

**NEWPORT BEACH HARBOR COMMISSION REGULAR MEETING MINUTES**  
**Council Chambers – 100 Civic Center Drive, Newport Beach CA**  
**Wednesday, October 9, 2019**  
**6:30 PM**

**1) CALL MEETING TO ORDER**

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

**2) ROLL CALL**

Commissioners: Paul Blank, Chair  
Scott Cunningham, Vice Chair (absent)  
Ira Beer, Commissioner  
William Kenney, Jr., Commissioner  
Marie Marston, Commissioner  
Steve Scully, Commissioner  
Don Yahn, Commissioner

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

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

Mayor Dixon presented a Proclamation to U.S. Coast Guard Auxiliary Flotilla 61.

Commissioner Kenney appreciated Flotilla 61's presence and inspection of vessels during opening day at Balboa Yacht Club.

**4) PUBLIC COMMENTS**

None

**5) APPROVAL OF MINUTES**

**1. Minutes of August 14, 2019, Regular Meeting**

Commissioner Scully noted Recommendation 2 for Item 2 on page 7 should state "add Commissioner Yahn to Objective 4.1." In addition, Chair Blank moved the action.

Chair Blank clarified that the recommendation is wrong, but the Minutes reflect the correct action. He inquired as to the accuracy of the subcommittee meeting 24 times as stated in Assistant City Manager Jacobs' presentation for Item 7.1 on page 4.

Assistant City Manager Carol Jacobs stated she counted a total of 24 meetings.

Commissioner Yahn moved to approve the Minutes of the August 14, 2019 meeting with the correction to the motion. Commissioner Beer seconded the motion. The motion carried by the following roll call vote:

**Ayes:** Chair Blank, Commissioner Beer, Commissioner Kenney, Commissioner Marston,  
Commissioner Scully, Commissioner Yahn

**Nays:** None

**Abstaining:** Vice Chair Cunningham

**Absent:** None

6) **CURRENT BUSINESS**

1. **Council Policy H-1 – Harbor Commission Review and Recommendation**

At the June 25, 2019 meeting, the City Council revised Council Policy H-1 to clarify the Policy's intent and process in order to assist staff and the Harbor Commission when considering future applications. The City Council also directed the Harbor Commission to review the recent changes and to make recommendations to the City Council regarding any proposed revisions thereto. At the July meeting, the Harbor Commission directed the subcommittee to review the Policy and return to the Commission by October with recommended changes, if any. The Harbor Commission will review the proposed changes, and if approved, recommend they be forwarded to the City Council for consideration.

**Recommendation:**

- 1) Find the Project 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 Section 15060(c)(3) (the activity is not a project as defined in Section 15378) of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3 because it has no potential for resulting in physical change to the environment, directly or indirectly; and
- 2) Review and approve updates to Council Policy H-1 and recommend that it be forwarded to the City Council for final approval.

Assistant City Manager Jacobs reported the City Council revised Council Policy H-1 in June 2019 and referred the Policy to the Harbor Commission for review.

Chair Blank advised that the subcommittee reviewed the purpose of Policy H-1, its relationship to Title 17, recent revisions of Council Policies, specifically Policy H-1, and unique and unusual conditions in Newport Harbor related to the application of pierhead lines. In addition, the subcommittee considered the difficulty current and succeeding Council Members, Commissioners, and staff may have in interpreting and applying consistently the language of Policy H-1. Policy H-1 is applicable to several unique and unusual conditions in Newport Harbor. The Code prohibits construction of a pier bayward of the pierhead line, but land lies within the pierhead line at many locations in the Harbor. The subcommittee's recommendations include adding the word "bayward" to references to extensions "beyond the pierhead line;" adding the phrase "all of the following conditions are met" before the enumerated five conditions; improving the formatting and layout of the enumerated conditions; adding the word "navigation" to Condition 5(d) as an item that shall not be negatively impacted; and adding a paragraph for clarity of situations where a pierhead line is irrelevant.

In response to Commissioner Yahn's inquiries, Chair Blank explained that Policy H-1 currently does not give staff the authority to approve over the counter a request for like-for-like reconstruction of a structure or system that does not comply with Title 17. The Council added the five conditions to Policy H-1 in June.

In reply to Commissioner Cunningham's queries, Chair Blank indicated an application where there is no record of a previous approval of the float would be presented to the Harbor Commission. The Harbor Commission could approve the application if it could make the findings for all five conditions. Commissioner Kenney clarified that an applicant could appeal the Harbor Commission's decision to the City Council.

In answer to Commissioner Marston's question, Chair Blank stated the phrase "limited exceptions exist as described in this Policy" refers to the second-to-last paragraph of the Policy. Commissioner Marston suggested including the word "exceptions" in the second-to-last paragraph to link it to the first two paragraphs. Commissioner Beer suggested revising the first paragraph to state "limited exceptions that existed prior to the adoption of this Policy and as further described herein."

Agreed wording for the first paragraph of Policy H-1: Consistent with Title 17's purposes described in the Newport Beach Municipal Code Section 17.05.020, the City Council's general policy is not to approve piers and floats beyond the pierhead line. Limited exceptions existed prior to the adoption of this Policy as described herein; however, the Harbor Commission is directed to use this general policy and the underlying

purposes of Title 17 as a default rule that can only be excepted by making specific findings concerning such exceptions.

In response to Commissioner Beer's hypothetical scenario of several adjacent or nearby floats exceeding the pierhead line and one property owner wanting to extend his float beyond the pierhead line similar to the others, Chair Blank advised that the Council would have to approve such a project. The motion could state that the Harbor Commission finds the project complies with conditions 1, 2, 4, and 5 but not 3; therefore, the Harbor Commission denies the application. However, the Harbor Commission recommends the applicant appeal the decision to the City Council, who can provide an exception to the policy. Commissioner Kenney disagreed in that the Harbor Commission can only approve, conditionally approve, or deny a project. The Harbor Commission cannot advise an applicant to appeal. Assistant City Manager Jacobs concurred.

Jim Mosher suggested the first sentence state in effect that this is the general policy but exceptions can be granted if the procedure herein is followed and the Harbor Commission or Council can make the findings. He inquired about the significance of changing "legally permitted" to "previously permitted." The Policy, as referred to the Harbor Commission, clearly intends that a project without documentation of prior approval and proposing to extend a pier beyond the pierhead line should be redesigned to fit within the pierhead line. The intent of like-for-like replacement is not clear. Like-for-like replacement should be acceptable throughout the Harbor, not solely in areas without pierhead lines. For applications in areas without pierhead lines, it is important for the Harbor Commission to make the finding for Condition 5 whether the project proposes like-for-like replacement or otherwise.

Chair Blank related that the change from "legally permitted" to "previously permitted" has to do with people challenging the authority of the body making the decision or granting the permit.

In reply to Len Bose's question, Blank indicated the definition of float is in Title 17.

Commissioner Yahn moved to approve the proposed revisions to Policy H-1, including revisions made during discussion of the Policy, and recommend staff forward them to the City Council for final approval. Vice Chair Cunningham seconded the motion. The motion carried by the following roll call vote:

**Ayes:** Chair Blank, Vice Chair Cunningham, Commissioner Beer, Commissioner Kenney, Commissioner Marston, Commissioner Scully, Commissioner Yahn

**Nays:** None

**Abstaining:** None

**Absent:** None

Assistant City Manager Jacobs advised that the revisions are scheduled for Council review on November 5.

## **2. Harbor Commission 2018 Objectives – Updated and Revised as of July 2019**

The Harbor Commission has completed a number of Objectives since the last full update of the Objectives in 2018. It is recommended that the Harbor Commission create a subcommittee to review the current updated Objectives and return to the November meeting to add, delete, or modify the Objectives for City Council consideration in January 2020. The subcommittees will report on their progress from the last month.

### **Recommendation:**

- 1) Find the Project 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 Section 15060(c)(3) (the activity is not a project as defined in Section 15378) of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3 because it has no potential for resulting in physical change to the environment, directly or indirectly; and
- 2) Appoint subcommittee to review Objectives and return to the Harbor Commission in November with recommendations to add, delete, or modify the Harbor Commission's Objectives.

Assistant City Manager Jacobs reported the Harbor Commission last updated its Objectives in 2018. The Chair recommended the Harbor Commission review the Objectives and revise them as needed. Staff recommends the Harbor Commission form a subcommittee to review the Objectives, revise them as needed, and propose additional Objectives.

Commissioner Kenney suggested the Harbor Commission review the status of Objectives prior to forming a subcommittee. Chair Blank preferred the subcommittee contact subcommittee chairs for status of the Objectives. Assistant City Manager Jacobs urged caution in Commissioners contacting other Commissioners so as not to violate the Brown Act.

Functional Area 1: Vice Chair Cunningham related that Objective 1.1 could be divided into two Objectives, one for deep-water dredging of 1.2 million cubic yards and one for deep-water dredging beyond the next five years. Objectives 1.2 and 1.3 could remain as-is.

Functional Area 2: Commissioner Beer wanted to review derelict vessels brought into the Harbor from other authorities and jurisdiction under Objective 2.1 and a new float system that could consolidate spaces in the mooring fields. A meeting with the Coast Guard is tentatively scheduled for the end of the month to review the Coast Guard's conditions for approving the West Anchorage.

Functional Area 3: Commissioner Kenney related that Objective 3.1 will extend well into 2020. The subcommittee may have recommendations for revising Title 17 for the Harbor Commission in November.

Functional Area 4: Commissioner Scully believed Objective 4.1 will extend into 2020 and beyond. Subcommittee members are familiarizing themselves with the issues and work accomplished thus far.

Functional Area 5: Chair Blank advised that the subcommittee has discussed conducting additional outreach sessions and the timing of the sessions.

In answer to Commissioner Kenney's query, Assistant City Manager Jacobs suggested Commissioners propose new Objectives by emails addressed to her. She could draft a staff report regarding the proposals and agendize a Harbor Commission discussion of them. Alternatively, Commissioners could submit their proposals via email to her. Assistant City Manager Jacobs could compile a list of proposed Objectives and submit the list to the subcommittee. The subcommittee could then decide how to handle the list.

Commissioners agreed to Assistant City Manager Jacobs' alternative method of proposing new Objectives.

Vice Chair Cunningham, Commissioner Yahn, and Commissioner Scully volunteered to serve on the subcommittee.

Commissioner Kenney moved to convene a subcommittee composed of Vice Chair Cunningham and Commissioners Yahn and Scully to review existing and any proposed new Objectives. Vice Chair Cunningham seconded the motion.

Jim Mosher felt a Harbor Commission discussion of proposed Objectives would be more appropriate and compliant with the Brown Act. The City's Finance Committee will meet tomorrow to discuss an audit of the charter fleet's compliance with the requirement to pay fees per passenger for services.

Chair Blank suggested any Objectives the subcommittee does not recommend for adoption be placed on a list of Objectives for consideration at a future time. Commissioners should submit their proposals to Assistant City Manager Jacobs on or before October 16.

The motion carried by the following roll call vote:

**Ayes:** Chair Blank, Vice Chair Cunningham, Commissioner Beer, Commissioner Kenney, Commissioner Marston, Commissioner Scully, Commissioner Yahn

**Nays:** None

**Abstaining:** None

**Absent:** None

**3. Harbormaster Update – August & September 2019**

The Harbormaster is responsible for on-water management of the City's moorings, the Marina Park Guest Marina and Harbor on-water code enforcement activities. This report will update the Commission on the Harbor Department's activities for July 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 Kurt Borsting reported nine abandoned vessels were sold at auction in mid-August, and the auction generated \$1,850 in revenue. Another auction is scheduled for the end of October. The Orange County Sheriff's Department has held its auction concurrent with the Harbor Department's auction so that the two can share resources and benefit from a larger number of potential bidders. He attended the California Association of Harbor Masters and Port Captains annual conference. Harbor Department staff attended a planning meeting for the Christmas Boat Parade scheduled for December 18-22, 2019. During the Boat Parade, the Harbor Department's primary responsibility will be supporting activities at Marina Park. One of the Harbor Department's vessels will serve as a marshal vessel. A "Day in the Life of the Newport Beach Harbor Department" aired in August on Spectrum News One. The segment featured staff serving the community. On September 26, he presented information about the Harbor and the Harbor Department to Newport Beach and Company's Board of Directors. The Harbor Department has purchased ad space in *The Log* newspaper. The lifestyle ad promotes short-term rentals at Marina Park, available moorings, and the public anchorage area. The ad will be updated to promote the availability of online reservations and will run through April 2020. The Harbor Department's new 21-foot patrol vessels are being fabricated and should be delivered by late November. The vessels will display identifying numbers, the radio frequency being monitored, and a telephone number for assistance. Staff has begun outreach to commercial liquid waste haulers. Code Enforcement Supervisor Matt Cosylyon conducted an inspection of one hauler on September 9. Staff will coordinate inspections with the Orange County Environmental Health Division. Staff has confirmed that Marina Park received 147 reservations and hosted 399 stays in August 2018 and August 2019. The decrease in use of Marina Park sand lines was caused by the removal of moorings from a navigational area. Staff attributes the decrease in mooring sub-permittees to the increase in rates. Revenue increased by 33 percent in August 2019 and 39 percent in September compared to the same months in 2018. Year over year, revenue has increased 23 percent. While the total number of mooring users has decreased significantly, the corresponding revenue decrease is small.

Commissioner Yahn remarked that the decrease in mooring users was an unfortunate consequence of the rate increase.

In reply to Commissioners' questions, Harbormaster Borsting related that the new vessels will have radar systems, but he would have to investigate whether they will have AIS. Code Enforcement Supervisor Cosylyon will provide information regarding the enforcement of discharge/pollution statistics. On September 30, the Orange County Sheriff's Department notified staff of a sunken vessel in the J field. A 30-foot pleasure craft had sunk and was not discharging pollutants. The vessel was raised the same day and removed from the Harbor the following day. After the required ten-day period for the owner to collect the vessel, the Harbor Department may destroy the vessel and pursue the owner for costs. There was no evidence the boat sank due to foul play or a collision with another vessel. Assistant City Manager Jacobs indicated the next court hearing for the *Wild Wave* is scheduled for October 18. The judge will not make a decision at that hearing.

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

Commissioner Kenney reported the Water Quality Control Board has scheduled a meeting regarding copper TMDLs.

Chair Blank advised that the Harbor Department sent mooring permittees a notice regarding anticipated wind events. The Water Quality Committee is making progress on adopting a polystyrene ordinance and has proposed a presentation for the Harbor Commission.

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

In answer to Commissioner Kenney's queries, Harbormaster Borsting indicated a meeting with the Coast Guard regarding the West Anchorage is scheduled for October 21. The Coast Guard denied the City's original application for the West Anchorage. After meeting with the Coast Guard, the City submitted a revised application. In September, the Coast Guard relayed additional requirements for a navigational and safety risk assessment and a five-step assessment tool. Assistant City Manager Jacobs advised that the timeline for a decision in the *Wild Wave* case is unknown. At this time, staff prefers not to provide an update regarding the vessel *Dire Straits*.

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

Commissioner Kenney requested items for the status of the *Wild Wave* litigation and subcommittee recommendations for Title 17 revisions.

Assistant City Manager Jacobs announced a community meeting for proposed revisions to Section 17.10, Marine Activity Permit, will be held October 21.

**10) DATE AND TIME FOR NEXT MEETING: Wednesday, November 13, 2019**

**11) ADJOURNMENT**

There being no further business to come before the Harbor Commission, the meeting was adjourned at 8:04 p.m.