

**NEWPORT BEACH HARBOR COMMISSION REGULAR MEETING MINUTES**  
**Council Chambers – 100 Civic Center Drive, Newport Beach CA**  
**Wednesday, June 12, 2019**  
**6:30 PM**

**1) CALL MEETING TO ORDER**

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

**2) ROLL CALL**

Commissioners: David Girling, Chair (excused absence)  
Scott Cunningham, Vice Chair  
John Drayton, Secretary  
Ira Beer, Commissioner  
Paul Blank, Commissioner  
William Kenney, Jr., Commissioner  
Don Yahn, Commissioner

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

**3) PLEDGE OF ALLEGIANCE – Commissioner Drayton**

Vice Chair Cunningham read a letter from Chair Girling.

**4) PUBLIC COMMENTS**

Mark Callin did not support increasing the number of nights one can remain on a mooring. Increasing the number would raise a number of issues, primarily enforcement.

**5) APPROVAL OF MINUTES**

**1. Minutes of May 8, 2019, Regular Meeting**

Commissioner Blank reported the unidentified speaker at the bottom of page 3 was Jordan Wachter.

Commissioner Yahn moved to approve the Minutes of the May 8, 2019 meeting as amended. 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:** Commissioner Drayton

**Absent:** Chair Girling

**6) CURRENT BUSINESS**

**1. Presentation by Orange County Sheriff's Department on Dock Space at Harbor Patrol Office**

Recently the Orange County Sheriff's Department changed the dock time limits at their facility located on Bayside Drive. The Sheriff's Department will provide a presentation regarding the changes.

**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.

Vice Chair Cunningham announced the presentation has been postponed.

Wade Womack reported the Coastal Commission found in favor of public use of the docks. He hoped the docks remained in public use for generations.

**2. Proposed Changes to Title 17 – Harbor Code, Sections 17.01 (Definitions), 17.05 (General Provisions), 17.20 (Vessel Launching and Operation), 17.25 (Berthing, Mooring and Storage), 17.30 (Harbor Use Regulations), 17.35 (Harbor Development Regulations)**

The City Council requested that the Harbor Commission Review Title 17- Harbor Code, of the Newport Beach Municipal Code in February of 2018. The Harbor Commission appointed an ad hoc committee comprising Commissioners Kenny, Blank and Yahn. The proposed changes are being recommended to the full Harbor Commission.

**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) Approve the recommended changes to Title 17 (Attachment A) and forward the recommendations to the City Council for consideration.

Assistant City Manager Carol Jacobs reported the City Attorney's Office has reviewed the proposed changes and at this time does not have any concerns. The numbering and formatting need additional work, and additional wordsmithing may be necessary. The committee held public meetings on April 8 and May 6 and conducted a public outreach campaign. A website was created so that the public could provide comments. Items 3 and 4 will be discussions of mooring extensions and the definition of a live-aboard.

Commissioner Kenney advised that the committee divided the task into three components, Sections 17.01-17.35 excluding Section 17.10, Sections 17.40-17.70, and Section 17.10. The committee has debated several provisions of the Code. At last count, 16 comments have been submitted via the website. In response to Mr. Mosher's comments, Commissioner Kenney indicated the City Attorney's Office has reviewed and revised the definition of commercial fishing vessel. He concurred with Mr. Mosher's proposed change to the definition of graywater. The committee's proposed change to Section 17.20.010 allows the launching of only human-powered craft. However, the Code section contains a prohibition against operating a motor within 100 feet of swimmers. The committee's proposed changes would prohibit the launching of wind-powered craft from designated launching sites. Commissioner Kenney proposed the Harbor Commission consider the original language of hand-carried vessels in place of human-powered vessels. Because of the level of community input and interest regarding the definition of live-aboard, the committee believed the definition of live-aboard should be determined by the Harbor Commission following discussion, public comment, and debate. Therefore, the definition of live-aboard will be covered in Item Number 4.

Commissioner Blank recalled the committee's request for the Harbor Department to conduct a survey of launch sites and present the findings to the Commission. He suggested the Commission delay a discussion until the findings are available.

In response to Commissioner Yahn's queries, Commissioner Kenney explained that the committee proposed a revision to Section 17.20.010(B)(3) to allow the launching of human-powered vessels and a revision to section 17.20.010(B)(2) to prohibit the operation of a motor within 100 feet of a swimmer. The two appear to conflict. If Subpart 3 states hand-carried vessel, a vessel with a motor could be launched and the prohibition would remain in place. A future discussion of launch sites will not affect the proposed changes.

Commissioner Drayton moved to approve the recommended changes to Title 17 with amendments to Section 17.20.010(B)(3) to state "hand-carried vessels" and to the definition of graywater to incorporate Mr. Mosher's revision and forward the recommendations to the City Council for consideration. Commissioner Blank 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

**3. Proposed Amendment to Title 17, the Harbor Code, Regarding Offshore Mooring Extensions**

The Harbor Commission established their 2018 Goals and Objectives last year. Goal 3.2 is to "Establish policies for modifications to mooring sizes". As part of this objective, an analysis of all mooring fields under City management was completed. As a result of that analysis, the Harbor Commission subcommittee is recommending changes to Title 17 to establish maximum lengths of vessels in each row of each mooring field.

**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) Approve the proposed changes to the Newport Municipal Code and recommend to the City Council for approval.

Commissioner Blank recused himself from this item as he holds a mooring permit.

Assistant City Manager Jacobs reported the City's Municipal Code does not contain a process or method for granting or denying a mooring extension request. The subcommittee has analyzed every offshore mooring managed by the City. The goals of the analysis are to ensure the mooring fields are safe and have appropriate availability; to maximize the space within the fields in the most effective manner possible; and to provide staff and the community with guidance regarding mooring extension requests. The committee found no best practices for the distance between vessels, the width of fairway rows, or the appropriate size and mix of vessels within a mooring field. The committee developed a formula to establish maximum vessel lengths for each row within each field. In addition, the committee drafted an ordinance and a Harbor Department policy.

Commissioner Beer summarized the Policy. An extension request can be considered only if the following conditions apply: the proposed extension will not impede or obstruct the fairways or channels or prevent or obstruct the passage of other vessels between or adjacent to the rows; will not impede, obstruct, or prevent other mooring permittees from safely navigating in and out of adjacent moorings or moorings in other rows connected by the same fairway to the row of the permittee's vessel; will not extend beyond the outer boundaries of the mooring area row; will not exceed the intended vessel length overall (LOA) established by the Harbor Commission for the row or mooring area in which the vessel will be moored; and will not exceed the lesser of the maximum length of other vessels in the same row or one-third (1/3) the total sum of the width of the mooring row plus the widths of both adjacent fairways as adopted by resolution of the

Harbor Commission. In the event a mooring extension is approved, two conditions must be met. One, the mooring permittee must occupy the mooring with the new vessel within 12 months following the date of approval. Two, the mooring permittee's rights pursuant to a valid mooring permit as amended shall not be sold or otherwise transferred for a period of 12 months following the date of occupancy of the mooring with the new vessel. The Policy will accommodate extensions for at least one mooring in 78 of 88 mooring rows excluding Rows K and D because they are mostly two-row fields. Within the 78 rows, approximately 246 moorings potentially qualify for a mooring extension. The proposed Policy and amendment to Title 17 allow a vast number of mooring permittees to extend their mooring lengths, where appropriate, while ensuring there is adequate space in the fields for safe navigation in and out of moorings, between rows, and throughout the Harbor.

Commissioner Kenney indicated the definition of fairway in the Policy and in Title 17 should be consistent. The word "occupancy" should be removed from the first paragraph of Section 17.60.040(M). In response to Commissioner Kenney's questions, Commissioner Beer explained that the applicant will provide an LOA rather than the make model, year, etc. when requesting an extension prior to purchasing a boat. The Harbormaster will follow the guidelines contained in the Policy. If he cannot approve an extension request, he will generate a report with findings and present it to the Harbor Commission for approval or denial of the application. As conditions change, the Harbor Commission may change the Policy without amending Title 17.

In reply to Commissioner Yahn's question, Commissioner Beer indicated the limits do not apply to the two attachment mooring fields and the G Field. Commissioner Yahn commented that the proposed Policy has eased his concerns regarding the potential growth of the mooring fields.

Vice Chair Cunningham related that initially he was against extending moorings because a permittee could find another mooring for a larger boat. After reviewing the Policy, he could support allowing extensions of no more than 5 feet. Commissioner Beer indicated many rows can accommodate 50-foot vessels, but they are occupied by 30-foot vessels. In 27 instances, vessels in a row exceed the recommended length. Item 5.C prevents the transfer of a mooring extension to a new permittee, so that eventually all vessels will comply with the maximum vessel lengths. The next step is to use GIS to utilize the space more efficiently and perhaps increase the waterways without affecting the lengths and rows. Vice Chair Cunningham added that there should be a 5, 8, 10-year plan.

An unidentified speaker encouraged the Commission to remember the mooring field is intended for recreational use.

Jim Mosher noted the definitions of fairway proposed in Items 2 and 3 are not the same. The definition of fairway is not clear to a non-boating person.

Tom Lebeau suggested the Harbor Commission include a provision indicating a permittee who is in default or has violated his permit cannot apply for an extension. A permittee should be required to pay a deposit upon application for an extension in the event the applicant defaults on the agreement.

Commissioner Beer advised that proposed Section 17.60.040(M) states a permittee may not apply for an extension unless he is in full compliance with the original permit. The permittee is responsible for paying all costs to modify the length of the mooring and to resize mooring tackle.

Chuck South remarked that his policy is not to replace the chain when the size of a mooring is reduced. When a customer requests work on the mooring, he will replace the chain with one of the appropriate size. He never picks up the weights because all vessel owners want weights heavier than the required weights.

An unidentified speaker noted a permittee could increase the value of the mooring during a transfer of the mooring permit by putting the new permittee's boat on the mooring. He preferred the City take possession of a mooring when a permittee chooses to leave the mooring instead of the City allowing permittees to transfer the permit to a new permittee.

Len Bose questioned whether a 40-foot boat could occupy a 50-foot mooring. Vessel length should not be the only factor in setting limits on moorings; displacement should be considered as well.

Commissioner Drayton suggested in this instance fairway be referred to as a mooring fairway. This would distinguish it from the fairway definition elsewhere in Title 17. Commissioner Beer suggested the definition include "the space between a row of moored boats within a mooring field as set forth in Attachment A." Assistant City Manager Jacobs recommended the language state "as set forth in Harbor Policy."

Commissioner Kenney indicated a permittee had the right to moor a 40-foot boat on a 50-foot mooring. If a permittee requests an extension, he must place the larger vessel on the mooring within 12 months. Once the larger vessel is placed on the mooring, the permittee cannot sell the mooring for 12 months. This provision limits a permittee's right to expand a mooring. Assistant City Manager Jacobs added that a permittee cannot place a boat he does not own on his mooring.

Commissioner Beer moved to approve the proposed changes to the Newport Municipal Code with an amendment to delete "occupancy" from proposed Section 17.60.040(M)(1) and the proposed Policy with the definition of fairway revised to state "as set forth in Harbor Policy" and recommend to the City Council for approval. Commissioner Drayton seconded the motion. The motion carried by the following roll call vote:

**Ayes:** Vice Chair Cunningham, Commissioner Drayton, Commissioner Beer, Commissioner Kenney, Commissioner Yahn  
**Nays:** None  
**Recused:** Commissioner Blank  
**Absent:** Chair Girling

**4. Consideration of Revision to Title 17 - Live-Aboard Definition**

The City Council requested that the Harbor Commission Review Title 17-Harbor Code, of the Newport Beach Municipal Code in February of 2018. The Harbor Commission appointed an ad hoc subcommittee comprised of Commissioners Kenny, Blank and Yahn. The ad hoc subcommittee is requesting the Harbor Commission review the definition of live-aboard.

**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) Provide direction to staff on any recommendations to the City Council.

Commissioner Blank recused himself from this item as he holds a mooring permit.

Assistant City Manager Jacobs reported the definition of live-aboard generated a lively debate at the public meetings. Members of the public requested an extension of the time limit to 11 or 12 days per month so that mooring permittees could enjoy their boats on their moorings more often. However, residents facing the bay opposed extending the time limit. The committee believes the Harbor Commission should hear public comments and decide whether to change the definition.

Commissioner Kenney proposed deleting the words "as a domicile" from the definition. By definition, a domicile is a primary residence. Any person who resides on a vessel for three days or eleven days each month is not using the vessel as a domicile.

Commissioner Yahn remarked that after hearing comments during the two public meetings, he felt all Commissioners should hear public comments and debate the issues and possible consequences of extending the time limit.

Commissioner Beer favored increasing the time limit to four days so that permittees can enjoy their moorings two weekends per month.

Vice Chair Cunningham suggested the three-day limit was based on 10 percent of 30 days in a month.

Commissioner Drayton noted anchorages, moorings and slips at Marina Park, and commercial slips are available to permittees who want to use moorings more than three days.

Chuck South remarked that many boats had been turned into domiciles over the past few years, but the Harbor Department is working on the problem. He speculated that residents are anticipating problems if the time limit is increased. The time limit has not been enforced in several years, and many permittees live aboard more than three days a month without raising any concerns. Extending the time limit to eight or ten days should not change the current situation.

Rob Steward expressed concern about raw sewage being pumped into the Bay. Some vessels never leave their moorings or have pump outs. The time limit should not be increased or another live-aboard permit issued until the City addressed raw sewage in the Bay. Commissioner Yahn indicated the term live-aboard in this context should be interpreted as stay-aboard. Enforcement is increasing. Mr. Steward stated the sewage issue was the same for live-aboards and stay-aboards.

Mark Callin agreed that increasing the time limit would not cause a change in use of the Harbor. Some stay-aboards do party on the moorings just 10 feet away from his dock. One boat never leaves the mooring, and a man lives aboard permanently. Increasing the number of nights will increase the value of the moorings. He opposed any increase in the time limit.

Tom Lebeau commented that many permittees are on the moorings more than three days per month. Increasing the time limit would decrease the City's ability to remove nuisances.

Bill Peterson remarked that *LA168* is a derelict boat located in front of Marina Park. According to the Harbormaster, nothing can be done to remove it. The Sheriff's Department stores impounded boats in the Harbor. The Harbor Commission should address these issues before considering an extension of the time limit.

Commissioner Drayton noted mooring permittees are not present advocating for an extension of the time limit. He did not support extending the number of days.

Commissioner Kenney reported the Harbor Commission wants to make a greater impact on the raw sewage and enforcement issues. One of the main issues is cost versus benefit. The public needs to advocate for additional funds for the Harbor Department so that enforcement efforts can increase.

Commissioner Yahn found no reason to increase the time limit, given that permittees are not present to request an increase. Extending the time limit would impact the community and City resources.

Commissioner Yahn moved to retain the existing definition of live-aboard with "as a domicile" deleted. Commissioner Beer seconded the motion.

Assistant City Manager Jacobs expressed concern about deleting "as a domicile" because she understood a person could not live on the vessel for three consecutive days. Commissioner Kenney indicated a live-aboard permit requires the vessel to be the permittee's domicile or primary residence. A mooring permittee could argue that he is not using the vessel as his domicile and, therefore, is not subject to the 72-hour limit. Commissioner Beer questioned whether removing "as a domicile" would indicate the permittee could not be on the vessel for more than 72 hours in 30 days, e.g., the permittee could spend a few hours each day on the vessel for a total of 72 hours. Retaining "as a domicile" seems to indicate a permittee could live or spend the night onboard but could not live there for more than 72 hours. Commissioner Drayton suggested adding "continuous" before "use or occupancy." Commissioner Beer stated including "continuous" would allow a permittee to stay for 48 hours five times in a month.

With the consent of the maker and seconder, the motion was amended to:

Commissioner Yahn moved to approve the definition of live-aboard in concept subject to the City Attorney's Office crafting language for the definition that includes the allowance of 72 hours in any 30-day period and that will be presented to the Harbor Commission for ratification at its next meeting. Commissioner Beer seconded the motion.

The motion carried by the following roll call vote:

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

**Nays:** None

**Recused:** Commissioner Blank

**Absent:** Chair Girling

**5. 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: Vice Chair Cunningham reported work continues on dredging, renewal of the RGP-54 permit, exploring low-cost solutions, and searching for new hydraulic dredgers.

Functional Area 2: Commissioner Drayton noted the Harbormaster continues to work on enforcement and derelict vessels.

Functional Area 3: Commissioner Beer advised that the committee will explore opportunities to utilize mooring field space more effectively, which could include designating some space for commercial and derelict vessels.

Functional Area 4: Commissioner Kenney indicated the next stakeholder meeting regarding Sections 17.40-17.70 is scheduled for June 24.

Functional Area 5: Commissioner Kenney related that the committee has obtained good feedback from the president of Electra Yachts and Chandler Bell of Hornblower.

Functional Area 6: No report

**6. Harbormaster Update – May 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 on the Harbor Department's public dock time-limit education and enforcement efforts; summer staffing and expanded patrol hours; recent anchorage raft-up events; summary data from Marina Park Guest Slip Surveys; a community serve project led by local youth; staff recruitment efforts; and Department statistics for May 2019.

In reply to Commissioner Kenney's question, Commissioner Blank advised that the dinghy dock has been restored to dinghy access from dusk to dawn.

In answer to Commissioner Beer's inquiries, Harbormaster Borsting indicated he will check on the status of the pontoon boat with a jacuzzi and television. With respect to the West Anchorage, Borsting reported that the Department is awaiting the US Coast Guard's decision associated with the City's request to re-establish the public Anchorage and that follow up inquiries had recently been made.

In response to Commissioner Yahn's queries, Harbormaster Borsting shared that in-coming telephone calls made to the Department's main public number were being transferred and fielded by Harbor Department patrol staff following the office's closure at 5 pm, with calls answered by staff in the field through the ends each night's final shift. Following close of business, callers may either leave messages for the following business day (for non-pressing inquiries) or may be transferred to the City's Metro-Net Dispatch line for assistance by lifeguards (for items needing immediate attention). Harbormaster Borsting was under the impression after-hours call volume was light. Assistant City Manager Jacobs added that the Harbor Department implemented the 24/7 call availability of lifeguards. A monthly statistic can be added to the report to show after-hours calls to lifeguards.

In answer to Commissioner Blank's questions, Assistant City Manager Jacobs explained that an after-hours caller hears a recorded message directing them to press 1 for immediate assistance. The caller is connected to Metro-Net Dispatch who calls the Sheriff's Department, 9-1-1, or the lifeguards depending on the caller's needs. If the call is referred to the lifeguards, the lifeguards contact the caller and determine the appropriate action.

**7) COMMISSIONER ANNOUNCEMENTS (NON-DISCUSSION ITEM)**

Commissioner Kenney announced the next Title 17 community meeting is scheduled for June 24.

Commissioner Blank reported Commissioner Kenney and he attended the Regional Water Quality Board hearing on copper TMDLs in Newport Harbor. He felt the Board had made its decision prior to the meeting. The next meeting is August 2. The Board's staff recommends the Board ban copper-based anti-fouling paints in Newport Harbor and task the City with goals and objectives related to TMDLs in Newport Harbor over the next several years. Commissioner Blank felt the recommendation is ill-advised. The City has recommended a statewide program. Commissioner Kenney noted the areas of non-attainment are getting smaller in Newport Harbor. The City is attempting to focus on the small non-attainment areas rather than the entire Harbor. Vice Chair Cunningham added that dredging could change the entire makeup of the Harbor. Perhaps the City's plan for dredging could have a positive effect on negotiations with the Board.

**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)**

Commissioner Kenney requested a future discussion of designated launching sites.

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

**11) ADJOURNMENT**



There being no further business to come before the Harbor Commission, the meeting was adjourned at 8:25 p.m.

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