

**NEWPORT BEACH HARBOR COMMISSION REGULAR MEETING MINUTES**  
**Council Chambers – 100 Civic Center Drive, Newport Beach, CA**  
**Wednesday, March 11, 2020**  
**7:00 PM**

**1) CALL MEETING TO ORDER**

The meeting was called to order at 7:00 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  
Chris Miller, Public Works Administrative Manager  
Matt Cosyion, Code Enforcement Supervisor  
Jennifer Biddle, Administrative Support Specialist

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

**4) PUBLIC COMMENTS**

None.

**5) APPROVAL OF MINUTES**

**1. Draft Minutes of February 12, 2020, Regular Meeting**

In response to Commissioner Marston's questions, Commissioner Kenney explained that the pile mentioned in the third paragraph on page 5 is a vertical steel pole located close to the public pier. It is believed that the pole is located within the property lines of the upland commercial property owner. The pole was placed at that location to protect one of the charter vessels operating from the Balboa Pavilion.

Jim Mosher understood the first sentence in the first paragraph on page 4 refers to the possibility that the discharge pipe may be located on the bottom of the Harbor. Similarly, the sentence about \$23 million in the 2020 work plan needs clarification.

Commissioner Scully moved to approve the draft Minutes of the February 12, 2020 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 Scully, Commissioner Yahn

**Nays:** None

**Abstaining:** None

**Absent:** None

**6) CURRENT BUSINESS**

**1. Review of Harbor and Beaches Master Plan Projects**

Staff will provide an overview of the 2020 Harbor and Beaches Master Plan Projects. The Harbor Commission is requested to review the plan and provide comments.

**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.

Public Works Administrative Manager Chris Miller reported the spreadsheet of projects guides the planning of projects and is used to inform annual budgets. These projects are larger in scale and typically are not routine maintenance work.

In response to Vice Chair Cunningham's questions, Public Works Administrative Manager Miller advised that the purchase of a work boat would not be included in the spreadsheet. If the Harbor Commission identifies a needed project, Commissioners should discuss it with him. Harbormaster Kurt Borsting added that funds are allocated annually to a sinking fund for the purchase of vessels.

In reply to Commissioner Yahn's inquiries, Public Works Administrative Manager Miller indicated external funding includes State and Federal grants and cost-sharing agreements. The City has received Federal funding for the dredging project and a grant for the water wheel. The Harbor Commission may suggest individual projects to the Council for funding or special attention.

In answer to Commissioner Beer's queries, Public Works Administrative Manager Miller explained that the start date may indicate the beginning of project design or permitting rather than construction. A consultant will likely assist staff with launching a program for public piers in 2020. The initial phase of work will be administrative. A project with a construction start date in 2019 should be in progress.

In response to Commissioner Kenney's questions, Public Works Administrative Manager Miller related that the bilge pumpout dock and oil collection center on line 7 should be an oil collection center only. Staff is looking at Balboa Yacht Basin for a bilge pumpout center and evaluating a system and options for makes and models of oil/water separators. Len Bose will be notified about work on the project. The City of Newport Beach will have the only bilge pumpout center in the state that is open to the public, unmanned, and open 24/7. Other harbors have controlled systems. Over the next two years, plans are to replace floats at 19<sup>th</sup> Street, Coral Avenue, Fernando Street, M Street, Opal Avenue, Park Avenue, Washington Street, 29<sup>th</sup> Street, Emerald Avenue, and Sapphire Avenue piers. He anticipated presenting some subtle design changes for many of the piers to the Harbor Commission. The Harbor Commission may study and suggest expansion and/or reconfiguration of public piers. Major dock maintenance at Balboa Yacht Basin will involve straightening and leveling fingers in 2021.

In reply to Commissioner Marston's inquiries, Public Works Administrative Manager Miller advised that item 39 for the Lower Castaways bulkhead is a reminder item in that replacement of the bulkhead will occur but not in 2022. The date should be further out. Staff is in the final stages of designing a replacement cap with a 75-year lifespan for the American Legion bulkhead. Before the 75-year period ends, the bulkhead should probably be replaced. He preferred not to delete item 61 because it should be included in planning for the future. Projects can be pushed out based on available funding. Many of the spreadsheet projects are included in the Capital Improvement Program (CIP).

In answer to Commissioner Scully's queries, Public Works Administrative Manager Miller explained that grant amounts in later years are guesstimates, but they represent opportunities for contributions or funding

for projects in the later years. The Finance Department is responsible for calculating the financial data for projects, such as debt service.

Chair Blank commented that years containing few capital expenditures usually indicate staff is planning projects. Panel 5 for expenditures by type extends to 2095 and includes all spreadsheet projects, but panels 1-4 extend to 2044-2046. In panel 6, the blue half of the chart, increment revenue, represents revenue above and beyond the amount of revenue mooring permittees, residential pier permittees, and commercial pier permittees paid in 2010. The funds can only be spent on Harbor-related matters. Perhaps the "sinking" fund could be referred to as a "replenishment" fund. Mr. Bose should cut the ribbon for a bilge collection system, if it is constructed.

Jim Mosher remarked that the debt service probably pertains to a loan from the General Fund to the Tidelands Fund. The CIP budget has not been finalized; therefore, the Harbor Commission could suggest revisions to the CIP budget. He questioned the zero amount for line items 22 and 27. He inquired about the possibility of external funding for replacement of bulkheads and seawalls in 20-30 years.

Public Works Administrative Manager Miller explained that sometimes a zero amount indicates an unknown amount because the spreadsheet requires a number value. Staff would seek grants for future projects. The City Manager has requested a five-year CIP plan; therefore, Staff has to narrow the list of projects to projects that can be funded in five years.

Commissioner Beer observed that some of the larger grant periods and expenditures can be associated with line items based on the years. In 2027-28, the projected expenditure summary totals \$30 million, but the corresponding line items total \$12 million.

## **2. Harbor Code Enforcement Program Presentation**

The Harbor Department is responsible for the management of the City's mooring fields, the Marina Park guest slips and providing quality customer service to harbor users and various stakeholder groups. Harbor Department staff are also tasked with maintaining the health, safety and charm of Newport Harbor through the enforcement of Newport Beach Municipal Code Title 17--Harbor Code regulations and applicable State and Federal laws. This report will update the Harbor Commission on harbor-related code enforcement activities since July 2018.

### **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.

Code Enforcement Supervisor Matt Cosylon reported the Code Enforcement Program focuses on education to obtain voluntary compliance and Council Policy, K-9. Since July 2018, staff has opened approximately 1,700 cases and issued 500 verbal warnings, 1,400 notices, 139 citations, and 3 mooring revocations. Staff has been auditing Marine Activities Permit (MAP) holders and businesses operating in the Harbor, identifying live-aboards, conducting enforcement at public docks, and abating derelict and abandoned vessels.

In reply to Commissioner Scully's question, Code Enforcement Supervisor Cosylon advised that staff compared lists of charter operators with the Revenue Division and found some charter operators were on one or the other lists. After contact with staff, the charter operators either paid passenger taxes due the City or obtained MAPs.

In response to Commissioner Beer's inquiry, Code Enforcement Supervisor Cosyion indicated the operator in question was loading six or fewer passengers from a commercial dock. Staff will continue to monitor the operator.

In answer to Commissioner Yahn's queries, Code Enforcement Supervisor Cosyion related that staff positions are part-time, and staff turnover is high. His is the only full-time position, and he is the only person who has been with the Harbor Department since 2018. Hiring for Code Enforcement positions is difficult. Collaboration between the Harbor Department and the Sheriff's Department has been fantastic. In a few instances, boaters or permittees have been angry, but staff has managed to diffuse conflicts without assistance.

In response to Vice Chair Cunningham's question, Code Enforcement Supervisor Cosyion was not aware of a company offering short-term lodging in the Harbor. Staff scans airbnb.com for short-term lodgings offered in the Harbor.

In reply to Commissioner Kenney's inquiries, Code Enforcement Supervisor Cosyion explained that the category of discharge pollution covers mechanical fluids leaking from vessels and trash being thrown into the water. He did not have an explanation for the higher number of paddleboard, kayak and pump-out incidents in January. Perhaps more people were on the water in January. Abandoned paddleboards are counted in the category as well.

Chair Blank noted six and eight revocations occurred during 2012 and 2013 respectively. Public education seems to be beneficial. In answer to Chair Blank's queries, Code Enforcement Supervisor Cosyion advised that he had no experience with boating prior to working with the Harbor Department. He is familiar with most boating terms.

Harbormaster Borsting commended Code Enforcement Supervisor Cosyion for his hard work and ability to collaborate with the public.

Jim Mosher suggested the six revocations Chair Blank mentioned were caused by failure to pay mooring fees, which is different than the cause for the revocations Code Enforcement Supervisor Cosyion mentioned. The Harbor is the only neighborhood in which code enforcement is proactive. Proactive enforcement in upland neighborhoods would probably result in an insurrection. At a recent Water Quality Committee meeting, he learned that the Water Quality Committee is not familiar with the statement that the Harbor's water quality is the best since the 1950s. The Water Quality Committee is proud that the water quality has improved over the past few years.

**3. Proposed Maximum Time Limit Zones—19th Street Public Dock**

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

To advance this objective, the Harbor Department is recommending reassignment of various sections of dock with the objective of improving overall utilization of the available dock space, consistent with the City's policy.

**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) Approve staff recommendation to reassign the proposed maximum allowable time period for vessels to occupy sections of the 19th Street Public Dock as shown on Attachment A.

Harbormaster Borsting reported demand for access to public docks is highest at the 19<sup>th</sup> Street and 15<sup>th</sup> Street Public Docks. At the 19<sup>th</sup> Street Public Dock, approximately 83 linear feet have a time limit of 20 minutes, 45 linear feet have a limit of 3 hours, and 88 linear feet have a limit of 72 hours. The 20-minute zone is under-utilized. Vessels can be stranded in the 72-hour and 3-hour zones during low tide. Staff recommends changing the time limit of the west side of the dock from 3 hours to 24 hours, the Bay side from 20 minutes to 3 hours, and 21 linear feet of the east side from 3 hours to 20 minutes. Currently, the Bay sides of all Public Docks limit access to 20 minutes. Because of a large dock located immediately west of the 19<sup>th</sup> Street Public Dock, the flow of traffic is not as pronounced at the 19<sup>th</sup> Street Dock as at other Public Docks. Increasing the time limit on the Bay side could increase usage of the Dock's Bay side. The addition of a 24-hour limit could accommodate live-aboards and businesses that provide services in the Harbor. Staff will monitor the new time zones, if approved, to ensure they are effective.

Chair Blank indicated the proposed configuration is consistent with a study conducted in 2014. Increasing the time limit on the Bay side of the Dock will allow boaters time to visit amenities and businesses around Newport Pier. The 20-minute area will work well for those who sail Monday nights at the American Legion.

In reply to Commissioner Kenney's inquiry, Harbormaster Borsting advised that discussions with users and evaluation of the number of cleats and/or tie-bars are needed. More tie-bars could be helpful, but too many could be a tripping hazard. Commissioner Kenney believed a tie-bar along the length of the upland side of the Dock would be appropriate.

In response to Commissioner Marston's query, Harbormaster Borsting related that the Harbor Commission changed the time limits for the 15<sup>th</sup> Street Public Dock in 2019. The changes and enforcement have resulted in some increased use of the 15<sup>th</sup> Street Public Dock. The Newport Mooring Association has suggested additional changes.

In answer to Commissioner Yahn's question, Harbormaster Borsting reported most vessels utilizing the Dock measure 14 feet and less because the maximum size for tenders in the mooring field is 14 feet. The proposed 3-hour zone does not have a limit on vessel size.

Jim Mosher remarked that aerial photos taken in 2012, 2014, 2016, and 2018 confirm Harbormaster Borsting's depiction of use of the dock. The City's and the Harbor Patrol's color coding for time limits may be different and confusing for boaters. He was puzzled by a substantive change included in the revisions to Title 17 that requires a special event permit to fasten a vessel pursuant to Section 25.10.

Chair Blank advised that the color coding for time limits is unique to the City of Newport Beach, and the City will likely not have an impact on the County's color coding.

Eric Linebach supported the proposed changes as he uses the 19<sup>th</sup> Street Public Dock often.

Commissioner Yahn moved to reassign the proposed maximum allowable time period for vessels to occupy sections of the 19<sup>th</sup> Street Public Dock as shown on Attachment A. Commissioner Kenney 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

#### 4. Harbor Commission 2020 Objectives

Each ad hoc committee studying their respective Functional Area within the Commission's 2020 Objectives will provide a progress update. The 2020 Objectives were approved by the City Council 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.

Functional Area 1: Commissioner Kenney reported the City Council approved the recommended changes to Title 17 and directed the ad hoc committee to review a provision allowing administrative approval of commercial dock encroachments in front of upland residential properties and the limit on the number of live-aboards allowed in commercial marinas. The ad hoc committee hopes to provide recommendations for commercial dock encroachments at the next Harbor Commission meeting. The ad hoc committee obtained good feedback about the limit on live-aboards in commercial marinas at a public meeting on March 2. A second public meeting has been scheduled for March 31. The ad hoc committee will recommend the creation of five categories for a MAP and will schedule a public meeting. The *Wild Wave* and *168* are no longer in the Harbor. The ad hoc committee for shore moorings met February 19, will meet again on March 16, and will likely schedule a public meeting thereafter.

Harbormaster Borsting advised that the *Dire Straits* is now operable, but more improvements are needed.

In response to Chair Blank's query, Commissioner Kenney stated he received feedback from one Commissioner regarding the MAP proposals. Harbormaster Borsting added that staff will submit their feedback as well.

Functional Area 2: Commissioner Beer indicated discussion is needed prior to submission of a revised footprint for the West Anchorage. Harbormaster Borsting clarified that public outreach is needed. Commissioner Beer related that an item regarding mooring extensions was removed from the Council agenda the prior day so that a meeting with the Newport Mooring Association can be held. Assistant City Manager Carol Jacobs advised that staff will not issue any mooring extensions until the policy is approved.

Functional Area 3: No report.

Functional Area 4: Commissioner Scully reported Harbormaster Borsting is communicating with businesses about obtaining MAPs. The ad hoc committee for the Harbor Attendance Study and staff have identified 158 Harbor stakeholders and related information. The ad hoc committee and staff will continue their work on the study.

In reply to Commissioner Yahn's query, Commissioner Scully indicated he would provide names of launch ramps at a later time.

Functional Area 5: Chair Blank advised that Assistant City Manager Jacobs and he have been updating Commissioner Scully to assume the lead for the Functional Area. Commissioner Marston indicated a meeting with the Parks, Beaches and Recreation (PB&R) Commission has been scheduled for March 30 regarding Lower Castaways. Assistant City Manager added that staff will meet with Harbor Commissioners and PB&R Commissioners separately prior to the two meeting jointly. The March 30 meeting is not subject to the Brown Act.

Jim Mosher did not believe the cost of appeals in Title 17 has been addressed correctly. The City has a policy of 100-percent cost recovery unless stated otherwise in Title 3 of the Municipal Code.

Chair Blank stated the setting of fees is not within the Harbor Commission's purview.

**4. Harbormaster Update – February 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 February 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 Borsting reported public information and outreach continues with appearances on "The Village Green," at the Association of Orange Coast Yacht Clubs, and in print news media. Staff is working with the Information Technology (IT) Department to create a 360-degree view of the Harbor to be used in online navigational resources. Recruitment for part-time staff continues. A Department Assistant began work with the Department on February 18, and a Harbor Service Worker was promoted to Harbor Service Worker Lead.

In answer to Chair Blank's question, Harbormaster Borsting related that the Department Assistant was an external hire.

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

Vice Chair Cunningham shared additional copies of the book *Newport Bay: A Pioneer History* and copies of a documentary about the history of the Harbor and George Rogers.

Commissioner Kenney announced the next stakeholder meeting for live-aboards in commercial marinas is March 31 at 6 p.m. at Marina Park.

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

In reply to Commissioner Yahn's inquiry, Assistant City Manager Jacobs reported the Finance Committee meeting is scheduled for March 12 at 3 p.m.

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

None.

**10) DATE AND TIME FOR NEXT MEETING: Wednesday, April 8, 2020 at 6:30 p.m.**

**11) ADJOURNMENT**

There being no further business to come before the Harbor Commission, the meeting was adjourned at 8:44 p.m.