

NEWPORT BEACH HARBOR COMMISSION REGULAR MEETING MINUTES
Council Chambers – 100 Civic Center Drive, Newport Beach, CA
Wednesday, February 12, 2020
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, Secretary
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

3) PLEDGE OF ALLEGIANCE – Commissioner Beer

4) PUBLIC COMMENTS

Hein Austin advocated for some tolerance of marine growth on boats so that there can be less frequent washing of boats and lower amounts of copper in Harbor waters.

Jim Mosher related that the Council adopted revisions to Title 17 and postponed action on the new policy for mooring extensions. He disagreed with a Council Member's characterization of public comment as disparaging of the Harbor Commission. The public has the right to review and comment upon Council business.

5) APPROVAL OF MINUTES

1. Draft Minutes of January 8, 2020, Regular Meeting

Chair Blank requested the minutes reflect Mr. Mosher's written revisions.

Commissioner Beer corrected paragraph 9 on page 5 to "Vice Chair Cunningham proposed striking the word park from the description of Objective 5."

Commissioner Yahn moved to approve the draft Minutes of the January 8, 2020 meeting as amended. Commissioner Scully seconded the motion. The motion carried by the following roll call vote:

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

Nays: None

Abstaining: Commissioner Beer

Absent: None

6) CURRENT BUSINESS

1. Harbor Commission 2019 and 2020 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. In January, the Commission approved draft Objectives for 2020. It is anticipated that the new Objectives will be provided to the City Council for their consideration on February 25, 2020.

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) Receive and file current subcommittee reports.

Assistant City Manager Carol Jacobs advised that the 2020 Objectives will be presented to the Council on February 25.

Chair Blank requested the Objectives be placed on the Council's Consent Calendar if possible.

Vice Chair Cunningham noted Commissioner Scully and Vice Chair Cunningham should be assigned to Objective 5.1. Objective 3.4 should include coastal erosion with sea level rise. In reply to Commissioner Scully's question, Vice Chair Cunningham explained that Objective 3.2 is different from moving material from the Harbor to the big beaches along the shoreline.

Commissioner Kenney noted the 2019 Objective 4.1 regarding review and dialog with the Harbor charter fleet was not carried over to the 2020 Objectives. Vice Chair Cunningham believed that was covered in Objectives 4.1 and 4.2. The subcommittee felt the 2019 Objective 4.1 was too high level and needed some actions. Chair Blank remarked that the dialog with the charter fleet industry needs to be stated in the objective. Vice Chair Cunningham referred to the Functional Area 4 description which spells out commercial users. Chair Blank preferred an objective that is directed specifically toward the charter fleet. Commissioner Kenney concurred. Commissioner Yahn clarified that specifying solely the charter fleet precludes other classes of operators on the Bay. The subcommittee wanted to capture the 2019 Objective 4.1 but keep it broad enough to cover all operators. Commissioner Kenney recalled that the Council directed the Harbor Commission to study issues such as a size limit and a number limit on charter vessels and methodologies for taxing charter vessels. The direction was more than developing a plan to communicate and assist. Vice Chair Cunningham suggested the subcommittee associated it with Objective 1.2. The rules and regulations were placed under Functional Area 1, and Functional Area 4 pertained to the outreach program, communication, and execution of it. Chair Blank advised that Objective 1.2 is close to completion. Council Members asked the subcommittee to study in detail the charter fleet specifically, the overall numbers, sizes, and other unique characteristics of that particular stakeholder group. Vice Chair Cunningham asked if Chair Blank is expecting to change codes and policies because that would fall under Functional Area 1. Whether it is placed in Functional Area 1 or 4 is semantics. Commissioner Yahn noted Chapter 17 will be a living document with ongoing input and revision. In the future, other regulations can refer to Functional Area 1. Chair Blank understood the direction was for a study of the longer-term operations of the charter fleet industry. Eventually, Code adjustments may be needed to guide future changes to charter fleet operations. The effort and discussion at present are to devise the vision in conjunction with the charter fleet. At present, that falls under Functional Area 4 more so than Functional Area 1. Commissioner Kenney was more concerned about the specific objective being listed. The charter fleet interaction is unique with respect to all stakeholders in the Harbor. Chair Blank proposed changing "establish" to "continue" in the 2019 Objective 4.1 and placing it in Functional Area 4 as Objective 4.4. Commissioner Kenney concurred, volunteered to work on the new Objective 4.3, and requested two additional volunteers. Commissioners Yahn and Scully volunteered.

Commissioner Marston requested "park" be deleted from Objective 5.2. In answer to her query, Vice Chair Cunningham explained that only one Commissioner is assigned to Objectives 2.2, 3.1, and 3.3 because of the significant staff support provided to those objectives. Commissioner Yahn added that the Functional Area leader can provide assistance as needed.

Jim Mosher remarked that the agenda item refers to subcommittee reports only because the Harbor Commission approved the Objectives in January. The narrative for the Harbor Commission Objectives refers to supporting the mission of the Harbor Area Management Plan. The Harbor Area Management Plan should be easily accessible on the website. The City's mapping refers to Lower Castaways as a park, but the City may not have officially established it as a park. He suggested a draft copy of revisions to Title 17.10, Marine Activity Permit (MAP), be made available to the public.

Commissioner Kenney indicated no public hearings for revisions of Section 17.10 have been held, but they will be scheduled. Chair Blank clarified that the subcommittee has met with Marine Activity Permitholders, and another meeting will be scheduled now that the MAP forms have been drafted.

Vice Chair Cunningham moved to approve the Updated January 8, 2020 Harbor Commission Objectives with the following changes:

1. Objective 3.4 should read "... and could help combat coastal erosion and sea level rise."
2. Renumber Objective 4.3 to Objective 4.4; insert the 2019 Objective 4.1 with "continue" replacing "establish" as Objective 4.3; and assign Commissioners Kenney and Yahn to Objective 4.3.
3. Replace Commissioner Kenney with Vice Chair Cunningham and Commissioner Scully in Objective 5.1.
4. In Objective 5.2, delete the word park.

Commissioner Yahn 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

Functional Area 1: Commissioner Kenney reported the second reading of the proposed Title 17 revisions, except for Section 17.10, was approved on the Council's Consent Calendar on February 11. Council Member Muldoon instructed staff to direct the Harbor Commission to review Section 17.60.60 regarding commercial marinas that encroach upon abutting upland residential properties. Council Member Dixon instructed staff to direct the Harbor Commission to review the limitation on the number of live-aboards allowed in commercial marinas. In response to Council Member Dixon's request, the subcommittee has scheduled a stakeholder meeting to discuss the live-aboard issues in commercial marinas.

Functional Area 2: Commissioner Beer anticipated the proposed guidelines for mooring extensions to return due to minor revisions to Policy H-3. He will review the changes with staff and hopefully resolve any issues quickly so that the guidelines can be approved. With respect to the West Anchorage, he and staff have met with the U.S. Coast Guard and spoke with them by conference call a few weeks ago. The Coast Guard provided good direction on certain things and some encouragement that the Coast Guard may approve a proposal.

Functional Area 3: Vice Chair Cunningham indicated staff has received some feedback from the California Coastal Commission, U.S. Army Corps of Engineers, and Water Board regarding RGP 54. Next week, Public Works Administrative Manager Chris Miller, Harbormaster Borsting, and he will meet with the Coastal Commission and Water Board to review their comments. None of the feedback has been alarming. Vice Chair Cunningham shared photos and videos of the new hydraulic dredger at work. If the dredger operates more than two consecutive days, the Water Board requires an onsite monitor of the turbidity of the water at a cost of \$1,200 per day. Because the new dredger does not cause turbidity, negotiations of the RGP 54 will include waiving the requirement for an onsite monitor if this type of equipment is used for dredging. The City was not awarded any federal funding for dredging in the fiscal year 2020 work plan. \$2 million remains of the fiscal year 2019 funding. The Corps of Engineers has been quoted a cost of \$1

million to mobilize equipment to the mouth of the Harbor for dredging. The City wants the Corps of Engineers to delay the project until the City receives additional funding, but that may not happen.

In reply to inquiries, Vice Chair Cunningham explained that if the City moves to permanent infrastructure, building along the Harbor bottom is an option. The equipment is more controllable in the existing environment. The suction hose is 50 feet long. The maximum distance on the output of the motor is 1,000 feet. Increasing the hose length decreases the motor distance and vice versa. The City requested \$23 million in the 2020 work plan. The City has \$4.5 million in funding for dredging projects. With clean material, 40 cubic yards an hour can be dredged. The dredged material settles better on the beach when it can be dropped at high tide. At low tide, material runs down the beach much faster. At Beacon Bay, they're going to experiment with straw wattles to see if it will slow the speed of the material running down the slope. The contractor charges \$1,500 in addition to the permit fees for an average job. The total cost for permits is less than \$5,000. Hydraulic dredgers are best for material that can be reused in the Harbor. If material has to go to LA3, the contractor does not own a scow or hopper barge to handle the material. They are looking at options.

Functional Area 4: Commissioner Scully advised that he and Harbormaster Borsting have compiled lists of companies that may need MAPs. Staff is educating and working with companies about MAPs. Work on the Harbor Attendance Study is just beginning.

Functional Area 5: Chair Blank related that a dialog has been opened with the Balboa Island Improvement Association or Balboa Island Residents Association to conduct a stakeholder data collection meeting. Commissioner Marston stated she will contact the Parks, Beaches, and Recreation Commission again to see if a meeting has been scheduled.

Vice Chair Cunningham suggested Commissioner Marston meet with the National Marine Fisheries to learn about its marine protected area and any flexibility or mitigation it can offer.

Hein Austin hoped the new dredger would dredge around the public docks to increase the hours the docks are usable.

Jim Mosher reported the Parks, Beaches, and Recreation Commission meeting the prior week was canceled. He inquired regarding the Harbor Attendance Study.

Chair Blank explained that it is the total number of visitors to the Harbor. Commissioner Yahn clarified that it is the utilization rate of the Harbor by both tourists and local residents.

2. Harbormaster Update – January 2020 Activities

The Harbormaster is responsible for the management of the City's mooring fields, 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 January 2020.

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) Receive and file.

Harbormaster Kurt Borsting reported the U.S. Coast Guard is interested in good public outreach when developing concepts for a West Anchorage and maintaining the main channel for commercial and recreational use. The Coast Guard's concern seems to be location rather than reconfiguration. Staff received good feedback and will develop a formal proposal and public outreach plan. A Department Assistant was hired in January. Eight candidates for Harbor Service Worker Lead have been interviewed, and second interviews will be scheduled with a goal of hiring one or two people by the end of the month.

The Bay Foundation provided staff with summary data from its 2019 quarterly tests of City pumpout stations. Four of the five stations received good annual scores. Signage and infographics at pumpout stations are undergoing improvements. The Harbor Commission subcommittee and staff are preparing a list of stakeholders to contact about customer and Harbor user counts. The count may be separated into on-water users and on-land users. Based on data from 14 stakeholder groups, the attendance estimate is 1.8 million Harbor users and 1.1 million Harbor visitors. The Harbor Department has requested an intern to assist with this data collection.

In answer to queries, Harbormaster Borsting indicated the Coast Guard will allow short-term use permits for large vessels, and staff is working to obtain a short-term use permit for a 150-foot vessel to moor for a few weeks in June. These short-term use permits will provide data that can be used to develop a large-vessel area in the West Anchorage proposal. Recently, two macerators have been damaged by boaters pumping out their bilges. Staff could use more training to detect when bilges are being pumped out. Assistant City Manager Jacobs added that if staff can prove someone damaged a pumpout station, the City can file a claim for damages with the person's insurance company. Harbormaster Borsting reported the City has funded a project to establish a bilge pumpout station. A few pumpout stations are located on private property but available for the public's use. When a private entity accepts grant funding for a pumpout station, the pumpout station has to be made available for public use. The City is responsible for regulating only its own pumpout stations. Most owners do a good job of maintaining and repairing their pumpout stations. The Harbor Department's full-time equivalent (FTE) is 8.39 for the fiscal year. He will explore the history, use, and possibility of removing the poles in the water near the Fun Zone.

Commissioner Kenney related that the definition of a large vessel needs to be codified. The location of the hose can indicate whether a boater is pumping out a bilge or a holding tank. If there is no fine for pumping out a bilge, the Harbor Commission should recommend the Council establish one. The pile may be a private improvement and part of the commercial marina. The Balboa Pavilion owns the dock to the left.

7) COMMISSIONER ANNOUNCEMENTS (NON-DISCUSSION ITEM)

Chair Blank reported Sally Cooper will retire from the Orange County Sheriff's Harbor Patrol after more than 20 years of service. Ms. Cooper has always been friendly and helpful. The Championship of Champions will be held in Newport Harbor October 8-11. He attended the Council's Planning Session, where he received great feedback about the Harbor and learned that more resources may be provided to the Harbor Department.

Vice Chair Cunningham recommended the book *Newport Bay: A Pioneer History* and shared three copies with Commissioners. He gave a copy of *Between Two Harbors: Reflections of a Catalina Island Harbormaster* to Harbormaster Borsting.

Commissioner Yahn expressed condolences to Chair Blank for the passing of his mother.

Commissioner Kenney announced a stakeholder meeting has been scheduled for March 2 at 6:00 p.m. to discuss live-aboards in commercial marinas. Bayfront homeowners should be invited to the meeting.

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

In response to Commissioner Kenney's questions, Assistant City Manager Jacobs suggested the subcommittee meet with the City Attorney to discuss Council Member Muldoon's concern with Title 17. The subcommittee can make recommendations to the Harbor Commission, which will be a public meeting. Harbormaster Borsting will attend the court hearing for the *Wild Wave* on February 13. Harbormaster Borsting advised that the owner of *Dire Straits* likely will not utilize the vessel turn-in program. Staff has provided notice, and the first period of time for the owner to repair or remove the vessel has begun. Staff has observed the owner working on the vessel.

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

Commissioner Beer requested staff present a summary of outreach regarding the West Anchorage.

10) **DATE AND TIME FOR NEXT MEETING: Wednesday, March 11, 2020 at 6:30 p.m.**

Chair Blank moved to reschedule the March 11, 2020 meeting from 6:30 p.m. to 7:00 p.m. Commissioner Kenney 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: Vice Chair Cunningham

Abstaining: None

Absent: None

11) **ADJOURNMENT**

There being no further business to come before the Harbor Commission, the meeting was adjourned at 8:15 p.m.