

**NEWPORT BEACH HARBOR COMMISSION REGULAR MEETING MINUTES**  
**Council Chambers – 100 Civic Center Drive, Newport Beach, CA**  
**Wednesday, November 13, 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  
Ira Beer, Commissioner  
William Kenney, Jr., Commissioner  
Marie Marston, Commissioner  
Steve Scully, Commissioner (excused absence)  
Don Yahn, Commissioner

Staff Members: Carol Jacobs, Assistant City Manager  
Kurt Borsting, Harbormaster  
Yolanda Summerhill, Assistant City Attorney  
Chris Miller, Public Works Administrative Manager  
Matt Cosylion, Code Enforcement Supervisor  
Jennifer Biddle, Administrative Support Specialist

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

**4) PUBLIC COMMENTS**

John Fradkin requested the Harbor Commission continue the practice of private moorings within the Balboa Yacht Club mooring field falling within the purview of the Balboa Yacht Club dockmaster and allow all moorings within the field to be treated similarly. The term "Balboa Yacht Club-designated moorings" should be defined to include all moorings within the field.

**5) APPROVAL OF MINUTES**

**1. Draft Minutes of October 9, 2019, Regular Meeting**

Chair Blank corrected the draft minutes to reflect Vice Chair Cunningham's presence at the meeting.

Commissioner Beer moved to approve the draft Minutes of the October 9, 2019 meeting as amended. Commissioner Marston 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 Yahn

**Nays:** None

**Abstaining:** None

**Absent:** Commissioner Scully

**6) CURRENT BUSINESS**

**1. Referral of Marine Activities Permit Application to Harbor Commission**

SoCal Cycleboats, Inc., a commercial operation interested in providing a human-powered multi-passenger cycleboat experience on the waters of Newport Harbor, has submitted a Marine Activities Permit application for consideration. Since no similar business currently operates in the Harbor, there is no basis of comparison for staff to evaluate if this operation

will adversely affect the health, safety, or welfare of those who use, enjoy, or own property near Newport Harbor. As such, the Harbormaster is referring the application to the Harbor Commission for their recommendation as to whether or not a Marine Activities Permit should be issued for this type of operation (such referrals for Harbor Commission consideration are provided for in NBMC Section 17.10.050).

**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; and
- 2) Provide staff direction regarding the request for issuance of a Marine Activities Permit for the SoCal Cycleboats Inc. proposal, subject to any additional approvals from other City Departments or outside agencies with authority over the proposed business.

Harbormaster Kurt Borsting reported SoCal Cycleboats, Inc., has submitted a Marine Activity Permit (MAP) application to provide a human-powered, multi-passenger cycleboat experience on the waters of Newport Harbor. As there is no similar business in Newport Harbor, Harbormaster Borsting referred the application to the Harbor Commission for an evaluation of the business' compatibility with other Harbor uses.

Michael Kapusta, applicant, advised that a cycleboat can travel 3-5 miles per hour. Rentals will include the services of a captain and deckhand. Passengers will not control the boat.

Chris Ferren Cirino indicated he and his wife have cycleboat operations in San Jose, Sacramento, and Reno. The experience is interactive and personable. The primary priority is ensuring customers have an interactive experience. In Sacramento, each excursion includes one stop at a bar or restaurant where customers can patronize the bar or restaurant. All cycleboats are certified by the U.S. Coast Guard and inspected annually. The number of alcoholic beverages customers can bring aboard is limited to three or four. He prefers customers not bring hard liquor onboard. Excursions are restricted to the hours of 9 a.m. to approximately 9:30 p.m.

In response to questions, Mr. Cirino explained that a cycleboat does not have a head. After approximately 30 minutes, excursions stop at restaurants and bars where customers may use the restrooms. Excursions load at Mr. G's. A 30-hp motor provides alternative power to peddling. Corporate outings can extend to 2-3 hours, but the total time is not spent on the water. Corporate groups may visit a restaurant for a meal or visit several bars during the excursion. The application notes only one cycleboat. Should the number of cycleboats increase in the future, parking arrangements will have to be determined. Mr. G's dock will be the point for departure and arrival. The five parking spaces allocated to Cycleboats do not include spaces for the rental operation. The rental operation is required to provide ten parking spaces, and it has 15 spaces. The rental operation agreed to allow Cycleboats to utilize five of the 15 spaces. The rental operation will provide offsite parking for Cycleboat only. Customers can park at Balboa Fun Tours and sign in at Mr. G's. The owner of the rental operation has offered to mark five parking spaces for Cycleboats. Seating is provided in the front of the boat for passengers who do not want to pedal. Passengers naturally alternate peddling with socializing. The captain and deckhand can control the volume of amplified sound. Mr. Cirino and Mr. Kapusta advised that they are aware of the regulations contained in the MAP. Cycleboats will not provide passengers with food or beverages. In the future, food and beverages may be provided to corporate passengers. Cycleboat's ABC license limits beverages to an alcohol content of 8 percent or less. Hard liquor is not allowed aboard the boats. The captain and deckhand are authorized to handle rowdy or intoxicated customers. Typically, the captain or deckhand addresses the issue with the person who booked the excursion. If necessary, the captain or deckhand may cancel or shorten the excursion. Mr. Cirino and Mr. Kapusta were amenable to utilizing multiple excursion routes to mitigate the impacts on one area of the Harbor. The passengers do not steer the cycleboat. Cycleboats are equipped with lighting for the passengers and with Coast Guard lighting. To comply with legal requirements, the captain will be a certified master captain as defined by the Coast Guard. Mr. Kapusta and Mr. Cirino explained that they are partners in the venture, and both are financially responsible for the business. Early morning tours are popular in

Sacramento. A good time to end excursions is 8:30 to 9:30 p.m. during the summer months. The application includes a letter from the Sacramento Chief of Police, in which he endorses the Sacramento operation's safety practices.

Matt Cosylion, Code Enforcement Supervisor, reported the parking standard is one space per three passengers. With five parking spaces, the number of passengers would be limited to 15.

Harbormaster Borsting reported he can add a condition for multiple excursion routes.

Commissioner Kenney suggested the Commission limit the number of cycleboat operations in the Harbor and the number of boats for each operation. He proposed allowing one cycleboat during the first year of operations; restricting the hours of operation to 6:30 p.m. during winter months and 9 p.m. during summer months; requiring the use of multiple excursion routes and the presence of a certified master captain onboard at all times; prohibiting the use of public docks except in emergencies; and prohibiting alcohol except for beer, wine, hard cider, and packaged premixed beverages.

Commissioner Beer added a prohibition for excursions after dark.

Commissioner Yahn felt the requirements contained in Title 17 should adequately limit operations without adding specific conditions to the MAP. Vice Chair Cunningham concurred.

Commissioner Kenney proposed the Harbor Commission limit cycleboat entities in general to no more than three boats per entity during the entity's first year of operation.

Assistant City Manager Carol Jacobs related that parking requirements will limit the number of boats each entity can operate. The Harbor Commission could discuss and develop a policy for the number of vessels allowed in the Harbor.

Commissioner Kenney moved to recommend the Harbormaster approve the requested Marine Activity Permit with conditions requiring a certified master captain onboard at all times; prohibiting the use of public docks except in emergency situations; restricting alcoholic beverages to bottles and cans of beer, wine, and other spirits containing 8 percent alcohol by volume or less; prohibiting the applicant from providing food and/or beverage service; and requiring the applicant to utilize different excursion routes. 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 Yahn  
**Nays:** None  
**Abstaining:** None  
**Absent:** Commissioner Scully

## **2. Lower Bay Dredging Update**

Public Works Manager Chris Miller will update the Harbor Commission on the latest planning efforts on the future Lower Bay dredging project.

### **Recommendation:**

- 1) Determine that the project is exempt from the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(2) and Section 15060(c)(3) of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3 because it will not result in a physical change to the environment, directly or indirectly; and
- 2) Receive and file.

Public Works Administrative Manager Chris Miller reported the goal of the dredging project is to dredge the Harbor to its designed depth, including necessary navigation and improved tidal flushing. In 2012, the City in partnership with the Army Corps of Engineers dredged approximately 600,000 cubic yards of material in Phase I. Approximately twice that amount of material should be dredged in Phase II. Because of successful efforts to prevent material from traveling from the watershed to the Upper Bay, future dredging projects would likely be small. As an incentive for the Army Corps of Engineers to dredge the federal channels, the

City is handling all permitting, design, engineering, environmental analysis, and community outreach. In a best-case scenario, dredging could begin in early 2021. Sediment in 90 percent of the Harbor has been characterized as clean, and the majority of dredged material, approximately 850,000 cubic yards, will be deposited in LA3, which is located six miles from the entrance to Newport Harbor. Sediment characterized as beach quality, approximately 70,000 cubic yards, will be deposited in the near-shore zone, which is located just beyond the breaking waves. The Environmental Protection Agency (EPA) is the primary permitting agency for LA3. About 100,000 cubic yards of material is characterized as unsuitable. Generally, the Army Corps of Engineers is not responsible for finding a repository for unsuitable material. Staff spent a significant portion of 2019 negotiating reductions in the fields of unsuitable material. The options for disposing of unsuitable material are to do nothing, *i.e.*, leave it in place; to treat the material on the beach and truck it to a landfill; and to build a confined aquatic disposal (CAD) site measuring 450 feet by 450 feet by 47 feet deep. Regulatory agencies have expressed a preference for the CAD method of disposal. Staff proposes to construct a CAD site in the anchorage area between Lido Isle and Bay Island. Staff has geotechnical and sediment information for the area. Staff proposes dredging the site 5 feet deeper than required so that a future project to deepen the channel to Marina Park, for example, would have a disposal site. The benefit of the additional dredging exceeds the incremental cost. If the CAD site is constructed to accommodate 150,000 cubic yards of material, RGP 54 dredging material could be deposited into it. The proposed CAD location is also the area where sediment would be deposited during a 100-year rain event. The CEQA analysis covers dredging of unsuitable material. Dredging clean material is analyzed under the National Environmental Policy Act (NEPA). A public scoping meeting, which has been scheduled for December 4, is intended to notify the community of the eventual project and to obtain preliminary feedback during the Environmental Impact Report (EIR) process. Staff will incorporate the preliminary feedback into the Draft EIR (DEIR), publish the DEIR, accept public comment regarding the DEIR, and prepare a Final EIR (FEIR). In the spring of 2020, staff anticipates applying for permits. In nine to twelve months, the project could be ready for the Army Corps of Engineers to begin dredging.

In reply to inquiries from the Commission, Public Works Administrative Manager Miller indicated digging the CAD would require several months. If Coast Guard approval of the proposed West Anchorage has not been resolved, using the West Anchorage as a temporary anchorage during the dredging project would be considered an official trial project in establishing it as a permanent anchorage. Staff is proposing a ten-year timeframe for depositing material into the CAD. Once the Lower Bay dredging is complete, an interim cap would be installed. A permanent cap would be installed once the CAD is filled. When negotiating with the City, the EPA allowed staff to exceed the general nationwide standard for sediment disposal at LA3 in exchange for staff drafting a sediment management plan for Newport Harbor. The CAD would disrupt the anchorage for quite some time, but staff hopes to figure out a method to reduce the disruption time. The ten-year timeframe is a goal rather than a limit. The City has funded all work to date at a cost of around \$1.5 million. The City Council has budgeted \$4.3 million or \$4.4 million for construction. Staff is lobbying the federal government for full funding. The CAD would not be lined. The engineers will calculate the slope and size of the CAD so that sloughing is minimal. Mercury causes the dredged material to be characterized as unsuitable and is more likely to migrate into surrounding areas in its current state than in the CAD. The cap would be composed of dredged material. A CEQA analysis is not required for a staff report. When dredging is complete, the depth of the CAD should be 20-22 feet. The estimated amount of unsuitable material produced by the Lower Bay dredging project is 100,000 cubic yards. The engineers have calculated the size of the CAD to accommodate 150,000 cubic yards of material. The City could utilize the excess capacity of the CAD when dredging the Balboa Yacht Basin. Eel grass does not exist in the proposed location of the CAD, but staff will conduct a survey to confirm that. Possible mitigations for eel grass would be a component of the federal environmental analysis. Public Works Administrative Manager Miller did not anticipate a major dredging project in the future absent a major weather event. If the Harbor could be dredged to the authorized depth, maintenance dredging would be minimal because of the small amount of material that cycles through the Harbor. Staff has considered constructing CADs south of Via Lido Soud, a few blocks east of the H Mooring Field, and near the tip of Lido Isle just before the turning basin. The entirety of Newport Harbor Yacht Club's mooring field would be impacted by the CAD. The gray areas on the map are at design depth within a tolerance. Assistant City Manager Jacobs explained that all Commissioners may attend the public scoping meeting but may not speak during the meeting or discuss it among themselves.

Commissioner Kenney expressed concern that the east end of the anchorage could be unsafe for vessels if an anchor drifts from a 15-foot-deep shelf to a 30 or 40-foot-deep bottom. However, a longer trial of the West Anchorage would be beneficial.

Commissioner Beer suggested the engineers quantify the length of time required to fill the CAD completely. The slope of the CAD could be problematic for the anchorage.

John Fradkin opposed the proposed location for the CAD as it is his favorite part of the Harbor and used extensively for sailboat races. He preferred the location of the West Anchorage.

Tom Hartman, Newport Sea Base Executive Director, requested the Commission conduct robust outreach to the various user groups and operators in the Harbor. Newport Sea Base will need to dredge its marina in the next few years and would like to dispose of the material in the CAD.

### **3. Proposed Changes to Title 17 – Harbor Code**

The City Council requested that the Harbor Commission review Title 17 (Harbor Code) of the Newport Beach Municipal Code in February 2018. The Harbor Commission created a subcommittee consisting of Commissioners Kenney, Blank, and Yahn to provide recommended changes based on the changed conditions within the Harbor. The proposed changes reflect all chapters of the Harbor Code with the exception of Chapter 17.10 – Marine Activity Permits which will be provided to the Harbor Commission at a future date.

#### **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 and forward to the City Council for their consideration.

Chair Blank advised that he will recuse himself from discussion of the definition of live-aboard, mooring extensions, and conditions specific to the Yacht Club mooring field.

Commissioner Kenney reported the subcommittee held four public stakeholder meetings to gather input from mooring permittees, homeowners, and others who use and care about the Harbor. On June 12 and August 14, 2019, the Harbor Commission reviewed proposed changes to Title 17 and provided feedback. Revisions to Section 17.10, Marine Activity Permit, are ongoing and not a component of the current discussion. The subcommittee has held two stakeholder meetings regarding Section 17.10 and will likely hold additional public meetings.

Harbormaster Borsting advised that the Harbor Commission formed the subcommittee to review Title 17 and identify potential revisions. The subcommittee organized a series of meetings and created an independent section of the Harbor Department's webpage to encourage public participation and to promote transparency. Title 17 was divided into two portions, and each portion was presented to the public for review. Public comments were incorporated into the provisions of Title 17, and additional meetings were held to review the modified portions. Lastly, the subcommittee and the City Attorney's Office reviewed the final drafts. Attendance at the meetings varied between 25 and 50 people. Key topics identified for review included a public hearing process, the length of time dinghies may be tied to public docks, live-aboard boater issues and vessel requirements, mooring extension requests, recreational non-live-aboard boaters, an appeals process, water quality, public hearing requirements, sea lion deterrent measures, and public noticing requirements. While the discussion of allowed overnight stays for non-live-aboards was extensive, the subcommittee is not recommending any change to the existing maximum of three overnight stays per month. Harbormaster Borsting highlighted the subcommittee's recommendations.

Chair Blank recused himself and left the meeting.

Dan Gribble commented that dockmasters have long managed vessels in yacht club mooring fields by tradition. The proposed revision to Title 17 will require visitors to complete excessive paperwork and pay additional costs and will not make visitors feel welcome to Newport Harbor. He requested clarification of Section 17.60.040 related to yacht club-designated moorings.

Scott Carlin, Newport Mooring Association, read a resolution of the Newport Mooring Association Board of Directors in support of continuing the practice of yacht clubs managing their mooring fields. The Newport Mooring Association appreciates the many clarifications of Title 17.

Megan Delaney remarked regarding yacht club dockmasters juggling resources to support activities in the Harbor. Management of the yacht club mooring fields should remain with the dockmasters.

John Fradkin requested the City allow the dockmasters to continue managing the small number of moorings located in yacht club mooring fields.

Jim Parker questioned whether commercial marina operators attended the outreach meetings as he could not identify any public comments from commercial marina operators. The number of live-aboards within commercial marinas has declined during the years that the City has not regulated the percentage of allowed live-aboards in commercial marinas.

Chair Blank advised that outreach meetings were advertised to commercial marina operators, and several attended subcommittee meetings.

Jim Mosher did not believe the revised Title 17 is ready for Council adoption. In Section 17.05.030, the statement that any activity or action or use of Newport Harbor is prohibited unless specifically permitted by the provision of this Code or the Tidelands Trust is contrary to the usual interpretation of the Code. He was surprised by the revision for the Community Development Department to review construction in the Harbor. The appeals process does not make sense.

At Commissioner Yahn's request, Harbormaster Borsting explained that Section 17.60.040 allows yacht clubs to manage the moorings for which they hold permits. A small number of City-issued moorings are located within the Balboa Yacht Club mooring field, and the rules applicable to any City-owned mooring are applicable to the City-owned moorings located in yacht club mooring fields. Staff does not typically direct potential sub-permittees to the Balboa Yacht Club mooring field. The Code allows a sub-permittee to utilize a mooring for a maximum of 30 days without charge if the sub-permittee has a letter of permission.

Commissioner Kenney proposed allowing individual mooring permittees whose moorings are located in the Balboa Yacht Club mooring field to assign their moorings to Balboa Yacht Club for management and administration. This would comply with the Code requirements and resolve the issue. Assistant City Manager Jacobs explained that the City would need an agreement with Balboa Yacht Club indicating Balboa Yacht Club's willingness to accept management and liability for the individuals' moorings and to provide insurance coverage for the moorings. If the individuals assign their moorings to Balboa Yacht Club, the City would not receive documentation from the permittees. Commissioner Kenney suggested the permittee would assign management only and would continue to provide the City with documentation. Assistant City Manager Jacobs questioned the City's ability to protect itself should the yacht club loan a mooring to a mariner who does not have proper insurance. Commissioner Kenney responded that the yacht club would have to ensure that all vessels on individual permittees' moorings have property insurance. Assistant City Manager Jacobs reiterated that an agreement would be needed to ensure all parties understand their responsibilities. Staff is willing to discuss the issues with yacht club management. Commissioner Kenney remarked that one of the benefits of yacht club membership is receiving accommodations at yacht clubs around the world. The City and the Harbor Commission should protect that ability. Harbormaster Borsting stated the Code does not align with the longstanding practice. A permittee in Mooring Field A is prohibited from lending his mooring to a visiting mariner. The individual permittee's mooring is located in the yacht club mooring field, but he holds a City mooring permit and should be subject to the same rules as the permittee in Mooring Field A.

Vice Chair Cunningham asked if Commissioner Kenney meant an individual who is a member of a yacht club and who holds a mooring outside the yacht club field or within the jurisdiction of the yacht club field, could allow the yacht club to manage the mooring. Commissioner Kenney noted all moorings in the Newport Harbor Yacht Club mooring field are controlled by Newport Harbor Yacht Club. Only in the Balboa Yacht Club field, if the permittee is a member of the Balboa Yacht Club and assigns his mooring to the Balboa Yacht Club to administer, then the Balboa Yacht Club would accept responsibility for the mooring. Seventeen of Balboa Yacht Club's moorings are occupied by individuals holding City-issued mooring permits, and 15 of the 17 are members of Balboa Yacht Club. The individual permittee would continue to provide all required documentation to the City. The individual permittees would not be required to assign management to Balboa Yacht Club.

Commissioner Beer indicated Section 17.60.04.G states that only for those moorings assigned by the City within those established mooring areas or locations prior to May 11, 2017. He questioned the event that compelled the City to assign all but those 17 moorings to the Balboa Yacht Club.

Assistant City Manager Jacobs suggested a discussion with the Balboa Yacht Club could reveal requirements the City may want to strengthen with Balboa Yacht Club and Newport Harbor Yacht Club permits.

Commissioner Kenney concurred that moorings in any of the three yacht club fields should be held to the same standards and requirements as moorings in City mooring fields. Perhaps a subcommittee could work with Balboa Yacht Club to resolve the issue while the revisions to Title 17 continue toward approval.

Commissioner Beer noted the Code requires the yacht clubs to provide mooring records to the Harbormaster by February 1 each year. The records could provide the utilization of the moorings, which could justify a mutually agreeable resolution of the matter.

Commissioner Kenney reported the subcommittee held six public stakeholder meetings. Participants did not provide personal information, but he recognized a couple of commercial marina operators in the audience. Notices for the public meetings were published through a variety of methods.

Commissioner Yahn moved to (1) find this action exempt from the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(2) and 15060(c)(3) of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3; and (2) approve the recommended changes to Title 17 and request staff forward them to the City Council for consideration. 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 Yahn  
**Nays:** None  
**Abstaining:** None  
**Absent:** Commissioner Scully

#### **4. Proposed City Council Policy – Offshore Mooring Extensions**

At the Harbor Commission meeting of June 12, 2019, the Harbor Commission reviewed proposed amendments regarding offshore mooring extension in conjunction with their 2018 Goals and Objectives to "Establish policies for modifications to mooring sizes." The Commission reviewed and approved a Harbor Department Policy based on this recommendation. After further review, it is recommended that the Harbor Commission recommend a new City Council Policy establishing how and when moorings may be extended.

#### **Recommendation:**

- 1) Determine this action is exempt from the California Environmental Quality Act (CEQA) pursuant to Sections 15050(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) Approve the proposed City Council Policy on mooring extensions and request staff to present to City Council for consideration.

Chair Blank recused himself from the item as he holds a mooring permit.

Assistant City Manager Jacobs reported the Harbor Commission formed a subcommittee to explore a process for managing the lengths of mooring fields. A number of mooring permittees have requested extensions, and staff has realized the Code does not provide a process for approval or denial of a mooring extension. A formal process is needed to ensure vessels can travel safely and efficiently. Attached to the Harbor Policy is a designation by mooring of the existing length and a maximum length for moorings. Staff can utilize the attachment to determine whether a requested extension can be approved. A formal process utilizing the designated maximum lengths will ensure the size of vessels do not impede fairways and vessels can maneuver safely.

Commissioner Kenney suggested modifying "with the mooring fields" to "within the mooring fields" in the second paragraph; "location" to "locations" in the first line of the fairway definition; and "built slips" to "built moorings" in the second line of the fairway definition. Perhaps Section 17.60.040.M.4.a and Section 17.60.040.M.4.b should be stated in the policy as well as the Code.

At Commissioner Yahn's request, Commissioner Beer explained that the average vessel length can be deceptive. The row width is calculated by adding 20 feet (10 feet for the stern and 10 feet for the bow) to the length overall (LOA) of a vessel to accommodate the mooring ball. For example, a 40-foot vessel needs a 60-foot-wide row to prevent the mooring ball from extending into the fairway. Based on that methodology, the subcommittee determined the maximum vessel length a row could accommodate. In some cases, vessels extend past the row, but the ends of many rows can accommodate the extra length. The language allows the Harbormaster to consider the total circumstances.

Jim Mosher understood the policy is not meant to apply to the single-point mooring fields. Row and maximum vessel length are the only defined terms used in the policy. The first procedure paragraph does not indicate where a Request for Mooring Extension form may be obtained. The third paragraph does not indicate whether the Harbormaster's decision may be appealed. He questioned the omission of an appeal of an approval, the intent of the exceptions, and the heading for the final column in the table of Maximum Vessel Lengths in City Mooring Fields.

Scott Carlin expressed concern regarding the length and size of moorings surrounding his mooring.

Commissioner Beer could agree to amend the language to reference the Harbormaster form in procedures, modify the chart title to Guidance for Maximum Vessel Length, add the requirement for the mooring to be occupied by the larger vessel within 12 months, and add the prohibition regarding transfer of a mooring within 12 months. The definitions were drafted for the policy and subsequently incorporated into Title 17.

Commissioner Kenney concurred with Mr. Mosher in that a decision of approval or denial should be appealable. Assistant City Manager Jacobs advised that she would delete "if denied."

Commissioner Kenney moved to approve the proposed City Council Policy on mooring extensions with the inclusion of Section 17.60.040.M.4.a and Section 17.60.040.M.4.b, revisions that the Harbormaster can provide the Request for Mooring Extension form, that the decision of the Harbormaster is appealable, the title of the chart is Guidance for Maximum Vessel Length; and request staff to present to City Council for consideration. Commissioner Beer seconded the motion. The motion carried by the following roll call vote:

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

5. **Create a Subcommittee to Work with the Parks, Beaches and Recreation Commission to Explore a Community Pool at Lower Castaways Park**



At the City Council meeting of November 5, 2019, the City Council directed the Parks, Beaches and Recreation Commission and the Harbor Commission to work together to explore the possibility of a community pool at Lower Castaways Park.

**Recommendation:**

- 1) Determine this action is exempt from the California Environmental Quality Act (CEQA) pursuant to Sections 15050(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) Appoint three members of the Harbor Commission to a subcommittee to work with the Parks, Beaches and Recreation Commission on a community pool at Lower Castaways Park.

Assistant City Manager Jacobs reported the Recreation and Senior Services Department presented a proposal for a community pool to the City Council. During the discussion, the location for the proposed pool was identified as Lower Castaways Park. The Council expressed interest in pursuing the proposal but is aware of the Harbor's needs. Therefore, the Council wanted three Harbor Commissioners to join an ad hoc committee composed of Parks, Beaches and Recreation Commissioners and staff to evaluate the property. Assistant City Manager Jacobs cautioned Commissioners that the project and the ad hoc committee could extend for three or four years.

Assistant City Manager Jacobs explained that the ad hoc committee will be subject to the Brown Act. Participation could require 30-40 hours of Commissioners' time over the next several years. The Council clearly indicated the project could be a joint use site and the two Commissions should work together to ensure all interests are accommodated. Other locations have been considered, but Lower Castaways Park seems to be the final viable location. The first meetings will review the work of both Commissions regarding the location.

Commissioner Marston recalled a prior proposal for a community center on the west side of Newport Beach and the Harbor Commission's presentation to the Parks, Beaches and Recreation Commission regarding a launch site for non-motorized craft at Castaways.

Commissioners Marston and Yahn volunteered to serve on the ad hoc committee.

Commissioner Kenney felt this could be an opportunity for the Harbor Commission to develop a joint use for the location and obtain funding for the project.

Jim Mosher recalled a prior joint project of the two Commissions that accomplished little. He understood the Council indicated the ad hoc committee could determine Lower Castaways is not the best location for a community pool and recommend other locations. Council Member Duffield has suggested Marina Park.

Chair Blank advised that former Commissioner Girling has agreed to share his knowledge of the site if Commissioners wish.

Tom Hartman, Newport Sea Base Executive Director, reported Newport Sea Base has been working with community partners to develop a rowing center to accommodate the growing demand. This could be an opportunity for a joint partnership among many organizations. The facility can accommodate more than a pool.

Chair Blank invited Mr. Hartman to attend and participate in meetings of the ad hoc committee.

Commissioner Kenney moved to (1) determine this action is exempt from the California Environmental Quality Act (CEQA) pursuant to Sections 15050(c)(2) and 15060(c)(3) of the CEQA Guidelines; and (2) appoint Commissioners Marston (Chair) and Yahn and Chair Blank to a subcommittee to work with the Parks, Beaches and Recreation Commission on a community pool at Lower Castaways Park. Commissioner Beer 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 Yahn

**Nays:** None  
**Abstaining:** None  
**Absent:** Commissioner Scully

**6. Harbor Commission 2020 Objectives and Subcommittee Reports for Progress of Current Objectives**

The Harbor Commission has completed a number of Objectives since the last full update of the Objectives in 2018. At the October 9, 2019 meeting, the Harbor Commission created a subcommittee to review the current updated Objectives. They were tasked with adding to, deleting, and modifying the current Objectives for the City Council's consideration in January 2020. The subcommittee for Objective review will report their recommendations for consideration of the full Harbor Commission. Each subcommittee will also report their progress from the last month.

**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) Review and approve updates to the Harbor Commission Objectives for 2020 and recommend that they be forwarded to the City Council for consideration.
- 3) Receive and file current subcommittee reports.

Vice Chair Cunningham reported Commissioner Yahn and he reviewed the proposals for Objectives and attempted to categorize them by Functional Area but felt the Functional Areas need some enhancements prior to modifying the Objectives. Functional Areas 1 and 5 could remain as is. Earlier in the year, the Harbor Commission combined Functional Areas 2 and 3, which combined Amenities, Harbor Operations and Management, and Strategic Assets. The subcommittee proposed reorganizing Functional Area 2 as Harbor Operations, Policies, and Regulations and creating Functional Area 3 for Harbor Strategic Assets and Amenities. Functional Area 4 can continue, but it needs better definition. Rather than forming a subcommittee of two or three Commissioners for each Functional Area, he proposed selecting a lead for each Functional Area and allowing one or two additional Commissioners to work on each Objective as needed. In other words, the Commissioners would not be assigned to Functional Areas, except for the lead, but could work on any or all Objectives as needed or desired, within Brown Act requirements. If the Commission agrees to the proposed Functional Areas and selecting a lead for each Functional Area, the subcommittee will seek input for the Objectives and work on those over the next month.

Commissioner Kenney could accept the restructuring of the Functional Areas. Preparing revisions for Section 17.10 would probably require another 9-12 months. Work is just beginning on the Objectives for the current Functional Area 4. Mixing Commissioners for the Objectives could be confusing. Vice Chair Cunningham clarified that the Functional Area lead will drive the Objectives. Commissioner Kenney asked if Vice Chair Cunningham is proposing an ad hoc committee for each of the three Objectives under Harbor Operations. Vice Chair Cunningham explained that a maximum of three Commissioners could work on each Objective, but Commissioners could work on Objectives in different Functional Areas.. Commissioner Yahn indicated the Commissioners who are not the lead for a particular Functional Area could serve on multiple ad hoc committees. This approach allows Commissioners to diversify their interests and share the workload.

Commissioner Beer suggested Objectives should be closely related within a Functional Area in order to provide consistency in the ad hoc committee.

Vice Chair Cunningham advised that the same Commissioners could work on multiple Objectives within a Functional Area. After Objectives are identified, Commissioners can be sorted based on expertise and preferences.

Commissioner Yahn indicated Title 17 correlates to Harbor Operations, Policies, and Regulations. The existing subcommittee could choose to continue working on Title 17.

Chair Blank supported selecting a Commissioner as a lead for each Functional Area and allowing Commissioners to work on different Objectives. For example, he would have to recuse himself from the subcommittee working with the yacht clubs on mooring permits, but a Commissioner from another Functional Area could take his place.

Vice Chair Cunningham volunteered to lead Functional Area 1 for dredging. Chair Blank should continue as lead for Functional Area 5.

Commissioner Yahn agreed to lead Functional Area 2, Harbor Operations, Policies, and Regulations, which includes Title 17 review.

Commissioner Beer accepted the lead for Functional Area 3, Harbor Strategic Assets and Amenities.

Commissioner Kenney wanted to continue as lead for Title 17 in Functional Area 2.

Vice Chair Cunningham clarified that Functional Area 2 contains Objectives in addition to Title 17.

Chair Blank assigned Commissioner Scully to lead Functional Area 4.

Vice Chair Cunningham requested the Functional Area leads list Objectives for each Functional Area and send the lists to Assistant City Manager Jacobs, who will provide them to the subcommittee.

Commissioner Kenney requested an updated list of Functional Areas.

Jim Mosher commented that the subcommittees assigned to Functional Areas appear to be standing committees, and as standing committees they are required to meet publicly.

Chair Blank suggested only one Commissioner would be assigned to a Functional Area, and a standing committee cannot be composed of one member.

**7) Harbormaster Update – October 2019**

The Harbormaster is responsible for the 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 October 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 Public Works Administrative Manager Miller, Commissioner Beer, and he visited U.S. Coast Guard representatives at the LA/LB Sector Base to obtain clarification and direction regarding the proposed West Anchorage. The representatives suggested the City reduce the size of the proposed West Anchorage and develop a public outreach plan. Staff is following up on the suggestions. The Harbor Department website has been enhanced with marketing features. The Harbor Department sent an email to all mooring permittees regarding expected high-wind conditions. Assistant City Manager Jacobs, Chair Blank, and he co-presented an overview of the Harbor Department to the Leadership Tomorrow group on October 17. The City and the Sheriff's Department hosted an abandoned vessel auction on October 30. The City offered 23 vessels for sale, and 12 of the smaller vessels were sold. Once the unsold 11 vessels are disposed, three vessels will remain in impound. In October, 84 new Code

Enforcement cases were opened, and 69 cases were resolved. The top three violations for October were provisions of Title 13, outdated registration and insurance documents, and sea lion deterrence. On October 16, Code Enforcement and Fire Department personnel inspected all commercial docks and observed ten violations. Follow-up inspections will occur in the next few weeks. Also in October, Code Enforcement Supervisor Cosylion and Lead staff conducted pre-dawn patrols to gather information about potential unauthorized live-aboard activity. Additional investigation is underway in 18 new cases.

In answer to queries, Harbormaster Borsting advised that paddleboard/kayak is defined as assisting or educating paddleboarders or kayakers. The large decrease in the category probably resulted from the change in seasons.

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

Chair Blank reported the City Council adopted Policy H-1 without comment. The Christmas Boat Parade is scheduled for December 18-22.

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

Assistant City Manager Jacobs indicated she had no new information regarding the *Wild Wave*. The next court date is in January 2020. Chair Blank recalled that a bench trial was scheduled for January with a decision rendered by March.

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

Chair Blank advised that a follow-up discussion of Objectives will be placed on an agenda and requested an update regarding the water wheel project from the Public Works Department. In reply to Assistant City Manager Jacobs' inquiry, Chair Blank suggested Ms. Ip could present her proposal for polystyrenes.

Chair Blank suggested the December meeting may be canceled.

**10) DATE AND TIME FOR NEXT MEETING: Wednesday, December 11, 2019**

**11) ADJOURNMENT**

There being no further business to come before the Harbor Commission, the meeting was adjourned at 10:16 p.m.