



CITY OF NEWPORT BEACH

Harbor Commission Staff Report

July 14, 2021
Agenda Item No. 8.2

TO: HARBOR COMMISSION

FROM: Paul Blank, Harbormaster, (949) 270-8158 pblank@newportbeachca.gov

TITLE: Council Policy H-1 – Harbor Commission Review of Proposed Changes

ABSTRACT:

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 and recommend changes that may allow them to approve dock permit applications that cannot otherwise be approved by staff. 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 changes proposed by the Harbor Commission subcommittee to Council Policy H-1 and forward the recommendations to the City Council for consideration.

FUNDING REQUIREMENTS:

There is no fiscal impact related to this item.

DISCUSSION:

The City Council has established City Council policies to further clarify and provide guidance to staff on implementation of various city services and the Newport Beach Municipal Code. There are a series of policies that provide direction on issues of the Harbor. These are the Harbor and Beaches Policies or the H Policies.

The purpose of Policy H-1, Harbor Permit Policy is to provide guidance on Newport Beach Municipal Code Section 17.35.030(A) which states: "Piers and floats may not extend beyond the pierhead line unless approved in compliance with Council policy as may be amended from time to time". The policy is intended to layout the process for exceptions to this rule. The Council Policy was established in 1964 and has been revised 62 times since then. The City Council has

asked that the Harbor Commission review the policy and make recommendations on how and when exceptions may be made to the Newport Beach Municipal Code.

Council Policy H-1 (Attachment A) provides criteria for staff and the Harbor Commission when making decisions regarding piers and floats within Newport Harbor, specifically the distance they extend bayward throughout the harbor.

The proposed changes further clarify under what conditions a pier or float may extend past the pierhead line. In the recent past, the Harbor Commission has heard several appeals where there has been a difference between what is allowed according to the approved residential pier permit and what has actually been constructed. This has led to confusion about the pier/float when considering what should be allowed under a “like-for-like” reconstruction permit application.

In addition, the proposed policy provides guidance to those areas of the harbor in which there is no pierhead line.

Upon review at the June 9, 2021 Harbor Commission meeting, further revisions were made to the proposed, recommended policy. The revisions to H-1 reflect the changes the Commission agreed on at the June 9 meeting as well as clarifications and some reorganization:

- Organized into Parts A and B. A is the main part; B addresses the unusual or outlier parts of the Harbor (the “like-for-like” reconstruction language).
- Gives Commission more flexibility/discretion to approve structures that were not built exactly in accordance with the permit but have been encroaching for some time. This is achieved with the “or in substantial conformance” language in Finding #2.
- Added the discretionary criteria of preserving harbor views and being aesthetically compatible with the surroundings.
- Title of policy has been changed to more accurately reflect its purpose.
- Latter part of Part B is added to provide clarify like for like reconstruction.
- Added a clarification that approval under H-1 may not be enough to move forward with the project. There may be other applicable requirements under Title 17, such as having to get a harbor development permit, which would require the Commission make the specific findings for such permit.

ENVIRONMENTAL REVIEW:

Staff recommends the Harbor Commission find this action 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, Chapter 3, because it has no potential for resulting in physical change to the environment, directly or indirectly.

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).

ATTACHMENTS:

- Attachment A - Council Policy H-1 – Redline
- Attachment B - Council Policy H-1 – Final