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NEWPORT BEACH

Harbor Commission Staff Report

January 12, 2022
Agenda Item No. 6.2

TO: HARBOR COMMISSION

FROM: Chris Miller, Public Works Administrative Manager – 949-644-3043,
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TITLE: Public Pier Reconfiguration at 29th Street and Lafayette Avenue

ABSTRACT:

The City of Newport Beach (“Applicant”) is reconfiguring the public dock system at the 29th Street end, east of Lafayette Avenue, by removing the existing gangway, piles, and floats, and installing a pier platform, gangway, and single-finger float with piles (“Project”). The proposed float extends beyond the pierhead line the same distance as the existing float extends. Because Applicant is proposing to construct bayward beyond the pierhead line, staff is unable to approve the project. Therefore, Council Policy H-1 directs the Harbor Commission to hold a public hearing for the proposed project.

RECOMMENDATION:

- 1) Conduct a public hearing; and
- 2) Find the Project exempt from the California Environmental Quality Act (“CEQA”) pursuant to Section 15301 (Existing Facilities) and Section 15302 (Replacement or Reconstruction) of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3; and
- 3) Approve in concept the Project by making specific findings to allow the public dock to be reconfigured pursuant to the provisions in Council Policy H-1.

FUNDING REQUIREMENTS:

There is no fiscal impact related to this item.

DISCUSSION:

Council Policy H-1 and the Newport Beach Municipal Code (NBMC) state that piers and floats may not extend bayward beyond the pierhead line unless approved in compliance with Council Policy. However, Council Policy H-1 does set forth circumstances wherein the Harbor Commission may approve a pier or float to extend bayward beyond the pierhead line after holding a public hearing and considering a staff report with accompanying supporting materials.

Applicant’s public dock is located at the 29th Street end, east of Lafayette Avenue in the Rhine Channel. The aerials (Attachment A) depict many of the adjacent floats on either side of the

channel extending beyond the pierhead line as permitted via previous versions of Council Policy H-1.

Council Policy H-1 provides that the Harbor Commission 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:

Council Policy H-1 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.

EXISTING DOCK CONFIGURATION

Attachment B shows the most current as-built plans on file for this public dock system. In 2011, the City dredged the Rhine Channel and replaced all the residential, commercial, and public pier piles immediately adjacent to the channel (dredge footprint). The existing 29th Street public pier had two piles replaced as noted on the as-built plans.

The existing public pier had been leased for several decades to the adjacent, upland commercial property, and functioned as a pier that served both commercial and public uses. However, the public component of this pier was never fully utilized nor widely known. In 2020, the City terminated the lease with the intention of rebuilding the public pier for exclusive public use.

PROPOSED PROJECT

The Project conforms to the Harbor Design Criteria. The proposed floats shown in Attachment B extend approximately 54-feet channelward from the physical bulkhead and extend the same distance as the existing float (approximately 12-feet beyond the pierhead line).

Coincidentally, another City project along the Lafayette waterfront walkway closest to the 28th Street end and adjacent to 2804 and 2806 Lafayette Avenue, is in the final planning stages to be rebuilt, like for like. Earlier this year, the California Coastal Commission (“CCC”) permitted this Lafayette walkway project. However, to satisfy a mitigation requirement imposed by the CCC for the loss of a portion of the Lafayette walkway associated with an adjacent building failure in 2000, the City proposed to reconstruct the 29th Street public pier as described in this report. The CCC agreed with the City’s proposal, and subsequently approved the 29th Street public pier as a condition of the Lafayette walkway project in a single action. Therefore, the Harbor Commission’s approval of this project will complete the CCC’s approval conditions.

STAFF RECOMMENDATION AND FINDINGS

Staff recommends approval in concept of the Project. Council Policy H-1 allows the Harbor Commission to 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:

Finding No. 1: Council Policy H-1(I)(A). The existing pier or float is currently encroaching bayward beyond the pierhead line.

Facts in Support of Findings: The existing float currently encroaches bayward beyond the pierhead line.

Finding No. 2: Council Policy H-1(I)(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.

Facts in Support of Findings: The existing dock configuration was previously approved by the City in 2011 when the City replaced the piles as evidenced by the as-built drawings in Attachment B.

Finding No. 3: Council Policy H-1(I)(C). The pier or float will not encroach any further bayward beyond the pierhead line than the existing encroachment.

Facts in Support of Findings: As depicted in Attachment B, the proposed float encroaches bayward beyond the pierhead line the same distance as the existing float encroaches.

Finding No. 4: Council Policy H-1(I)(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.

Facts in Support of Findings: The project line does not exist in the Rhine Channel. Therefore, the applicable limitation is the line established under the City-issued permit which is Newport Beach Municipal Code 17.25.020(C)(2) which states that any vessel berthed at a slip shall not extend bayward beyond the end of the slip by a distance of more than the maximum width of its beam.

As the proposed float will encroach bayward the pierhead line the same distance as the existing float, vessels will not extend bayward any further than what is currently allowed (width of its beam).

Finding No. 5: Council Policy H-1 (I)(E)(1). The pier or float will preserve the diverse uses in Newport Harbor and the waterfront that contribute to the charm and character of Newport Harbor.

Facts in Support of Findings: The Project use and configuration conforms to the provisions of the NBMC, applicable policies and the City of Newport Beach Waterfront Project Guidelines and Standards Harbor Design Criteria Commercial and Residential Facilities. The float will be open to the public, and its use and configuration is compatible with the existing, surrounding docks.

Finding No. 6: Council Policy H-1 (I)(E)(2). The pier or float will maintain or enhance public access to Newport Harbor's waterways and waterfront areas.

Facts in Support of Findings: Public access to the harbor waterways and waterfront areas will be maintained because the proposed float extends bayward the same distance as the existing float extends. The float will be open to the public.

Finding No. 7: Council Policy H-1 (I)(E)(3). The pier or float will preserve or enhance the visual character of Newport Harbor.

Facts in Support of Findings: The Project conforms to the provisions of the NBMC, applicable policies and the City of Newport Beach Waterfront Project Guidelines and Standards Harbor Design Criteria Commercial and Residential Facilities. The Project use and configuration is also compatible with the existing, surrounding docks.

Finding No. 8: Council Policy H-1 (I)(E)(4). The pier or float will not negatively impact adjacent property owners, harbor views, navigation and future harbor dredging.

Facts in Support of Findings: The Project conforms to the provisions of the NBMC, applicable policies and the City of Newport Beach Waterfront Project Guidelines and Standards Harbor Design Criteria Commercial and Residential Facilities. Navigation will not be negatively impacted.

Finding No. 9: Council Policy H-1 (I)(E)(5). The pier or float will be aesthetically consistent and compatible with its surroundings.

Facts in Support of Findings: The Project use and configuration is compatible with the existing, surrounding docks.

Finding No. 10: NBMC Section 17.50.030. The Project conforms to the provisions of the NBMC, Harbor Design Criteria, and applicable standards and policies in conjunction with plan reviews by the Public Works Department.

Facts in Support of Findings: The Project conforms to the provisions of the NBMC, applicable policies and the City of Newport Beach Waterfront Project Guidelines and Standards Harbor Design Criteria Commercial and Residential Facilities.

ENVIRONMENTAL REVIEW:

Staff recommends the Harbor Commission find this Project exempt from the California Environmental Quality Act ("CEQA") pursuant to Section 15301 (Existing Facilities) and Section

15302 (Replacement or Reconstruction) of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3. CEQA Guidelines Section 15301 (Class 1) applies to the “operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of existing public or private structures, facilities, mechanical equipment, or topographical features, involving negligible or no expansion of existing or former use.” Section 15302 (Class 2) applies to the “replacement or reconstruction of existing structures and facilities where the new structures will be located on the same site as the structure replaced and will have substantially the same purpose and capacity as the structure replaced[.]” The replacement public dock system is in the same location and is substantially the same size and purpose as the dock system it replaces. The overwater coverage of the new dock system is not substantially greater than the existing configuration (485 square feet compared to 475 square feet).

NOTICING:

The agenda item has been noticed according to the Brown Act (72 hours in advance of the meeting at which the Harbor Commission considers the item). This public hearing was noticed to all residents within a 300’ radius per NBMC Section 17.05.140(B). The notice was also published in the newspaper on Sunday, December 26, 2021 (Attachment C). The project was also considered and approved at a publicly noticed California Coastal Commission meeting on May 12, 2021.

ATTACHMENTS:

- Attachment A - Aerial Photos
- Attachment B - Existing Approved Plans and Proposed Configuration
- Attachment C - Public Outreach
- Attachment D - Resolution HC2022-002