

NEWPORT BEACH HARBOR COMMISSION REGULAR MEETING MINUTES
Hybrid Meeting (Zoom and In-Person), Newport Beach, CA
Wednesday, May 12, 2021
5 p.m.

1) CALL MEETING TO ORDER

The meeting was called to order at 5:03 p.m.

2) ROLL CALL

Commissioners: William Kenney, Jr., Chair
Scott Cunningham, Vice Chair
Ira Beer, Secretary
Marie Marston, Commissioner
Steve Scully, Commissioner
Gary Williams, Commissioner
Don Yahn, Commissioner

Staff Members: Carol Jacobs, Assistant City Manager
Paul Blank, Harbormaster
Chris Miller, Public Works Administrative Manager
Jennifer Biddle, Administrative Support Specialist

3) PLEDGE OF ALLEGIANCE – Harbormaster Paul Blank

4) PUBLIC COMMENTS

Steve Harder, property owner of 936 Via Lido Nord, announced his opposition to the floating dry dock that is being installed at 944 Via Lido Nord. He stated that the dock causes a navigational hazard.

Chair Kenney summarized that the Commission approved the reconstruction of the dock into a single finger and the Commission recommended, which is supported by City Council, that a vessel can extend up to 20-feet out into the water beyond the end of the dock.

Mr. Harder mentioned that the dock in question is 7-feet longer than neighboring docks. The homeowner was granted a variance but the homeowner tore down the house and he believed that the variance should have been eliminated once the house was removed. He concluded there is no other purpose for the dock other than to dock a boat.

Chair Kenney mentioned that there are several docks along the eastside of Lido Island that extend 7- feet beyond the pierhead line. The Commission's decision was based upon the current situation and that the original dock has approved plans from the City. He shared that staff will be providing an update on the matter later in the meeting.

Jim Mosher mentioned that the Harbor Commission website should be updated to reflect that the Commission is now recognized in the City's Charter as well as post the Commission's newly adopted By-Laws.

Charles Klobe welcomed Mr. Blank as the new Harbormaster.

[The Commission moved to Current Business]

5) APPROVAL OF MINUTES

1. Draft Minutes of the April 14, 2021 Harbor Commission Regular Meeting

In answer to Commissioner Marston's written comments, Vice Chair Cunningham explained that the project referenced on Page 6 had to do with removing materials from the harbor to a land disposal site. Chair Kenney agreed. Secretary Beer suggested changing the word "the" to "that" and Commissioner Marston agreed.

Chair Kenney noted that on Page 3 in line 4 of the first full paragraph, the reference to Section 17.05.040(d)2 should be changed to 17.050.140(d)2. Also, on Page 3 in line 5 of paragraph seven, Section 17.25 should be changed to 17.05 and on Page 4 in the 11th line from the bottom, the word "excepts" should be changed to "accepts".

Secretary Beer moved to approve the draft Minutes of the April 14, 2021 meeting with the proposed changes submitted by Secretary Beer and Commissioner Marston and Commissioner Kenney as amended. Commissioner Marston seconded the motion. The motion carried by the following roll call vote:

Ayes: Chair Kenney, Vice Chair Cunningham, Secretary Beer, Commissioner Marston, Commissioner Scully, Commissioner Williams, Commissioner Yahn

Nays: None

Abstaining: None

Absent: None

[The Commission moved back up to Public Comment]

6) CURRENT BUSINESS

1. **Caulerpa in Newport Harbor**

The invasive algae, *Caulerpa prolifera*, was recently found growing in the Entrance Channel area of Newport Harbor. Staff will provide an update to the Harbor Commission on the current efforts to eradicate the algae

Recommendation:

- 1) Determine this action is exempt from the California Environmental Quality Act (CEQA) pursuant to Sections 15060(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; and
- 2) Receive and file.

Public Works Administrative Manager Chris Miller shared that harbor staff has been surveying for *Caulerpa taxifolia* for over 20-years and has never found any in the harbor. *Caulerpa prolifera* is different than *Caulerpa taxifolia* and is sold for home aquariums. The algae is not harmful to humans but is harmful to the biology under the water for it smothers everything in its path. A Southern California Caulerpa Action Team has been established and comprises of many agencies including the California Department of Fish and Wildlife and the Regional Water Quality Control Board. The team is meeting daily to survey and find out how widespread the invasion is. The algae was found in the farthest northern end of the dredging footprint in the entrance channel, also known as China Cove, which caused the Army Corps of Engineers to begin dredging in the Balboa reach first. Staff has installed yellow signs at every entrance point in China Cove communicating that folks should not enter the space inside the buoy area. If the algae is disturbed, it can float away and begin to grow in a different area of the harbor. The ultimate goal of the action team is to eradicate the algae by vacuuming the material out of the area and to have the algae contained as quickly as possible. The cost for eradication is large and will result in many follow-up surveys in future years. The team is pursuing funding mechanisms from the state and other agencies to help fund the clean-up.

In response to Vice Chair Cunningham's questions regarding the distance between the federal navigational channel and the contaminated area and silt curtains, Public Works Administrative Manager Miller noted that the federal navigational channel cuts through a small portion of the contaminated area. It has been discussed to not dredge that overlapping area. Regarding silt curtains, Public Works Administrative Manager Miller mentioned that the action team has not refined the plan to that level of detail, but he agreed that using silt curtains is a good idea.

In reply to Secretary Beer's inquiries regarding cost, funding sources and how the algae got into the harbor, Public Works Administrative Manager Miller stated that the cost is contingent on many factors but estimated it will be under \$200,000 for just the eradication stage. He restated that the team is exploring state and other agency funding. He guessed that the algae was introduced into the harbor by someone cleaning out their aquarium.

In answer to Commissioner Marston's questions regarding monitoring the contaminated site and dredging in the area, Public Works Administrative Manager Miller mentioned that staff reached out to the homeowners and requested they report violators inside the buoy area to harbor staff. In terms of dredging, he mentioned that if eradication happens before the dredging project is complete, he hopes that the Army Corps of Engineers will dredge the overlapping area. Commissioner Marston commented that it would be a shame if the timing did not work out and the entire footprint is not dredged.

In response to Commissioner Scully's questions how will the contaminated material be removed and what testing done in the nearby storm drain, Public Works Administrative Manager Miller explained that the material will be placed in a large permeable bag and then disposed of in a landfill. He stated that testing will be done to the storm drain where the *Caulerpa* could have entered the harbor, but that testing will happen after the algae has been removed from the harbor.

In reply to Commissioner Williams's query how quickly does the algae spread, Public Works Administrative Manager Miller mentioned that if it is left undisturbed, it would spread as fast as normal plant growth.

In answer to Commissioner Yahn's inquiries how staff found out about the algae and are there potential undiscovered contaminated areas, Public Works Administrative Manager Miller shared that a videographer filmed it and it was identified by someone who shared the finding with harbor staff. He answered that extensive surveys are being done of surrounding areas and once the algae is eradicated, follow-up surveys will happen.

Chair Kenney advised staff to post a staff member near the site to make sure there is no disturbance to the site. Public Works Administrative Manager Miller agreed but mentioned that having a lifeguard stationed there is not feasible.

Brent Mardian shared that the City of San Diego has a ban on all sales of *Caulerpa* types and suggested that the City implement a similar ban.

2. Council Policy H-1-Harbor Commission Review of Proposed Changes

As a result of recent applications for dock extensions and reconfigurations brought before the City Council, the City Council raised a concern regarding the inability of the Harbor Commission to resolve applications. The City Council requested the Harbor Commission review the policy. The Harbor Commission established a subcommittee at the February 10, 2021 Harbor Commission meeting, to review City Council Policy H-1, Harbor Permit Policy, 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 adopted in 2020 and to make recommendations to the City Council regarding any proposed revisions thereto.

Recommendation:

- 1) Determine that the project is 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, because it will not result in a physical change to the environment, directly or indirectly; and
- 2) Review, modify and or approve proposed changes to Council Policy H-1 and forward the recommendations to the City Council for consideration.

Commissioner Williams briefly summarized the recommendations and language changes that the ad hoc committee made to the policy.

Vice Chair Cunningham commented that the City's H-1 Policy used to be more robust and it was thinned out per Council's direction. In answer to Vice Chair Cunningham's query how many pages was the H-1 Policy 3-years ago, Harbormaster Blank answered it was 97 pages. Vice Chair Cunningham shared that the previous H-1 Policy allowed staff to approve applications without coming to the Commission. He summarized that any application that requests to have a float extend beyond the pierhead line will come before the Commission. Harbormaster Blank clarified that any application that requests to extend beyond the pierhead line, that does not have a permit currently, and is not being replaced like-for-like will come before the Harbor Commission. The Harbormaster or staff will have the authority to approve requests for an existing permitted reconstruction that is a like-for-like replacement. In answer to his inquiry how many docks currently extend beyond the pierhead line and will the new policy reduce the number of hearings, Public Works Administrative Manager Miller answered approximately 25 percent of the harbor contains floats that extend beyond the pierhead line. Vice Chair Cunningham remarked that with a slimmed-down version of the policy, the Commission will continue to be burdened with applications that should be approved by staff.

In reply to Secretary Beer's understanding that an application that meets all required conditions can be approved by staff and will not require Harbor Commission review, Harbormaster Blank answered that if the float is not permitted and code enforcement has not written a citation for the float, then the application will come before the Commission for review. Secretary Beer indicated that there are circumstances that reasonably warrant allowing a float to extend past the pierhead line and the newly proposed H-1 Policy ties the hands of the Commission to allow those circumstances to happen.

Chair Kenney agrees with Vice Chair Cunningham's comment that the policy should be more robust and he agrees with Secretary Beer that the newly proposed H-1 Policy ties the Commission's hands in the same way that the prior Council Policy H-1 did. He recommended that in paragraph five, line three, the words, "determined that all of the following conditions are met" should be removed and replaced with "by taking the following conditions into consideration". For condition four, he recommended that the words "whichever is greater" be changed to "whichever is lesser". Also, add the language "including updates required to conform to current codes and building standards" to the final paragraph. He believed those changes will provide more flexibility for the Commission and staff.

In answer to Vice Chair Cunningham's query did the subcommittee review the 2018 policy, Harbormaster Blank confirmed that the revision recommended to City Council in 2018 was a result of Council's direction to reduce the policy. Public Works Administrative Manager Miller confirmed that the previous policy identified the areas where floats are allowed to extend beyond the pierhead line as well as addressed areas where there are no pierhead line. Vice Chair Cunningham recommended that the ad hoc committee review the previous policy and see if any information from that policy can be adopted into the newly proposed policy.

Secretary Beer believes that the newly proposed policy does allow staff to make those decisions, but he agrees that the ad hoc committee should review the previous policy.

Commissioner Marston agrees that the ad hoc committee should review both policies. In terms of Chair Kenney's recommendation for condition four, she commented that with the change to lesser instead of greater, there would still be applications that the Commission could not make a ruling on. Chair Kenney restated that his intent to change condition four is to address the project line and limit situations that go beyond the project line. Commissioner Marston mentioned she is concerned about the word "all" on the first page in the fourth paragraph. Chair Kenney agreed and that is why he recommends changing it to "by taking the following conditions into consideration". Commissioner Marston mentioned that condition 5D is very vague and she is not sure who makes the determination that a negative impact is occurring to an adjacent property owner.

Commissioner Scully agrees that the ad hoc committee should reevaluate the two policies.

Commissioner Williams and Commissioner Yahn agreed to review the previous policy and bring the policy back to the Commission at a future meeting.

Jim Mosher mentioned that the Council Member who requested that the policy be reduced had expressed that he felt that it was a mistake that any float be allowed to extend beyond the pierhead line because it delineated the boundary between semi-private and public waterway. He shared that the Commission does have flexibility in approving or denying an application with condition five. He did not support Chair Kenney's proposed change to condition two and he suggested that the condition be revised to say "that the existing encroachment is in substantial compliance with a valid City-used permit as determined or to the satisfaction of the Harbor Commission".

Chair Kenney requested that Mr. Mosher submit his comments to the Commission in writing. He recalled that the policy was sent back to the Commission because in the Council's opinion, the Commission did not have flexibility.

2. Harbor Commission 2021 Objectives and Ad Hoc Reports

Each ad hoc committee studying their respective Functional Area within the Commission's 2021 Objectives, will provide a progress update.

Recommendation:

- 1) Find this action exempt from the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment) and 15060(c)(3) (the activity is not a project as defined in Section 15378) of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, because it has no potential for resulting in physical change to the environment, directly or indirectly; and
- 2) Receive and file.

Functional Area 1: Chair Kenney shared that Objective 1.1 and Objective 1.2 will be reviewed later in the year and a determination will be made at that time. With respect to Objective 1.3, Mooring Permit forms are being distributed to permittees and the Commission will revise the objective once feedback has been received. With respect to Objective 1.4, the ad hoc committee will be reviewing the [Permit Transfer for Permit](#)-Policy soon. With respect to Objective 1.5, the ad hoc committee has provided input on the scope of work for the appraisal to staff.

Functional Area 2: Secretary Beer mentioned that the temporary west anchorage will be installed at the end of the month. With respect to Objective 2.4, Commissioner Scully noted that Vice Chair Cunningham and himself discussed with Balboa Island Improvement Association about addressing several items including derelict boats on moorings, limited public dock space, beam specification for shore moorings and other items. Vice Chair Cunningham added that the idea is to draft a 25-year plan for shore moorings and the reason to engage Balboa Island Improvement Association is because 74 percent of the shore moorings in the harbor are on Balboa Island. Secretary Beer addressed Objective 2.5 and shared that the Multiple Vessel Mooring Systems (MVMS) will be trialed after Objective 2.3 is resolved. Commissioner Marston commented that in terms of Objective 2.6, a group from the Outrigger Canoe Club performed a beach cleanup on the south ramp and a new ramp has been fabricated to be installed there.

Functional Area 3: Commissioner Cunningham reported that with respect to Objective 3.1, RGP54 has been renewed by two of the agencies with the ad hoc committee working with the third agency, the Coastal Commission, and he expected that the objective to be closed by the end of the year. With respect to Objective 3.2, he suggested that the objective be combined with the objective regarding shore moorings. With respect to Objective 3.3, the Draft Environmental Impact Report (DEIR) will be presented to City Council on May 25, 2021. With respect to Objective 3.4, he shared that University of California, Irvine (UCI) are conducting a study on putting fine grains off the nearshore and what will happen to it. He plans to reach out to them for more information regarding their study.

Functional Area 4: Commissioner Scully reported that with respect to Objective 4.1, the overall Marine Activity Permit (MAP) effort is going very well with 47 completed permits and 13 permits in progress. He requested that an update be agendized from Mr. Cosylyon on the progress and an overall discussion regarding MAPs. With respect to Objectives 4.2 and 4.3, a process has begun to build a database that identifies charter fleets and other commercial operators in the harbor. He advised the Commission to think

long-term about how to communicate with harbor stakeholders as well as how to move to a living database where all parties have access to it.

4. Harbormaster Update – April 2021 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 April 2021.

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 Blank commended Secretary Beer for working with the US Coast Guard on the west Lido Channel temporary anchorage. The temporary anchorage was approved on April 23, 2021, and is available for use between May 21, 2021, to September 7, 2021. The temporary permit included two required provisions. One is an additional permit for the markers themselves, which is in progress and the other is filing a notice with Local Notice to Mariners which has been confirmed. The Dye Tab Program continues to be successful. Vessels are notified beforehand that Code Enforcement will be coming aboard to conduct a dye tab test and any vessels who do not have a secure marine sanitization device are required to leave the harbor immediately. Two vessels were acquired through the Vessel Turn in Program (VTIP) in April. There is a waiting list of folks who wish to turn in their vessels within the harbor as well as outside of the harbor. Staff expects there to be grant funding to remove an additional 20 vessels and staff has begun the process of applying for additional funds. Code Enforcement visited every commercial marina in the harbor to look for multiple vessel ~~birthing-berthing~~ situations which is not allowed in the harbor. There was a significant number of violations to which Code Enforcement addressed. Also, through a grant, the City is in the process of replacing all five of the City-maintained pump out stations. The new pumps are larger and include a particle separator which will reduce the amount of maintenance the pumps need when they are misused.

In response to Secretary Beer's query if the list of vessels to be destroyed is published for the public to see and does multiple vessel ~~birthing-berthing~~ violations apply to a tender, Harbormaster Blank announced that there is a list within the Harbor Department but there is personal information on the list that the Harbor Department are not permitted to release to the public. He did not believe that a situation involving a tender would receive a violation for multiple ~~birthing-berthing~~.

In answer to Chair Kenney's question could a vessel that is acquired by the City through VTIP be put up for sale instead of salvaged, Assistant City Manager Carol Jacobs answered that most of the vessels are not worth much or they are not seaworthy and may end up back in the harbor. For these reasons, it is best practice that the City destroy them.

In reply to Commissioner Scully's query will the temporary anchorage be advertised and what happens next if multiple vessel violators are visited by Code Enforcement twice, Harbormaster Blank restated that there will be notice in the Local Notice to Mariners for the temporary west anchorage. Also, there was mention of the temporary west anchorage at a City Council meeting. He explained that Code Enforcement are taking an educational approach to multiple ~~birthing-berthing~~ situations and he suspects that there will be no citations if Code Enforcement has to visit a second time.

Chair Kenney suggested that the City's Public Information Office post a small advertisement about the temporary west anchorage. Harbormaster Blank recommended that be done after the City receives the permits for the markers.

In response to Commissioner Yahn's query regarding large yachts and the temporary west anchorage field, Harbormaster Blank understood that as drawn currently, the approved temporary west anchorage shares

a borderline with the area that is used for large vessels. He suspected that large yacht owners will not house their vessels in the area while the temporary anchorage is in place.

Chair Kenney confirmed that there is room for both small and large vessels.

Len Bose advised Harbormaster Blank to investigate the lighting in the upper bay as well as the shallow marker in the area that is north of De Anza Bayside Village. He predicted that there will be an issue regarding who will be requesting California Boating Cards from folks.

Chair Kenney mentioned that there used to be a shoal marker near the launch ramp by De Anza Bayside Village near Shellmaker Island but suggested that Harbormaster Blank investigate that further.

Secretary Beer commented that Vice Chair Cunningham and himself are going to investigate the depth in that area and invited Harbormaster Blank to join them.

In reply to Vice Chair Cunningham's inquiry are there depth gauges on the harbor boats, Harbormaster Blank mentioned that one vessel (HM1) does not have a depth gauge.

7) COMMISSIONER ANNOUNCEMENTS (NON-DISCUSSION ITEM)

Secretary Beer provided an update on alternative methods of disposing unsuitable materials in the harbor. There were several discussions between the ad hoc committee and interested stakeholders, but no specifics were discussed regarding alternative methods of disposal. The ad hoc committee had a discussion with a hydro engineer, who was hired by Mr. Palmer Luckey, who is very knowledgeable regarding regulatory approvals, Environmental Impact Reports, Confined Aquatic Disposal (CAD) sites, and Confined Disposal Facilities (CDF). The engineer mentioned he will be providing to the ad hoc committee detailed information for alternative methods of disposal which will run in parallel with the existing draft EIR.

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

In answer to Vice Chair Cunningham's request for an update on Mooring Permits, Ms. Jacobs explained that there have been technical issues and only 22 Mooring Permits have been issued. The software does not distinguish if there are two permittees on a Mooring Permit which has caused a delay. In reply to Vice Chair Cunningham's question would the process be quicker if it were done manually on paper, Ms. Jacobs mentioned that the pace would be the same. She explained that transfers are done manually on paper. Vice Chair Cunningham commented that within a couple of years the permits will need to be updated again and all the work being done now may be beneficial. In answer to his question if the City has picked an appraiser for the moorings, Ms. Jacobs mentioned that the Request For Proposal (RFP) period has not closed.

In answer to Secretary Beer's query has the City received any Mooring Permits back from the 22 that were sent out, Ms. Jacobs answered 10 have been received but due to reduced staffing, they have not been processed.

In reply to Chair Kenney's request for an update on 940 Via Lido Soud and if the matter has been reviewed by the City's legal department, Harbormaster Blank reported that Code Enforcement staff are exploring various options and there are active discussions with the permittee. The City Attorney's office has been consulted but they have not provided any information on what course of action should be taken. In answer to Chair Kenney's question would it be beneficial for Harbor Department staff to be trained and certified to issue citations, Ms. Jacobs noted that there are folks who want to be Harbor Service Workers only and do not want to issue citations. Harbormaster Blank recommended that the City continue to have a separation between service staff and Code Enforcement staff.

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

Chair Kenney suggested an update from the ad hoc committee on alternative methods for disposing contaminated materials. He recommended that ad hoc committee reports be separate from harbor objectives reports on future agendas.

Commissioner Scully requested an update from Matt Cosyion on MAP and shore registrations.

10) **DATE AND TIME FOR NEXT MEETING: Wednesday, June 9, 2021 at 5 p.m.**

11) **ADJOURNMENT**

There being no further business to come before the Harbor Commission, the meeting was adjourned at 7:10 p.m.

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