

NEWPORT BEACH HARBOR COMMISSION REGULAR MEETING MINUTES
City Council Chambers - 100 Civic Center Drive, Newport Beach, CA
Wednesday, August 11, 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
Ira Beer, Vice Chair - zoom
Steve Scully, Secretary
Scott Cunningham, Commissioner
Marie Marston, Commissioner
Gary Williams, Commissioner - excused
Don Yahn, Commissioner

Staff Members: Carol Jacobs, Assistant City Manager
Paul Blank, Harbormaster
John Kappeler, Senior Civil Engineer
Mariah Stinson, Administrative Support Specialist

3) PLEDGE OF ALLEGIANCE – Secretary Scully

4) PUBLIC COMMENTS

Len Bose mentioned that the Newport Marina is going through a remodel and he has to find a slip for his boat for a few months. He asked if any of the Commissioners know of a slip that is for rent that he can use. He acknowledged that finding a transferable slip is difficult in the Harbor and encouraged the Commission to explore a multi-vessel mooring system.

Chair Kenney informed Mr. Bose that the Commission is currently working on a multi-vessel mooring system and encouraged him to participate in upcoming stakeholder meetings.

5) PRESENTATION

1. City of Newport Beach Marine Sanitation and Vessel Pumpout Program

Senior Civil Engineer John Kappeler reported that currently, the City has five public pumpout stations. Two are located at the 15th Street public dock, one at Fernando Street, Washington Street and Balboa Yacht Basin. There are also several private pumpout stations available to the public as well as mobile pumpout services. The five City-owned stations are on a 7-year replacement cycle and a grant from the state provides 80 percent of the funding for replacement cost. The City spends approximately \$30,000 per year on maintenance for the pumpout stations. To enhance the operation ~~facilitate more usage~~ of the Fernando and Washington Street pumpout stations, staff has moved the pumps from their original locations to the floating docks. Residents (Residents or boaters??) have shared that the new location is working much better and the stations are being used more frequently. Due to the amount of usage that the pumps see, the pumps often break or become damaged by small objects. A filter that was designed by a local resident has been installed on several of the pumps and has been successful in capturing debris before it can cause any damage.

In answer to Secretary Scully's question regarding who owns the pumpout station at the Sheriff's Department on the Harbor, Senior Civil Engineer Kappeler answered the County of Orange.

George Hylkema explained his particle separator which is the filter he designed to catch debris that may enter into a pumpout station.

Senior Civil Engineer Kappeler remarked that all City-owned pumpout stations have been replaced or upgraded. The next steps include updating the Harbor Map on where the pumpout stations are located, increase signage, and draft a long-term maintenance plan for all of the stations.

In response to Secretary Scully's ask question regarding the amount of debris collected by the filter, Senior Civil Engineer Kappeler shared that the station at 15th Street collects the majority of the debris ~~at an ounce or two~~ (not sure what this should say) per maintenance inspection.

In reply to Chair Kenney's queries regarding if the pumps can pumpout greywater and hazardous material at the pumpout stations, Senior Civil Engineer Kappeler indicated that the pumpout stations can pump out greywater. The City does have a used oil drop-off station at Balboa Yacht Basin and staff continues to explore other possible locations for another hazardous material station.

Senior Civil Engineer Kappeler shared a short video about the pumpout stations in the Harbor.

Brent Mardian appreciated Mr. Hylkema's design and suggested placing a magnet at the bottom to catch even smaller items. In answer to his ask question regarding if the City has explored not allowing bilge water to enter the sewer system, Senior Civil Engineer Kappeler explained that staff is exploring a pumpout system that has a holding tank.

In answer to Chair Kenney's inquiries regarding copper total maximum daily load (TMDL) and the trash wheel, Senior Civil Engineer Kappeler reported that the Santa Ana Regional Quality Control Board will be discussing possible adoption of a TMDL for copper in the water column and in the sediments in Newport Bay at their September 17, 2021 meeting. Staff has several concerns about adopting a TMDL and will be present at the meeting to discuss those concerns. In terms of the trash wheel, the design phase is 75 percent complete, the project is fully funded, and staff is almost ready to submit permit packages to the various agencies. He predicted that construction will begin in the spring of 2023.

6) APPROVAL OF MINUTES

1. **Draft Minutes of July 14, 2021 Harbor Commission Regular Meeting**

Secretary Scully announced that Commissioner Marston and himself submitted comments to staff regarding the minutes. Chair Kenney disclosed that he did not receive those comments.

Assistant City Manager Carol Jacobs suggested that the Commission table the item until the next meeting so that staff can make the changes to the minutes as suggested by Secretary Scully and Commissioner Marston.

7) CURRENT BUSINESS

1. **Ad Hoc Committee Updates**

Several ad hoc committees have been established to address short term projects outside of the 2021 Harbor Commission objectives. The ad hoc committees will provide an update on their projects.

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.

Commissioner Marston disclosed that there is no update from the Ad Hoc Committee for floats attached to piers and docks.

Chair Kenney referenced the comment made by Mr. Mosher at the last meeting regarding the definition of "vessel" from Title 17. The definition references hulled structures and he believed that the floating docks that have engines are not considered a hulled structure. For this reason, he suggested that the Ad Hoc Committee meet with City staff and hold a public stakeholder meeting to discuss docks with engines.

Vice Chair Beer reported that the Ad Hoc Committee responsible for exploring alternative methods of disposing dredged materials has received two proposals. The proposals include three possible locations for a land-based Confined Disposal Facility (CDF). The proposals were provided by Mr. ~~Palmer~~ **Luckey** and his team. After staff and the Ad Hoc Committee have vetted the proposals, the Ad Hoc Committee will bring the proposals to the Commission.

Commissioner Cunningham reported that the Ad Hoc Committee working on affordable access to boating has refined their objective to explore boat storage only. The Ad Hoc Committee discovered that the Harbor's mooring fields are the most cost competitive form of storage. Next steps include exploring how the public acquires access to storage in other California harbors.

In answer to Chair Kenney's question regarding if the name of the Ad Hoc Committee needs to be changed to reflect that boat storage is the main objective, Commissioner Cunningham replied yes. The Ad Hoc Committee agreed to work on a new name and will bring forward suggestions at the next Commission meeting.

2. Harbor Commission 2020 Objectives

Each ad hoc committee studying their respective Functional Area, within the Commission's 2020 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 announced that Objective 1.1 will be revisited later in the year to determine if further changes need to be made to Title 17. With respect to Objective 1.2, he announced that he will be meeting with staff to conduct the annual review. With respect to Objective 1.3, staff will be providing a status update on the distribution of the new Mooring Permits. He suggested that Vice Chair Beer, Commissioner Cunningham and himself meet with staff once all new Mooring Permits have been issued. With respect to Objective 1.4, the objective has been delayed and will begin again in September of 2021. With respect to Objective 1.5, an appraiser has been selected and staff is issuing a Notice to Proceed. Staff anticipates that the appraisal will take 6-weeks.

Functional Area 2: Secretary Scully reported that with respect to Objective 2.1, the City of San Diego has been trying different methods to improve its Harbor. One project the City of San Diego is doing is cleaning up its lakes, rivers and harbors of specific toxins. He encouraged staff to investigate San Diego's project and see if it can help dredge smaller areas around the Harbor that may contain toxins. Vice Chair Beer acknowledged that Harbormaster Blank may have further updates regarding Objective 2.2 and the west anchorage. With respect to Objective 2.3, a more detailed update will be ready for the next meeting. With respect to Objective 2.4, Commissioner Cunningham announced that the Ad Hoc Committee has settled on a vessel specification beam of 8-feet but the Ad Hoc Committees is waiting for further feedback from stakeholders on adequate spacing between moorings. He predicted that as discussions continue with the Balboa Island Improvement Association (BIIA), more feedback

will become available. With respect to Objective 2.5, Vice Chair Beer announced that a contracted engineering firm has drafted the standards and specifications for a multi-vessel mooring system. The Ad Hoc Committee and City staff reviewed the draft and provided comments. He predicted the drafts will be presented to the Commission at the October 2021 meeting. Commissioner Marston reported that the Outrigger Club has built a ramp at Lower Castaways Park and has arranged to have sand brought into the area. Now the Outrigger Club will focus on improving the launch area.

In answer to Vice Chair Beer's questions regarding how extensive is Lower Castaways Park used and how critical is it to keep that type of access at the park, Commissioner Marston acknowledged that Lower Castaways Park is well used. She recommended that a best use study happen for the entire site to determine longer-term improvements.

Functional Area 3: Commissioner Cunningham reported with respect to Objective 3.1, the permits have been renewed for RGP54 with the U.S Army Corps of Engineers (USACE) and the Water Board. Work continues on renewing the permit with the Coastal Commission. With respect to Objective 3.2, he noted that the waterway between the federal pierhead line and the City pierhead line on Balboa Island is a space where shore moorings may be housed. The Ad Hoc Committee will continue to work with the BIIA on possible Harbor enhancements that can use the space. With respect to Objective 3.2, staff continues to seek additional funds from various agencies to fund the dredging project. With respect to Objective 3.4, once the Harbor is dredged, more focus will be applied on how to maintain the Harbor moving forward.

Functional Area 4: Secretary Scully reported with respect to Objective 4.1, staff continues to move forward with the Marine Activity Permits and making sure all businesses on the Harbor have one. With respect to Objective 4.2, Commissioner Marston and himself have discussed various ways of how to communicate with stakeholders. The database of all the businesses in and near the Harbor has been completed by the Geographic Information System (GIS) team. The GIS team will explore incorporating MAP registrations as well as Small Harbor Operation Registrations (SHORs) into the database. With respect to Objective 4.3, Commissioner Williams and himself have reached out to multiple harbor stakeholders and asked questions about their businesses. Specific questions included the MAP process, speeding in the Harbor, noise, human-powered vessels, rental boat safety, pollution control, best practices and parking.

Chair Kenney shared that Americas Cup Harbor in San Diego used to house several shipyards that used "ways" and everything that was on the bottom of the boat was scraped off into the bay which caused a large toxicity problem. With that said, he is excited about San Diego's ecoSPEARS pilot program of cleaning toxins out of the bay. Secretary Scully acknowledged that the company is very new but believed there may be an opportunity to use them in the Harbor.

Chair Kenney noted that with respect to Objective 2.4, many on-shore moorings have floats attached to them. He suggested that an 8-foot beam restriction be applied to all structures attached to an on-shore mooring. With respect to Lower Castaways Park, he agreed that the area is very heavily used.

Brent Mardian expressed that Newport Harbor is not alone in its contamination issues. He noted the downside to treatment as opposed to removal of toxins is that treatment does not address depth issues.

3. Harbormaster Update – July 2021 Activities

The Harbormaster is responsible for the management of the City's mooring fields, the Marina Park Guest Marina, a variety of Harbor activities and Harbor on-the-water City code enforcement. This report will update the Commission on the Harbor Department's activities for July 2021.

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.

Harbormaster Paul Blank reported that the west anchorage will be available to the public until September 31, 2021. In September of 2021, staff will apply to have the temporary permit extended for another 6-months. Staff continues to work with the USACE to have the west anchorage become designated as a permanent anchorage. Three large vessels applied for a permit to use the west anchorage in July. Concerns were raised that one of the large vessels is a charter vessel but after exploration, staff discovered that the vessel was not being used as a charter vessel while in Newport Harbor. Discussions continue about placing lights on the navigational buoys throughout the Harbor. The Orange County Sheriff's Department has agreed to move the buoy located in the upper bay shoal to a more obvious location. In July, nine vessels were removed via the Vessel Turn-In Program (VTIP). With respect to the status of marine-related services in the Harbor, Title Marine has entered into a contract with the City of Newport Beach to provide mooring maintenance services to the City as well as individual permittees. The City has entered into a contract with Spectrum Facilities who will be performing public pier and dock cleaning as well as light maintenance. Also, the City has contracted with Swift Slip to perform public pier and dock maintenance and repair. With respect to the recruitment of staff members, one full-time permit technician, one code enforcement officer and five harbor services employees have been hired. All new hires will participate in training and CPR certification. A successful water rescue was performed where Harbor staff rescued a father and child who fell off their paddleboard in the path of an oncoming ferry. The New York Times wrote an article about boat safety that headlined the incident. Code enforcement continues to focus on non-permitted charter vessels and businesses in the Harbor. With respect to the revisions to Policy H-1, those revisions will be presented to the City Council on August 24, 2021 on the consent calendar. Lastly, in February of 2021, a Notice of Violation was sent to a specific mooring permittee for unsanitary conditions on their vessel. The permittee acknowledged the Notice of Violation but did not clean up the vessel. Staff issued an additional Notice of Violation and administered fines to the permittee who later appealed them. A hearing was held and the notices and fines were upheld.

In reply to Vice Chair Beer's questions regarding administrative fees and how the amounts for those fees are determined, Harbormaster Blank shared for the unsanitary vessel the fee was \$100. For the unpermitted charter operator who continued to operate after receiving a Notice of Violation, the fine was \$1,000. He shared that fines start at \$100, then move to \$200, \$500, and \$1,000 for continuous offenders. Staff has the discretion to issue the amount they feel is appropriate for the offense. Vice Chair Beer commended Harbormaster Blank and code enforcement on their work for MAP enforcement.

Commissioner Yahn recommended that the Commissioners working on the revisions to Title 17 meet with Harbormaster Blank to discuss increasing fines. Harbormaster Blank agreed to have a discussion but mentioned that any changes to fines would have to be vetted with the Revenue Division and be approved by City Council. In response to Commissioner Yahn's [ask question](#) regarding if the credentials of the captain of a MAP operator is investigated, Harbormaster Blank reported that a MAP is not issued unless the company has a licensed captain.

Chair Kenney shared that when he tours the Harbor, he notices more and more charter vessels. In reply to his [ask question](#) regarding extending the temporary permit for the west anchorage, Harbormaster Blank noted that nothing has been raised at this time that will hinder the renewal of the permit. Chair Kenney believed that the City winning the appeal for the unsanitary vessel will send a message to other mooring permittees that the City's codes and violations will be upheld.

Commissioner Marston indicated that children under 14 must wear life jackets. In answer to her question regarding if fines were issued in the rescue incident, Harbormaster Blank reported that the 1- to 2-year old child was wearing a life jacket. Upon arrival at the scene, the harbor service employee believed that the child was drowning and that the floatation device may not have been fitted properly. He confirmed that it is a requirement that all persons on any vessels, including paddleboards, have a personal floatation device. Any person under the age of 13 must be wearing a floatation device unless they are in a closed cabin. He shared that harbor service employees are not authorized to issue citations. Due to adrenaline, the harbor service employee in question may have forgotten to report any violations to code enforcement.

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

None.

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

Chair Kenney requested that staff provide an update on the issuance of permits for on and off-shore moorings. Assistant City Manager Jacobs reported that all 929 permits have been sent out, 353 permits are in process and 385 permits have been completed and signed. Staff continues to work with permittees and collect the appropriate information from them.

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

Secretary Scully recommended agendaizing a discussion on forming an Ad Hoc Committee to discuss objectives for the 2022 calendar year. Also, to receive an update on the work that is being done to the jetty.

Chair Kenney suggested an update on the dredging project happening in the Harbor as well as the containment of *Caulerpa Prolifera*.

11) **DATE AND TIME FOR NEXT MEETING: Wednesday, September 8, 2021 at 5 p.m.**

12) **ADJOURNMENT**

There being no further business to come before the Harbor Commission, the meeting was adjourned at 7:11 p.m.