



NEWPORT BEACH

City Council Staff Report

January 9, 2024
Agenda Item No. 3

TO: HONORABLE MAYOR AND MEMBERS OF THE CITY COUNCIL

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TITLE: Ordinance No. 2024-1: Amending Sections 17.35.030 (*Bayward Location of Piers and Floats*) and 17.35.060 (*Balboa Island – Noncommercial Piers*) of the Newport Beach Municipal Code and Repealing City Council Policy H-1

ABSTRACT:

City Council Policy H-1 (*Harbor Permit Policy*) describes the distance that piers and floats may extend bayward throughout the harbor. At its September 13, 2023 meeting, the Harbor Commission recommended an amendment to the Newport Beach Municipal Code to provide clear guidance throughout the harbor on the distance that piers and floats may extend bayward versus the broad, harbor-wide approach in use today. Rather than maintaining a standalone City Council policy document for this function, the Harbor Commission also recommends incorporating the entirety of H-1 into the Municipal Code alongside the other dock permitting and structural regulations in Title 17.

RECOMMENDATIONS:

- a) Find the introduction and adoption of this ordinance is not subject to 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, Division 6, Chapter 3. Additionally, find the introduction and adoption of this ordinance is exempt from CEQA environmental review pursuant to Sections 15301 (Existing Facilities) and 15302 (Replacement or Reconstruction) of the CEQA Guidelines; and
- b) Waive full reading, direct the City Clerk to read by title only, introduce Ordinance No. 2024-1, *An Ordinance of the City Council of the City of Newport Beach, California, Amending Sections 17.35.030 (Bayward Location of Piers and Floats) and 17.35.060 (Balboa Island – Noncommercial Piers) of the Newport Beach Municipal Code and Repealing City Council Policy H-1*, and pass to a second reading on January 23, 2024.

DISCUSSION:

The Newport Beach Municipal Code (NBMC) Section 17.35.030(A) provides that piers and floats may not extend beyond the pierhead line unless approved in compliance with City Council policy as may be amended from time to time.

Based on recent Harbor Commission experience of applying H-1 to dock reconfiguration projects, the commissioners felt it was appropriate to review H-1 with the goal of simplifying the application review process while still being mindful of field conditions and operational characteristics of the harbor and navigation channels.

Historically, harbor piers were administered via the 1941 City document “Regulations for Execution of Work or Erection of Structures Channelward of the U.S. Bulkhead Line in Newport Bay.” Then in 1962, the Harbor Permit Policies (later known as City Council Policy H-1) were created by using some of the original 1941 language which remained in the document for decades.

H-1 evolved over the years from a document that governed most of the harbor regulations to today’s simplified version which focuses solely on the distance that floats may extend bayward. To date, there have been 69 revisions to H-1 in its 61-year history – a testament to the evolving needs of the harbor.

In recent years, the Harbor Commission reviewed multiple dock applications with strict adherence to H-1. However, the Commission expressed a desire to simplify the process for the applicant, the Commission, and staff by providing flexibility within H-1, while also balancing the harbor’s functional and aesthetic characteristics and needs.

H-1 Transfer To NBMC

As previously noted, H-1 was once a comprehensive document which included, among other things, an area-by-area (delineated by U.S. Bulkhead Station numbers) set of rules noting the allowable distance floats may extend bayward. Equally important, it also addressed those unusual areas of the harbor where pierhead lines do not exist.

The current H-1 in effect today uses a simpler, broad-based approach without accommodation to areas which may warrant special consideration. Conflicts arose during the dock approval process when the permittees who, for decades, had previously relied on the old rules to extend bayward, or who had previously purchased their vessels and properties with the good-faith knowledge of the harbor’s long-standing policies.

As a result, and after having reviewed numerous dock applications in recent years, the Harbor Commission proposed to update H-1 to provide clear guidance for customers and to also reduce the number of Harbor Commission public hearings.

In April 2023, the Harbor Commission approved a then-final version of H-1 which reverted the policy back to the area-by-area delineations that were previously seen in earlier H-1 versions. There were few substantive changes from previous versions of H-1 aside from the complete reorganization of the document to increase clarity for the end user.

After the Harbor Commission's April 2023 approval, and upon further consideration, staff determined that the contents of H-1 would be optimally positioned within the NBMC alongside the other dock permitting and structural regulations. In other words, transferring the entirety of H-1 into the NBMC reduces the potential conflict between City Council Policy and the NBMC while simplifying the process for the public. As a result, the entirety of H-1 will be repealed until such time as the policy name "H-1" is reassigned for a different harbor-related purpose.

The newly proposed NBMC amendment eliminates potential guesswork by addressing the harbor in an area-by-area manner to provide clarity as to what is allowed and when Harbor Commission approval is required. In general, the rules are substantially the same as they were for decades, but they also incorporate improvements to reflect current conditions throughout the harbor.

The proposed NBMC amendment categorizes specific areas of the harbor, depending on the level of approval required, for the distance docks can extend bayward. The categories of approval are described below:

Section A: Staff may approve projects in these areas using specific criteria. If the applicant requests a deviation from the stated criteria in these areas, the Harbor Commission may approve those projects upon making certain findings.

Section B: Staff may approve projects in these areas if the pier or float will not extend beyond its existing permitted length, and if it is substantially similar in size and configuration as the existing structure and if it will not impede ingress or egress to adjacent piers and floats. Otherwise, the Harbor Commission may approve those projects upon making certain findings.

Section C: Staff may approve projects in specific, unique areas of Balboa Island if the pier or float will not extend beyond the existing permitted length. Otherwise, the Harbor Commission may approve those projects upon making certain findings.

Section D: The Harbor Commission may approve projects in these areas upon making certain findings.

Section E: Piers and floats are prohibited in these areas.

To assist the public, Harbor Commission, and city staff, a graphical representation of the areas described above will be integrated into the City's GIS website for public viewing.

The Harbor Commission supports the recommended NBMC amendment because it provides clarity for the public by defining a procedural review path via staff and the Harbor Commission. Therefore, the Harbor Commission recommends the City Council review and approve the proposed NBMC amendments.

In addition, staff also reviewed the proposed revisions with the State Lands Commission staff, and they were satisfied with the amendment.

FISCAL IMPACT:

There is no fiscal impact related to this item.

ENVIRONMENTAL REVIEW:

Staff recommends the City Council find the introduction and adoption of this ordinance 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. Additionally, find the introduction and adoption of this ordinance is exempt from CEQA environmental review pursuant to Sections 15301 (Existing Facilities) and 15302 (Replacement or Reconstruction) of the CEQA Guidelines. The ordinance will not change existing law but instead formally incorporates existing regulations and guidelines into the Municipal Code. Further, new regulations added by the ordinance pertain to existing dock facilities and structures with negligible or no expansion of use or the replacement or reconstruction of existing structures and facilities with substantially the same purpose and capacity as the replaced structures.

NOTICING:

The agenda item has been noticed according to the Brown Act (72 hours in advance of the meeting at which the City Council considers the item). The dock construction and dock permitting industries were also notified.

ATTACHMENTS:

- Attachment A – City Council Policy H-1 (redline and repealed)
- Attachment B – Newport Beach Municipal Code (redline strikeout)
- Attachment C – Ordinance No. 2024-1