

ATTACHMENT A

RESOLUTION NO. 2021-74

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF NEWPORT BEACH, CALIFORNIA, AMENDING AND RENAMING CITY COUNCIL POLICY H-1, "THE HARBOR PERMIT POLICY"

WHEREAS, the City of Newport Beach ("City") is governed, in part, by the Charter of the City of Newport Beach, Newport Beach Municipal Code, and adopted City Council Policies;

WHEREAS, at the July 14, 2021 Harbor Commission meeting, the Harbor Commission, by a majority vote (5 ayes, 0 nays), recommended the City Council approve an amendment to City Council Policy H-1, to provide clarity and greater direction; and

WHEREAS, the City Council desires to revise City Council Policy H-1.

NOW, THEREFORE, the City Council of the City of Newport Beach resolves as follows:

Section 1: The City Council hereby adopts an amended Council Policy H-1, formerly known as the Harbor Permit Policy, which is attached hereto as Exhibit "A," and incorporated herein by reference.

Section 2: All prior versions of Council Policy H-1 that conflict with the revisions adopted by this resolution are hereby repealed.

Section 3: If any section, subsection, sentence, clause or phrase of this resolution is, for any reason, held to be invalid or unconstitutional, such decision shall not affect the validity or constitutionality of the remaining portions of this resolution. The City Council hereby declares that it would have passed this resolution, and each section, subsection, sentence, clause or phrase hereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared invalid or unconstitutional.

Section 4: The recitals provided in this resolution are true and correct and are incorporated into the substantive portion of this resolution.

Section 5: Except as expressly modified in this resolution, all other City Council Policies, sections, subsections, terms, clauses and phrases set forth in the Council Policy Manual shall remain unchanged and shall be in full force and effect.

Section 6: The City Council finds the adoption of this resolution and the amendment of City Council Policy H-1 is not subject to 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, Division 6, Chapter 3, because it has no potential for resulting in physical change to the environment, directly or indirectly.

Section 7: This resolution shall take effect immediately upon its adoption by the City Council, and the City Clerk shall certify the vote adopting the resolution.

ADOPTED this 14th day of September, 2021.

Brad Avery
Mayor

ATTEST:

Leilani I. Brown
City Clerk

APPROVED AS TO FORM:
CITY ATTORNEY'S OFFICE



Aaron C. Harp
City Attorney

Attachment: Exhibit A – Amended City Council Policy H-1

PIER AND FLOAT EXTENSIONS BEYOND THE PIERHEAD LINE

Background

Newport Beach Municipal Code (NBMC) Section 17.35.030(A) provides that piers and floats may not extend bayward beyond the pierhead line unless approved in compliance with Council policy. This Policy sets forth the specific criteria, as a limited exception to the general rule set forth in Section 17.35.030(A) of the NBMC, where a harbor development permit and/or approval in concept for a pier or float to extend beyond the pierhead line may be granted.

Section I of this Policy sets forth the circumstances wherein the Harbor Commission, and/or City Council upon appeal or call for review, may approve a pier or float to extend bayward beyond the pierhead line. Section II of this Policy sets forth the circumstances wherein the Public Works Director, Community Development Director and/or Harbormaster, as applicable, may approve a harbor development permit and/or approval in concept, pursuant to this Policy.

I. Harbor Commission/City Council Review and Findings Required for Approval

After holding a public hearing and considering a staff report and accompanying materials that include, but are not limited to, the application and materials supporting the staff recommendation, the Harbor Commission, or the City Council on appeal or call for review, may approve or conditionally approve a harbor development permit and/or approval in concept for a pier or float to extend bayward beyond the pierhead line upon making all of the following findings:

- A. The existing pier or float is currently encroaching bayward beyond the pierhead line;
- B. The existing pier or float was previously permitted to encroach bayward beyond the pierhead line or is in substantial conformance with the existing City-issued permit;
- C. The pier or float will not encroach any further bayward beyond the pierhead line than the existing encroachment;
- D. Any vessel utilizing the pier or float will not extend bayward beyond the project line or the line established under the City-issued permit, whichever is less; and
- E. The pier or float will:
 - 1. Preserve the diverse uses in Newport Harbor and the waterfront that contribute to the charm and character of Newport Harbor;

2. Maintain or enhance public access to Newport Harbor's waterways and waterfront areas;
3. Preserve or enhance the visual character of Newport Harbor;
4. Not negatively impact adjacent property owners, harbor views, navigation and future harbor dredging; and
5. Be aesthetically consistent and compatible with its surroundings.

II. *Staff Review and Findings Required for Approval*

For those piers or floats in areas where the pierhead line does not exist or where the bayward extension of those structures is not clearly limited by the pierhead line, the Public Works Director, Community Development Director and/or Harbormaster, as applicable, may approve a pier and float reconstruction project if the:

- A. Existing pier or float is in substantial conformance with the existing City-issued permit;
- B. Reconstruction will utilize the same or less square footage;
- C. Reconstruction is in a substantially similar configuration as the existing pier or float; and the
- D. Pier or float complies with the City of Newport Beach Waterfront Project Guidelines and Standards Harbor Design Criteria, the California Building Code as set forth in Title 24 of the California Code of Regulations, and other applicable provisions of the NBMC.

Projects that do not meet the above criteria for approval shall be reviewed in accordance with the applicable provisions of Title 17 (Harbor Code) of the NBMC.

III. *General Provisions*

- A. Appeals and calls for review of decisions under this Policy shall be in accordance with Chapter 17.65 (Appeals or Calls for Review).
- B. Any approval granted under this Policy for piers and floats to encroach bayward beyond the pierhead line is separate from any and all other required permits and/or approvals.
- C. Any permit issued by the City of Newport Beach before June 26, 2019 that allows an existing pier or float to extend bayward beyond the pierhead line is ratified by the City Council and may continue as valid until such time as a new permit for a pier or float is approved and the pier or float is constructed pursuant to the new permit.

History

Adopted H-1 - 6-1-1964
Amended H-1 - 10-19-1964
Amended H-1 - 10-26-1964
Amended H-1 - 4-27-65
Reaffirmed H-1 - 8-30-1966
Amended H-1 - 1-9-1967
Amended H-1 - 7-24-1967
Amended H-1 - 6-24-1968
Amended H-1 - 8-19-1968
Amended H-1 - 12-23-1968
Amended H-1 - 1-26-1970
Reaffirmed H-1 - 3-9-1970
Reaffirmed H-1 - 2-14-1972
Amended H-1 - 8-14-1972
Amended H-1 - 6-25-1973
Reaffirmed H-1 - 12-10-1973
Amended H-1 - 12-17-1973
Amended H-1 - 6-10-1974
Reaffirmed H-1 - 11-11-1974
Amended H-1 - 3-10-1975
Amended H-1 - 4-28-1975
Amended H-1 - 5-27-1975
Amended H-1 - 10-28-1975
Amended H-1 - 12-8-1975
Amended H-1 - 5-10-1976
Amended H-1 - 10-26-1976
Amended H-1 - 11-22-1976
Reaffirmed H-1 - 1-24-1977
Amended H-1 - 5-23-1977
Amended H-1 - 5-22-1978
Amended H-1 - 12-11-1978
Amended H-1 - 3-12-1979
Amended H-1 - 6-25-1979
Amended H-1 - 6-9-1980
Amended H-1 - 6-23-1980
Amended H-1 - 11-23-1981
Amended H-1 - 6-28-1982

Amended H-1 - 10-12-1982
Amended H-1 - 10-25-1982
Amended H-1 - 6-27-1983
Amended H-1 - 1-14-1985
Amended H-1 - 3-25-1985
Amended H-1 - 6-24-1985
Amended H-1 - 6-22-1987
Amended H-1 - 6-13-1988
Amended H-1 - 11-28-1988
Amended H-1 - 6-26-1989
Amended H-1 - 9-25-1989
Amended H-1 - 11-27-1989
Amended H-1 - 5-14-1990
Amended H-1 - 6-25-1990
Amended H-1 - 4-8-1991
Amended H-1 - 6-24-1991
Amended H-1 - 10-28-1991
Reaffirmed H-1 - 1-24-1994
Amended H-1 - 6-27-1994
Amended H-1 - 6-26-1995
Amended H-1 - 3-25-1996
Amended H-1 - 06-8, 1998
Amended H-1 - 12-14-1998
Amended H-1 - 5-8-2001
Amended H-1 - 9-10-2002
Amended H-1 - 10-28-2003
Amended H-1 - 4-13-2004
Amended H-1 - 1-8-2008
Amended H-1 - 5-22-2018
Amended H-1 - 6-25-2019
Amended H-1 - 11-5-2019
Amended H-1 - 9-14-2021