NEWPORT BEACH HARBOR COMMISSION REGULAR MEETING MINUTES Council Chambers – 100 Civic Center Drive, Newport Beach CA Wednesday, May 8, 2019 6:30 PM

1) CALL MEETING TO ORDER

The meeting was called to order at 6:30 p.m.

2) <u>ROLL CALL</u>

Commissioners:	Dave Girling, Chair Scott Cunningham, Vice Chair
	John Drayton, Secretary (excused absence)
	Ira Beer, Commissioner
	Paul Blank, Commissioner
	William Kenney, Jr., Commissioner
	Don Yahn, Commissioner
Staff Members:	Carol Jacobs, Assistant City Manager Kurt Borsting, Harbormaster

Kurt Borsting, Harbormaster Chris Miller, Public Works Manager Patrick Alford, Planning Manager Jennifer Biddle, Administrative Support Specialist

3) <u>PLEDGE OF ALLEGIANCE</u> – Chair Girling's Father

4) <u>PUBLIC COMMENTS</u>

None

5) APPROVAL OF MINUTES

1. Minutes of March 13, 2019, Regular Meeting

Commissioner Beer moved to approve the Minutes of the March 13, 2019 meeting as presented. Commissioner Blank 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: Chair Girling Absent: Commissioner Drayton

6) <u>CURRENT BUSINESS</u>

1. California Environmental Quality Act (CEQA) Presentation

The Harbor Commission is tasked with providing recommendations to the City Council on issues related to Newport Harbor. Every staff report received by the Harbor Commission for consideration has language in the recommendation relating to CEQA compliance. This presentation will provide background into the CEQA process and the Harbor Commission's role in approving a CEQA recommendation.

Recommendation:

 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.

Planning Manager Patrick Alford reported the California Environmental Quality Act (CEQA) was enacted in 1970. The CEQA Guidelines are administrative regulations that implement the statute. Case law is important in refining and clarifying the CEQA Guidelines. Many communities have adopted local CEQA procedures, but the City of Newport Beach has not. The purpose of CEQA is to prevent avoidable damage to the environment, to foster and inform decision-making, and to ensure transparency in the governmental decision-making process. CEQA requires public agencies to refrain from approving projects with significant effects on the environment if there are feasible alternatives or mitigation measures that can lessen or avoid those effects. CEQA applies to projects, and a project is defined as involving a public agency, having a potential physical effect on the environment, and requiring an agency's discretionary approval. CEQA is not applicable to ministerial actions, a project with no possibility of a significant environmental effect, and a project that will not be approved. CEQA provides exemptions for such things as certification of a Local Coastal Plan (LCP), emergency projects, disapproval of a project, special projects, changes to existing facilities, replacement or reconstruction projects, minor land use division, and infill projects. A lead agency has the primary responsibility for carrying out or approving a project. A responsible agency is any other public agency with discretionary approval power over the project. CEQA documents include an Initial Study, a Negative Declaration, and an Environmental Impact Report (EIR). An Initial Study, which is prepared by the lead agency, determines whether a physical change in the environment will be potentially significant. A Negative Declaration can be issued if a project causes no significant impacts or significant impacts can be mitigated to a level of insignificance, often called a Mitigated Negative Declaration (MND). An EIR is required when an impact cannot be mitigated to a level of insignificance. An Initial Study is subject to a 30day public review period. A Notice of Determination is filed when a Negative Declaration is approved. When an EIR is required, the lead agency sends a Notice of Preparation to responsible agencies, prepares a Draft EIR, and files a Notice of Completion, which triggers the 45-60-day public review period. The lead agency then prepares a Final EIR that may include responses to comments, a Mitigation Monitoring and Reporting Program, and errata. Once the Final EIR is approved, a Notice of Determination is filed. In determining whether an impact is significant, the lead agency considers context and setting, whether the effects are direct or indirect, and whether the effects are incremental or cumulative. The determination must be based on substantial evidence contained in the public record. The public can comment during several stages of the CEQA process. With a Negative Declaration, the decision-making body must consider public comments but is not required to make formal responses. With an EIR, the decision-making body is required to respond to public comments.

In response to questions from Commissioner Kenney, Planning Manager Alford explained that anyone who has discretionary authority over a project and who is part of a public agency is the public agency. A City body that makes a recommendation to another City body is subject to CEQA requirements. The Harbor Commission can determine whether a project is exempt from CEQA review. The approving body makes the determination whether there are feasible alternatives or mitigation measures, e.g., the Harbor Commission makes the determination when reviewing the environmental document. The Harbor Commission determines whether CEQA applies to a project prior to taking action on a project. The Harbor Commission can review but not take action on a project prior to completion of environmental review. The Harbor Commission can find no potential impact associated with a project or find a project exempt from CEQA and take action on the project. The key point is that the Harbor Commission should make a determination of a project's status under CEQA prior to taking action on the project. If a project has the potential for a significant impact, additional environmental analysis of the project is needed. An environmental analysis may determine there is no significant impact or the impact can be mitigated to a level of insignificance. If a project has the potential for a significant impact, the CEQA exemptions may not apply to the project. If a project clearly falls under an exemption and there is no substantial evidence that the project will have a significant impact, an Initial Study is not needed.

Chair Girling stated Commissioner Kenney is alluding to an appeal presented to the Harbor Commission in January 2019. During the hearing, someone from the audience suggested the project was not exempt from CEQA. The Harbor Commission needs more direction regarding its actions with respect to CEQA. Planning

Manager Alford advised that a proper staff report in recommending a project as exempt from CEQA should provide facts and/or evidence supporting a finding that the project is exempt.

In reply to additional inquiries from Commissioner Kenney, Planning Manager Alford agreed that a public agency can make a finding different from that recommended in the staff report. Testimony from the public should be factored into the decision and should be reflected in facts supporting the public agency's action. At times, staff prepares the Initial Study and Negative Declaration for a project, but usually a consultant to the City prepares them. Typically, staff does not prepare EIRs. If a project has a significant unavoidable impact, the decision-making body can make certain findings and approve a Statement of Overriding Considerations, which indicates the value of the project overrides the identified environmental impact. The Harbor Commission has a duty to determine whether a project may have potential negative environmental impacts that should be analyzed.

In answer to Commissioner Yahn's queries, Planning Manager Alford indicated for a development project that is primarily on land but has a water component, staff will seek the Harbor Commission's counsel on the water aspect of the project. If the Harbor Commission has an interest in a particular project, it can request staff present a study session or discussion of the project so that the Harbor Commission can provide feedback. The Newport Village project has undergone a significant redesign. The applicant is conducting outreach with neighboring communities. Once the applicant formally submits a revised project, staff will begin the process for the EIR.

Commissioner Kenney remarked that the Harbor Commission would like to be more involved with projects that could have an impact on the Harbor.

Commissioner Blank recalled staff presenting two projects with upland components to the Harbor Commission for review. On one occasion, he attended a Planning Commission meeting at staff's request to discuss Newport Village.

Chair Girling commented that the Harbor Commission may decide that a project is not exempt from CEQA, contrary to the staff recommendation.

Assistant City Manager Carol Jacobs clarified that the Harbor Commission has the right to deny staff's CEQA recommendation for a project. In which case, the project will be denied until such time as the applicant provides CEQA information. The Harbor Commission cannot deny the CEQA findings and during the same hearing approve the project. Planning Manager Alford added that the Harbor Commission can deny a project without making a CEQA finding.

Commissioner Kenney related that staff should have advised the Harbor Commission that the review and approval stopped once the Harbor Commission found the project could have negative environmental impacts during the appeal hearing in January.

Jim Mosher seemed to recall that the Harbor Commission reviewed the project for a marina and restaurant. He did not believe the Harbor Commission could have approved the January appeal with a Statement of Overriding Consideration because an analysis of environmental impacts and a public comment period had not been provided.

Commissioner Kenney remarked that the City Council would only make findings for a Statement of Overriding Consideration after all environmental review has been completed. An EIR can identify negative environmental impacts, and the City Council can make findings for a Statement of Overriding Consideration.

An unidentified speaker inquired regarding the threshold for significance and levels of significance for impacts. Planning Manager Alford explained that thresholds vary by agency. For example, in determining the threshold for significance of noise, staff utilizes the City's General Plan and noise control ordinance, which contains standards for noise. If studies indicate a project could exceed those standards, the project has a significant environmental impact.

2. Eelgrass in Newport Harbor – Status Update

Staff will present a current status update on eelgrass in Newport Harbor.

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 Chris Miller reported at one point, dredging could not occur in the Harbor because of its impact on eelgrass. The City surveyed eelgrass for a number of years in order to obtain information that staff could use to negotiate regulatory agency approval of the Newport Specific Plan. To his knowledge, the City of Newport Beach is the only city with a specific plan. The City's Regional General Permit (RGP) 54 dredging permit allows an annual maximum dredging volume of 75,000 cubic yards (cy); a maximum individual project volume of 8,000 cy; and a maximum dredge depth of -10 feet MLLW plus 2 feet over depth. RGP 54 requires sediment testing every five years and allows temporary impacts to eelgrass as outlined in the City's eelgrass plan. A couple of varieties of eelgrass grow in Newport Harbor. The National Marine Fisheries Service is the lead agency for eelgrass impacts, and Fish and Wildlife and the Coastal Commission provide input. Other cities are subject to regulations contained in the California Eelgrass Mitigation Plan. Under the eelgrass program, the City is required to conduct eelgrass surveys of the Harbor every two years. The surveys provide exact locations of eelgrass. In 2003-2004, 23.5 acres of eelgrass were found in the Harbor. In 2009-2010, eelgrass dropped to 16.2 acres due to dredging and storms. In 2018, eelgrass increased to 30 acres. Dredging is allowed to impact approximately 1 acre of eelgrass per year. The 2016 survey of deep-water eelgrass found 50 acres. In 2016, staff received 43 applications for dredging: 60,000 cy of material was dredged; and a half acre of eelgrass was impacted. In 2017, staff received 32 applications; 54,000 cy of material was dredged; and an acre of eelgrass was impacted. When the impact to eelgrass reached its limit in 2017, staff stopped processing applications. In 2018, the number of dredging applications decreased to ten. For January, February, and March 2019, staff has received five applications. The Coastal Commission and the Water Board have approved an amendment to the RGP 54. U.S. Army Corps of Engineers approval of the amendment should be issued soon. The amendment proposes to replace the requirement for a Caulerpa survey for every project with a requirement for a Caulerpa survey during the biennial eelgrass survey. In the next 60 days, staff will file an application for reauthorization of RGP 54. The application will include an exception for unrestricted beach maintenance dredging by the City.

In answer to Commissioner Kenney's inquiries, Public Works Manager Miller indicated the water in Promontory Bay is not part of the RGP 54 because its sediment test did not go well. His earlier comments did not distinguish among private, County, or City tidelands but between sediment suitability.

Commissioner Yahn noted the diagram does not show deep-water eelgrass through any of the major federal channels. In response to his questions, Public Works Manager Miller clarified that eelgrass is surveyed every two years along the shoreline of the entire Harbor. A deep-water survey is conducted every four years through a side-scan sonar technique. A significant portion of the upcoming federal dredging project will not be affected by deep-water eelgrass; however, the channel entrance will be dredged. Impacts to eelgrass at the channel entrance will be addressed. Mitigations include planting eelgrass in other areas of the Harbor probably at a ratio of 1 to 1.38. The locations of eelgrass as determined by the survey is available to the public on the City website.

Commissioner Cunningham noted the Grand Canal on the south side of Park Street was dredged in 2017. The 2018 survey shows eelgrass is growing back in that area. That is a good indication of the Harbor's health. Good tidal flush is necessary for eelgrass to grow in the upper part of the Harbor.

Public Works Manager Miller advised that he is trying to change the public's attitude toward eelgrass in the Harbor. More eelgrass in the Harbor means more dredging projects can impact eelgrass.

Hein Austin inquired whether the exception for dredging public beaches would include public docks. Public Works Manager Miller indicated the exception does not include public docks, but public docks are included

in RGP 54. Applications to dredge the public docks at 19th Street, 15th Street, and Fernando have been submitted.

Jim Mosher inquired whether the increase in shallow-water eelgrass from 30 acres to 58 acres resulted from the large field of eelgrass north of the Bay Bridge. Public Works Manager Miller related that the field contributed to the increase. Mr. Mosher inquired whether different rules or credits applied to eelgrass north and south of the Bay Bridge. Public Works Manager Miller explained that requirements of RGP 54 are the same for properties north and south of the bridge.

3. Proposed Maximum Time Limit Zones – 15th Street Public Dock

Public docks have been provided by the City at various locations throughout the Harbor, for the purpose of loading and unloading passengers, supplies, boating gear, short-term mooring and similar purposes. It is the policy of the City to maintain such facilities in a manner that will permit the greatest public use and avoid continuous occupancy, congestion or blocking thereof. Where necessary to achieve this objective, the Harbormaster is authorized and directed to post dock markings or signs limiting the time during which a vessel may be tied up or secured.

To advance this objective, the Harbor Department is recommending reassignment of approximately twenty-seven feet of linear dock space at the 15th Street Public Dock, currently designated for vessels secured up to a seventy-two (72) hour maximum to a proposed twenty-four (24) hour maximum.

Recommendation:

- 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) Approve staff recommendation to reassign the proposed maximum allowable time period for a vessel to occupy this section of the 15th Street Public Dock from seventy-two (72) hours maximum to twenty-four (24) hours maximum as shown on Attachment A.

Harbormaster Kurt Borsting reported staff proposes a change to the allocation of time limits at the 15th Street dock. Currently, 46 linear feet of the Harbor side of the dock are limited to 20-minute parking; 36 linear feet on the west side of the dock are limited to 3-hour parking; 47 linear feet of the dock are limited to 72-hour parking for boats with a maximum length of 9 feet; and 28 linear feet on the land side of the dock are limited to 72-hour parking with no limit on boat size. Under staff's proposal, 72-hour parking for boats with a maximum length of 9 feet would be reduced from 47 feet to 20 feet, and 27 linear feet of 24-hour parking for boats with a maximum length of 9 feet would be added. Staff proposes the change in response to community feedback. Title 17 Section 17.25.010 authorizes the Harbormaster to post dock markings or signs limiting the time a vessel is secured to a dock or supplies may be left on a dock in order to achieve the greatest public use and to avoid extended occupancy, congestion, or blocking of the dock. If approved, staff will monitor the new time limits to determine whether they achieve greater use of the dock.

In reply to Commissioner Yahn's queries, Harbormaster Borsting was not aware of limits on boat size for the outside edges of the dock. The time limits presume boats will be bow-tied, and most boats are bow-tied to the dock. With respect to enforcement, staff has implemented a public education campaign and sent individual emails to live-aboards. Staff has recorded the time and vessel CF number and attached a notice of the time limit and blue painter's tape to the vessel's hull at the beginning of the 72-hour time period. Staff then photographed the dock area with the vessels. Over the next few days, staff returned to the dock to compare the photo with the area to determine whether vessels and/or supplies had been moved. Staff found almost universal movement of vessels. At the 15th Street dock, enforcement resulted in a 30-percent improvement in usage and one impounded vessel.

In response to Commissioner Kenney's inquiries, Harbormaster Borsting advised that the dock has individual cleats. Changing from individual cleats to a continuous rail within the zone for 9-foot boats may not increase usage because the area is already heavily used. Also, a continuous rail can be a tripping hazard. Public Works Manager Miller's response to Commissioner Kenney's inquiry regarding the timeframe for dredging the 15th and 19th Street docks is inaudible.

Richard Dorn [phonetic] felt the 24-hour time limit will be an improvement. The 72-hour zone is usually filled with vessels. A 12-hour zone would be a good improvement for daily users. Six boats are sometimes tied to one cleat, which makes access to the dock difficult. A continuous rail would be more user-friendly and efficient.

Eric Langenbach advised that as a live-aboard he often left his vessel tied in a 72-hour zone over a weekend. Because of restrictions, he cannot tie his vessel to the dock again on Monday morning to go to work. Live-aboards have been issued stickers for their skiffs. He requested the Harbor Commission consider some method for live-aboards to access the docks more often.

Hein Austin requested an exemption for live-aboard vessels with CF or live-aboard numbers. In some instances, vessels may appear not to have been moved during the time period when it had been moved.

Commissioner Blank moved to approve the staff recommendation to reassign the proposed maximum allowable time period for a vessel to occupy this section of the 15th Street Public Dock from seventy-two (72) hours maximum to twenty-four (24) hours maximum as shown on Attachment A.. Commissioner Kenney seconded the motion. The motion carried by the following roll call vote:

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

Nays: None Abstaining: None

Absent: Commissioner Drayton

Chair Girling requested Harbormaster Borsting consider accommodations in response to public comments.

4. Harbor Commission 2018 Objectives: Ad Hoc Committee Updates Each ad hoc committee studying their respective Functional Area within the Commission's

Each ad hoc committee studying their respective Functional Area within the Commission's 2018 Objectives will provide a progress update.

Recommendation:

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- 2) Receive and file.

Functional Area 1: Vice Chair Cunningham reported he and staff met with the Environmental Protection Agency (EPA) regarding disposal of dredged material. Staff is reviewing the possibility of using a confined aquatic disposal (CAD) site.

Functional Area 2: No report

Functional Area 3: Commissioner Beer advised that the committee has drafted language regarding extension of mooring length. The language can be presented to the Harbor Commission for discussion.

Functional Area 4: Commissioner Kenney indicated the committee held stakeholder meetings on April 8 and May 6 to obtain public input and suggestions for the first half of Title 17. The committee's recommendations for the first half of Title 17 may be ready for a Harbor Commission discussion in June or July. Stakeholder meetings for the second half of the Code are scheduled for May 13 and June 24.

Committee recommendations for the second half of Title 17 may be presented to the Harbor Commission in August. A stakeholder meeting for Section 17.10 is scheduled for May 23. The committee needs to coordinate with the Functional Area 3 committee regarding extension of mooring length.

Assistant City Manager Jacobs reported the Brown Act prevents the two committees from meeting jointly. She has the language crafted by the Functional Area 3 committee and will incorporate it into the review of Title 17.

Functional Area 5: Chair Girling related that the committee continues to meet with members of the charter fleet industry.

Functional Area 6: Commissioner Blank stated a visioning session was held in March. Staff is preparing a master list of constituent groups to invite to visioning sessions and exploring methods to collect data more quickly and to hold sessions more frequently.

5. Harbormaster Update – March and April 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:

- 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 the City submitted an application for \$175,000 to the California Division of Boating and Waterways for the Surrendered and Abandoned Vessel Exchange (SAVE) grant on April 12. The prior \$125,000 SAVE grant has funded the removal of 23 derelict vessels from the Harbor, and three vessels are pending removal. During March and April, staff solicited and received quotes from five qualified firms for the demolition/salvage of the three vessels. Staff is negotiating contracts with two firms to remove the three vessels. Harbormaster Borsting met with the U.S. Coast Guard to discuss establishing a permanent West Anchorage, removing fixed navigational aids, re-installing lights at various buoys, and exploring a suggestion to upgrade the navigational aid at the West Jetty. Staff has prepared an initial boater welcome packet that contains a welcome message, Harbor maps, a visitor guide and neighborhood guide, a customer satisfaction survey, Wi-Fi codes, and restroom and shower keys. Eleven people have submitted responses to the Marina Park guest slip survey. Based on the responses, 91 percent were satisfied with their stay and more than 70 percent agreed or strongly agreed that they received quality and value for the cost. One response somewhat disagreed that they received guality and value and expressed a concern about fuel costs in the Harbor. All responses agreed or strongly agreed that they were pleased with the appearance and condition of the guest slips and that they would return. The City is recruiting for Harbor Service Workers. Thirteen of 30 applicants were interviewed on May 6. Second-round interviews are scheduled for May 10. Visitor statistics have declined slightly since the implementation of new fees, but revenues have increased slightly.

Jim Mosher remarked that the Harbor Commission did not include a CEQA finding in its action for time limits on the 15th Street dock.

Len Bose recalled a promise for the fixed channel markers to be repaired in 2018 and requested repairs be prioritized. Channel marker lights are needed most in the Upper Bay.

In answer to Commissioner Kenney's inquiry, Harbormaster Borsting indicated the length overall (LOA) for the vessel *Energytech* is 83 feet. The proposal for *Energytech* is to remove it from the Harbor, remove the

house and the contents, and sell the hull. *Energytech* and *Espousa* were offered at auction and received no bids.

Hein Austin inquired whether Harbormaster Borsting has considered listing the vessels on Craig's List. Harbormaster Borsting indicated staff would investigate listing derelict vessels for sale on Craig's List.

In reply to Chair Girling's query, Assistant City Manager Jacobs advised that the Harbor Commission can make the findings for CEQA and approve the project in its motion for a project or move staff's recommendations for a project. Moving staff's recommendations will include all items. Commissioner Kenney clarified that the Harbor Commission should not move staff's recommendations if it disagrees with any or all recommendations.

7) COMMISSIONER ANNOUNCEMENTS (NON-DISCUSSION ITEM)

Commissioner Cunningham announced June 1 is the second annual Harbor cleanup day.

Commissioner Kenney indicated a Regional Water Quality Control Board meeting regarding copper-based anti-fouling paints is scheduled for May 9 at 5:30 p.m. May 13 is the next community meeting to review Title 17.

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

In answer to Commissioner Blank's question, Harbormaster Borsting reported seven applications have been submitted for special events to exceed the speed limit.

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

In reply to Commissioner Yahn's inquiry, Assistant City Manager Jacobs advised that the Sheriff's Department converted the dinghy docks to 20-minute parking because of security concerns.

Commissioners requested items for conversion of the dinghy docks at the Sheriff's Department and discussion of the draft Code language for mooring extensions.

Jim Mosher noted the Harbor Commission's decision regarding the dock configuration project at 939 Via Lido Soud has been appealed. The City Council will hear the appeal on May 28.

Chair Girling announced his resignation from the Harbor Commission. The June meeting will be his final meeting.

10) DATE AND TIME FOR NEXT MEETING: Wednesday, June 12, 2019

16) <u>ADJOURNMENT</u>

There being no further business to come before the Harbor Commission, the meeting was adjourned at 8:42 p.m.