining the Harbor. The City has conducted sediment sampling and will design and engineer the project, obtain permits, evaluate material disposal, prepare environmental documents, and conduct advocacy efforts so that the Army Corps of Engineers can focus on construction. At the end of pre-project planning, the City will have directly contributed \$1.3 million to the project. Construction is dependent on federal funding. Council Member Duffield, Commissioner Cunningham, Public Works Director Webb, and Public Works Manager Miller traveled to Washington, D.C., with the California Marine Affairs and Navigation Conference (CMANC) in order to advocate for dredging dollars for California and Newport Beach. The City's contribution to the project increases federal interest in the project. The project will likely be funded through the Army Corps of Engineers' Civil Works Work Plan.

Vice Chair Cunningham advised that he learned a great deal about dredging while in Washington, D.C. and met a number of people from California.

In response to Commissioner Drayton's inquiry, Public Works Manager Miller indicated the community can support the City's advocacy efforts by providing input during review of environmental documents pertaining to the project and writing letters of support to Congressional representatives.

In answer to Commissioner Blank's query, Public Works Manager Miller disclosed that he learned nothing new about copper paint requirements while in Washington.

In reply to Commissioner Yahn's questions, Public Works Manager Miller explained that the City's contribution of 20 percent of the project cost will include the cost of pre-project planning. Staff has proposed including the project in the fiscal year 2020 CIP budget so that construction can begin as soon as planning is complete and federal funding is provided. At some point in the future and in some manner, dredging will begin. Vice Chair Cunningham added that the Corps is aware of the project.

Carter Ford remarked that Congressman Calvert is aware of the need for dredging and will work on the issue.

3. Harbor Commission Goal and Objective 4.1 – Review and Update City Municipal Code, Title 17, Harbor Policies I-5, and Marine Activities Permits

The Harbor Commission subcommittee has been working on revisions to Title 17 for the past year. As part of this process, the subcommittee would like to review with the full Harbor Commission the work to date and the concepts that the subcommittee believes are changes they would like to address in updating Title 17.

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.
- 2) Receive and file and provide input

Commissioner Kenney reported the subcommittee in reviewing Title 17 has identified the following key topics: graywater, specifically allowing commercial vessels to discharge graywater into the Harbor; the number of allowable overnight stays for non-live-aboard mooring permittees; live-aboard permit requirements and whether the requirements should be modified; the definition of operable as it pertains to vessels assigned to moorings; mooring sub-permits including the time period before which a mooring must be vacant before the City can sublease it and the amount of time for which a sub-permit may be issued; marine activities permits including the types of businesses that should be required to obtain them, the number of permit types that should be obtainable, and the provisions of each permit type; sea lion deterrents including the Harbor Department's authority to address a sea lion issue on a private vessel or dock and the amount of time that the property or vessel owner has to rectify a sea lion issue; issues related to mooring permits including extensions, transfers, and procedures to sell mooring permits; the process for appealing decisions of the Harbormaster, the Harbor Resources Manager, and the Harbor Commission; pump-out facilities including permanent and mobile facilities, documentation for the use of the same by mooring permittees, penalties for noncompliant permanent facilities, and potential requirements for the use of mobile facilities by mooring permittees; and waste and refuse containment including the use of dye tablets.

Commissioner Drayton concurred with reviewing the graywater issue. The mooring subcommittee has questions and concerns regarding overnight stays and live-aboards, specifically the number of days as a live-aboard that require a permit and the number and quantity of permits issued, and would like to consult on the two issues.

Commissioner Kenney agreed that the subcommittee needs to work collaboratively with other subcommittees because the issues overlap. Perhaps the subcommittees could participate in the proposed public meetings.

Assistant City Manager Jacobs raised Brown Act concerns unless the public meetings are noticed as special meetings of the Harbor Commission.

In reply to Commissioner Beer's query, Assistant City Manager Jacobs indicated two subcommittees can collaborate if it is noticed as an agenda item during a regular meeting of the Harbor Commission.

Vice Chair Cunningham felt all the topics are important. Public feedback and comments can assist the subcommittee with determining which topics need in-depth review.

Hein Austin requested any action on the topics be delayed so that Mooring Association members can review the topics and provide feedback. Vice Chair Cunningham advised that the Harbor Commission will not take action during the meeting. The public may comment on the topics during the upcoming public meetings.

Assistant City Manager Jacobs disclosed that the Council has requested that the process move more quickly. No changes will be made without first obtaining public comment. The subcommittee has drafted a list of topics it wants to see changed in the Municipal Code. The first public meetings will be held in April and May. A redline version of suggested changes to Title 17 will be available on the Harbor Department's webpage before the public meetings are held. Proposed changes to Title 17 will be presented to the public over multiple public meetings, a Harbor Commission study session, and two readings of an ordinance before the Council. With respect to marine activities permits, individual meetings with stakeholders will be scheduled along with community meetings.

Commissioner Kenney added that public input will inform the subcommittee's recommendations to the Harbor Commission.

An unidentified speaker offered to facilitate stakeholder meetings regarding marine activities permits.

Jim Mosher questioned the proposal to remove the City Council from the appeal process when Mayor Dixon recently emphasized that the City Council is best able to interpret laws. Any citizen should have the right to appeal any City decision to the elected officials. Title 17 needs to be organized into a logical sequence. The Code authorizes the Harbormaster to interpret the Code, and his interpretations should be maintained in written form.

Commissioner Kenney clarified that the topics are general in nature. Certain appeal procedures do not extend to the City Council; however, in most cases they will.

In reply to Hein Austin's request, Assistant City Manager Jacobs agreed to provide her explanation of the public process to all mooring holders via email.

4. Harbor Commission 2018 Objectives: Ad Hoc Committee Updates

Each ad hoc committee studying their respective Functional Area within the Commission's 2018 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.
- 2) Receive and file.

Functional Area 1: No report.

Functional Area 2: Commissioner Drayton reported the subcommittee is working with staff to develop a process through which moorings can be lengthened. The subcommittee is also discussing items of mutual interest with the Mooring Association.

Functional Area 3: Commissioner Beer advised that the subcommittee has focused on mooring extensions. Staff provided information that allowed the subcommittee to develop a comprehensive and objective process.

Functional Area 4: No report.

Functional Area 5: No report.

Functional Area 6: Commissioner Blank announced the next visioning session is scheduled for March 18.

5. Harbormaster Update – February 2019

The Harbormaster is responsible for on-water management of the City's moorings, the Marina Park Marina, and code enforcement on the water. This report will update the Commission on the Harbor Department's activities for January 2019.

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.
- 2) Receive and file.

Harbormaster Borsting reported heavy rains in January and February resulted in the need to dewater vessels. The Harbor Department has acquired a high-volume submersible sump pump. Two vessels were sold at the February 8 auction, and the sales generated \$10,400 for the Harbor Department. Staff sent a mass email to customers to share the new Harbor fees and rents. Harbormaster Borsting participated in the 2018 Christmas Boat Parade after-action meeting and spoke at the February 20 Yachtsman's Luncheon. Staff from the Orange County Sheriff's Office attended a Harbor Department Staff meeting and shared information. During the meeting, Staff reached an agreement regarding the handling of special event permitting requests. Staff also visited the City of Oceanside to learn about a sea lion platform. Sea lions utilize the platform rather than vessels and docks, but their barking has raised noise concerns. In addition, people are venturing close to the platform to view and take selfies with the sea lions. In February 2019, slip rentals totaled 39 for a total of 171 nights; sand line rentals totaled 23 for a total of 187 nights; and mooring sub-permittees totaled 115 for 746 nights. Since the beginning of the fiscal year, reservations total 730. Staff continues to prepare an application for Surrendered and Abandoned Vessel Exchange (SAVE) Grant funds. The deadline to submit the application is April.

Jim Mosher suggested the Harbor Department's webpage include news and events. He inquired whether the upcoming visioning session will be a repeat of the earlier one.

Commissioner Blank disclosed that the exercise is performed the same in each session. Hopefully, the participants will be different and greater in number.

In answer to Commissioner Yahn's inquiry, Harbormaster Borsting agreed that the webpage can be improved. Staff is reviewing other City platforms, such as the My Newport Beach app, for use.

Joseph Rink asked if the City is monitoring sea level rise. Assistant City Manager Jacobs indicated staff in the Public Works Department monitors sea level rise and manages activities pertaining to sea level rise. Commissioner Blank added that the City's website has a page for sea level rise.

In answer to Commissioner Beer's question, Harbormaster Borsting advised that the number of cases opened increased because staff has been updating out-of-date records.

7) COMMISSIONER ANNOUNCEMENTS (NON-DISCUSSION ITEM)

Commissioner Kenney announced the first stakeholder meeting for Title 17 is planned for April 8. Assistant City Manager Jacobs added that details will be released soon.

8) **QUESTIONS AND ANSWERS WITH STAFF ON HARBOR-RELATED ISSUES**

None

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

None

10) **DATE AND TIME FOR NEXT MEETING: Wednesday, April 10, 2019**

11) **ADJOURNMENT**

There being no further business to come before the Harbor Commission, the meeting was adjourned at 8:37 p.m.

DRAFT