

Attachment D

Ordinance No. 2023-10

ORDINANCE NO. 2023-10

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF NEWPORT BEACH, CALIFORNIA, AMENDING TITLE 20 (PLANNING AND ZONING) OF THE NEWPORT BEACH MUNICIPAL CODE TO ESTABLISH THE SPECIAL FLOOD HAZARD (VE) OVERLAY DISTRICT (PA2018-075)

WHEREAS, Section 200 of the City of Newport Beach (“City”) Charter vests the City Council with the authority to make and enforce all laws, rules and regulations with respect to municipal affairs subject only to the restrictions and limitations contained in the Charter and the State Constitution, and the power to exercise, or act pursuant to any and all rights, powers, and privileges, or procedures granted or prescribed by any law of the State of California;

WHEREAS, on March 21, 2019, new Federal Emergency Management Agency (“FEMA”) Flood Insurance Rate Maps (“FIRM”) went into effect for Newport Beach and includes the new designation of a Special Flood Hazard Area (“VE Zone”) affecting 166 beachfront properties in the West Newport area between 24th Street and 48th Street;

WHEREAS, new development within the VE Zone must meet FEMA construction design criteria including elevation of structures with pilings, posts, piers, or columns to raise the main residential structure approximately three to five feet from existing grade so that these structures are designed and engineered to allow water to flow below the elevated floor system without damaging the foundation or creating substantial debris;

WHEREAS, of the 166 affected properties, 27 properties are within the VE 13 Zone and require elevating structures approximately three feet above existing grade while the remaining 139 properties are within the VE 15 Zone and require elevating structures approximately five feet above existing grade;

WHEREAS, compliance with the VE Zone design criteria presents several challenges for new residential development to also meet the requirements of Title 20 (Planning and Zoning) of the Newport Beach Municipal Code (“NBMC”) since compliance with the VE Zone design criteria significantly limits means of access to the dwelling, as well as the usability of outdoor areas;

WHEREAS, on March 26, 2019, the City Council adopted Resolution No. 2019-31 initiating an amendment to Title 20 ("Zoning Code Amendment") and Title 21 ("Local Coastal Program Amendment") of the NBMC to modify the setback encroachment regulations for residential properties in the VE Zone;

WHEREAS, since adoption of the new FIRM, the City has received three variance requests for new residential projects in the VE Zone seeking relief from the setback standards in Titles 20 and 21 of the NBMC that directly conflict with the ability to comply with FEMA's VE Zone design criteria;

WHEREAS, approval and implementation of the Zoning Code Amendment and Local Coastal Program Amendment would facilitate compliance and is likely to result in fewer variance requests in the VE Zone;

WHEREAS, the affected properties are categorized as RS-D (Single Unit Residential Detached) and RT (Two Unit Residential) by the General Plan Land Use Element and are located within the R-1 (Single-Unit Residential) and R-2 (Two-Unit Residential) Zoning Districts;

WHEREAS, the affected properties are located within the Coastal Zone with a Coastal Land Use Plan category of RSD-D (Single Unit Residential Detached – 20.0-29.9 DU/AC) and RT-E (Two Unit Residential – 30.0 – 39.9 DU/AC) and Coastal Zoning District designations of R-1 (Single-Unit Residential) and R-2 (Two-Unit Residential);

WHEREAS, a draft of this Local Coastal Program Amendment was presented to the design community on December 2, 2021, and to affected and nearby property owners on January 19, 2022, via virtual community meetings with comments incorporated into the proposed amendments to the extent feasible;

WHEREAS, the Planning Commission held a duly noticed public hearing on May 4, 2023, in the Council Chambers located at 100 Civic Center Drive, Newport Beach, California. A notice of time, place and purpose of the public hearing was given in accordance with the California Government Code Section 54950 *et seq.* ("Ralph M. Brown Act") and Chapter 20.62 (Public Hearings) of the NBMC. Evidence, both written and oral, was presented to, and considered by, the Planning Commission at this public hearing;

WHEREAS, at the conclusion of the public hearing, the Planning Commission adopted Resolution No. PC2023-022 by a unanimous vote (7 ayes, 0 nays) recommending approval of the Zoning Code Amendment and Local Coastal Program Amendment to the City Council; and

WHEREAS, the City Council held a duly noticed public hearing on June 13, 2023 in the Council Chambers located at 100 Civic Center Drive, Newport Beach, California. A notice of time, place and purpose of the hearing was given in accordance with the Ralph M. Brown Act and Chapter 20.62 (Public Hearings) of the NBMC. Evidence, both written and oral, was presented to, and considered by, the City Council at this hearing.

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

Section 1: The City Council does hereby approve the Zoning Code Amendment as set forth in "Exhibit A," based upon the Facts in Support of Zoning Code Amendment set forth in Exhibit "B," both of which are attached hereto and incorporated herein by reference.

Section 2: The recitals provided in this ordinance are true and correct and are incorporated into the substantive portion of this ordinance.

Section 3: If any section, subsection, sentence, clause or phrase of this ordinance 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 ordinance. The City Council hereby declares that it would have passed this ordinance 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 City Council finds this Zoning Code Amendment 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 California Code of Regulations, Title 14, Division 6, Chapter 3, ("CEQA Guidelines") because it has no potential for resulting in physical change to the environment, directly or indirectly.

The City Council also finds this Zoning Code Amendment is categorically exempt from CEQA pursuant to Section 15305 under Class 5 (Minor Alterations in Land Use Limitations) of the CEQA Guidelines, because it has no potential to have a significant effect on the environment. The Class 5 exemption allows minor alterations in land use limitations in areas with an average slope of less than twenty percent, which do not result in any changes in land use or density. The Zoning Code Amendment seeks to provide flexibility for potential encroachments into side, rear, and front setback areas for properties located within the VE Zone. The proposed changes to the NBMC could result in raised decks, landings, stairs, and other accessory features in the front, side, and rear setbacks for the affected properties. All changes are limited in scope and would only alter regulations for the height of accessory structures, which would not result in any changes to land use intensity or density.

The exceptions to this categorical exemption under Section 15300.2 are not applicable. The affected location does not impact an environmental resource of hazardous or critical concern, does not result in cumulative impacts, does not have a significant effect on the environment due to unusual circumstances, does not damage scenic resources within a state scenic highway, is not a hazardous waste site, and is not identified as a historical resource.

Section 5: Except as expressly modified in this ordinance, all other sections, subsections, terms, clauses and phrases set forth in the NBMC shall remain unchanged and shall be in full force and effect.

EXHIBIT "A"

ZONING CODE AMENDMENT (PA2018-075)

- I. Section 20.28.010 (Purposes of Overlay Zoning Districts) of the NBMC is amended to add subsection (E) to read as follows:

E. Special Flood Hazard Area (VE) Overlay Zoning District. The VE Overlay District is intended to modify certain development standards for properties subject to special flood hazards as identified by the Federal Emergency Management Agency (FEMA) in the Flood Insurance Study (FIS) for Orange County, California and Incorporated Area with accompanying FEMA Flood Insurance Rate Maps (FIRM).

- II. The title of Chapter 20.28 Overlay Zoning Districts (MHP, PM, B, H) shall be amended to read as follows:

Sections:

- 20.28.010 Purposes of Overlay Zoning Districts.**
- 20.28.020 Mobile Home Park (MHP) Overlay Zoning District.**
- 20.28.030 Parking Management (PM) Overlay District.**
- 20.28.040 Bluff (B) Overlay District.**
- 20.28.050 Reserved.**
- 20.28.060 Height (H) Overlay District.**
- 20.28.070 Special Flood Hazard Area (VE) Overlay District.**

- III. Section 20.28.070 (Special Flood Hazard Area (VE) Overlay District) of the NBMC shall be added to read as follows:

Section 20.28.070 Special Flood Hazard Area (VE) Overlay District.

- A. Applicability. This section applies to encroachments for residential properties located in the coastal high hazard area as defined in Chapter 15.50 (Floodplain Management) and identified as VE 13 or VE 15 on the adopted FEMA FIS and FIRM pursuant to Section 15.50.070 (Basis for Establishing the Areas of Special Flood Hazard). For purposes of this section, "encroachments" are limited to decks, landings, patios, platforms, porches, steps, raised walkways, or terraces required for access. With the exception of the encroachments authorized herein, all development shall comply with the applicable residential development standards (e.g., floor area limit, setbacks, parking) of the underlying zoning district set forth in the NBMC. In situations where an inconsistency occurs between the development standards of the underlying zoning district and the standards in this section related to encroachments, the standards related to encroachments in this section shall apply.

The encroachments allowed by this section shall only apply to new construction, substantial damage, or substantial improvements to the structure pursuant to Section 15.50.200 (Coastal High Hazard Areas) for residential properties where the structure is required to raise the foundation above the design flood elevation.

- B. Allowed Encroachments in Side and Rear Setbacks. An encroachment may be located within a required side or rear setback area other than those abutting an alley subject to the following restrictions:
1. The design of the encroachment shall comply with the building standards set forth in Section 15.05.100 (Amendment to Section R301.2.4) and either of the following:
 - a. Chapter 15.50 (Flood Plain Management); or
 - b. The Flood Resistant Design and Construction publication by the American Society of Civil Engineers (ASCE 24).
 2. Access to the side yard setback shall comply with Section 20.30.110(A)(1)(c) (Access to Side Setback Area).
 3. For interior lots, the encroachment may be located in one (1) or more side or rear setback and may extend to the property line abutting the side or rear setback. Encroachments in an interior side or rear setback may only be permitted to the minimum extent necessary to provide access to the dwelling from both the front and the rear of the property.
 4. For corner lots, the encroachment may be located in the interior side or rear setback. Encroachments in a side or rear setback facing a street may only be permitted to the minimum extent necessary to provide access to the dwelling from both the front and the rear of the property. The encroachment shall comply with all other development standards of the underlying zoning district including Section 20.30.130 (Traffic Safety Visibility Area).
 5. Excluding required guardrails or handrails, the finished surface of the encroachment shall not exceed six (6) inches above the finished floor of the dwelling unit(s).
 6. Guardrails and handrails in the side and rear setback shall be constructed of either transparent material (except for supports) or opaque material (e.g. decorative grillwork, wrought iron, latticework, or similar materials) so that at least forty percent (40%) of the guardrail or handrail is open. Handrails and guardrails shall not exceed the minimum height requirements set forth in the California Building Code for safety purposes.

C. Allowed Encroachments in Front Setbacks. Encroachments may be located within a required front setback area subject to the following restrictions:

1. The design of the encroachment shall comply with the building standards set forth in Section 15.05.100 (Amendment to Section R301.2.4) and either of the following:
 - a. Chapter 15.50 (Flood Plain Management); or
 - b. The Flood Resistant Design and Construction publication by the American Society of Civil Engineers (ASCE 24).
2. For interior lots, excluding the required guardrails or handrails, the finished surface of the encroachment shall not exceed six (6) inches above the finished floor of the dwelling unit(s). A deck, balcony, patio, or terrace encroachment shall not exceed three (3) feet into the front setback. Stairs, steps, or landing encroachments required for access may extend to the front property line.
3. For corner lots, excluding the required guardrails or handrails, the finished surface of the encroachment shall not exceed six (6) inches above the finished floor of the dwelling unit(s) and may extend into the front setback adjacent to the beach, permitted Ocean Front Encroachment areas (Appendix C Ocean Front Encroachment Policy Guidelines of Title 21), or Ocean Front Boardwalk. A deck, balcony, patio, or terrace encroachment shall not exceed three (3) feet into the front setback. Stairs, steps, or landing encroachments required for access may extend to the front property line. Encroachments are subject to compliance with all other development standards of the underlying zoning district including Section 20.30.130 (Traffic Safety Visibility Area).
 - a. Corner lots shall be developed in a manner that ensures visibility across the corners of the intersecting streets, alleys, sidewalks, private driveways, and the Ocean Front Boardwalk. Notwithstanding the requirements of this subsection (C), no encroachment over thirty (30) inches in height from existing grade shall be located within the traffic visibility triangle (i.e. the triangular-shaped area on a corner lot formed by measuring five (5) feet from the intersection of the front and street side property lines adjacent to the Ocean Front Boardwalk).
 - b. Improvements or structures that exceed the allowable height limit for visibility in the traffic safety visibility area may be approved by the City Traffic Engineer if he/she determines that the location and/or height of the existing or proposed improvement or structure, or other

obstruction allows for the unobstructed view of oncoming traffic including bicyclists, and pedestrians by a driver, bicyclist, or pedestrian approaching an intersection.

4. Guardrails and handrails in the front setback shall be constructed of either transparent material (except for supports) or opaque material (e.g. decorative grillwork, wrought iron, latticework, or similar materials) so that at least forty percent (40%) of the guardrail or handrail is open. Handrails and guardrails shall not exceed the minimum height requirements set forth in the California Building Code for safety purposes.

D. Third Floor Limitations. All residential structures shall comply with Section 20.48.180 (Residential Development Standards and Design Criteria). For purposes of determining the number of floors within the principal structure, the garage shall be considered the first level. In the case of a split-level design, the Director shall determine which portions of the split-level structure shall constitute a third floor for the purpose of implementing Section 20.48.180 (Residential Development Standards and Design Criteria).

- IV. Subsection (f) shall be added to Section 20.30.110(D)(1) (General Regulations) of the NBMC to read as follows:

f. Special Flood Hazard Area (VE) Overlay. Encroachments allowed by this subsection shall apply to properties within the VE Overlay except as modified by Section 20.28.070 (VE Overlay). See Section 20.28.070 (VE Overlay) for setback regulations and additional authorized encroachments.

EXHIBIT "B"

FACTS IN SUPPORT OF CODE AMENDMENT (PA2018-075)

An amendment to Title 20 (Planning and Zoning) of the NBMC is a legislative act. Neither Chapter 20.66 (Planning and Zoning, Amendments) of Title 20 (Planning and Zoning) of the NBMC, or Article 2 (Adoption of Regulations) of Chapter 4 (Zoning Regulations) of Division 1 (Planning and Zoning) of Title 7 (Planning and Land Use) of the California Government Code set forth any required findings for either approval or denial of such amendments.

Notwithstanding the foregoing, the Zoning Code Amendment is consistent with the City Council's initiation and allows for orderly residential development while protecting property rights, as identified below.

1. The Zoning Code Amendment is consistent with Coastal Land Use Plan Policy 2.7-1 and General Plan Land Use Element Policy LU 5.1.6, which require development to maintain appropriate setbacks for residential development to protect the character of established neighborhoods and to protect coastal access and coastal resources. The proposed amendments would only apply to private residential single-unit and two-unit properties and do not authorize any changes to public property.
2. The Zoning Code Amendment does not authorize any new development that will block coastal access, nor does it change the dimensions of setbacks. Instead, it will provide flexibility in the application of height requirements for accessory structures within front, side, and rear setbacks. No changes to density or to maximum height limits of principal structures are proposed as part of this amendment. All new residential development in the VE Zone will require approval of a coastal development permit to evaluate compliance with the Coastal Act, including potential impacts to views and access related to the proposed design and location.
3. Typical residential properties along the beach and boardwalk can achieve seamless indoor and outdoor living with front patios along the sand or boardwalk. As of the effective date of the new FIRMs, properties in the VE Zone are no longer able to achieve this design, as their finished floors are elevated well above the beach or boardwalk. The existing residential development standards in the NBMC limit accessory structures to 42 inches maximum within the front setback. However, in the VE Zone, no patios or decks attached to the principal structure can be located below the first-floor elevation. This significantly limits outdoor living space for the affected properties. Furthermore, no direct access to the ground is provided, as the required stairs and handrails or guardrails exceed height limits in the front setback. The Zoning Code Amendment is therefore necessary to provide parity between residential properties located in the VE Zone and typical residential properties throughout Coastal Zone. The changes will

allow for raised landings, decks, patios, platforms, stairs, railings, and terraces to exceed the maximum height limits for accessory structures within front, side, and rear yard setbacks for new residential construction within the VE Zone.

4. New residential construction and substantial improvements in the VE Zone are required to be elevated approximately three to five feet above existing grade and stairs are necessary to access the dwelling from the ground. Currently, the NBMC limits steps, landings, platforms, and similar features to 18 inches from existing grade in the side and rear setback. An 18-inch-high platform is not sufficient to reach the first floor of the new structure. The Zoning Code Amendment and Local Coastal Program Amendment would allow new residential construction to provide direct access to the dwelling from the side or rear setback without the need to reduce the floor area of the dwelling to accommodate the stairs. The required handrails or guardrails would also be allowed as part of the amendment to accommodate access in the side and rear setback areas.
5. With exception of the changes to allowable setback encroachments, all future development within the VE Zone would remain consistent with unchanged applicable standards of the R-1 and R-2 Zoning Districts. These include setbacks, height, floor area limitations, and parking standards.

STATE OF CALIFORNIA }
COUNTY OF ORANGE }
CITY OF NEWPORT BEACH }

ss.

I, Leilani I. Brown, City Clerk of the City of Newport Beach, California, do hereby certify that the whole number of members of the City Council is seven; that the foregoing ordinance, being Ordinance No. 2023-10 was duly introduced on the 13th day of June, 2023, at a regular meeting, and adopted by the City Council at a regular meeting duly held on the 27th day of June, 2023, and that the same was so passed and adopted by the following vote, to wit:

AYES: Mayor Noah Blom, Mayor Pro Tem Will O'Neill, Council Member Brad Avery, Council Member Robyn Grant, Council Member Lauren Kleiman, Council Member Joe Stapleton, Council Member Erik Weigand
NAYS: None

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed the official seal of said City this 28th day of June, 2023.





Leilani I. Brown, MMC
City Clerk
City of Newport Beach, California

CERTIFICATE OF PUBLICATION

STATE OF CALIFORNIA }
COUNTY OF ORANGE }
CITY OF NEWPORT BEACH }

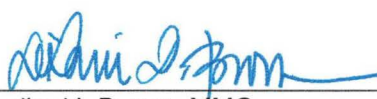
ss.

I, LEILANI I. BROWN, City Clerk of the City of Newport Beach, California, do hereby certify that Ordinance No. 2023-10 has been duly and regularly published according to law and the order of the City Council of said City and that same was so published in *The Daily Pilot*, a newspaper of general circulation on the following dates:

Introduced Ordinance: June 17, 2023
Adopted Ordinance: July 1, 2023

In witness whereof, I have hereunto subscribed my name this 7th day of July, 2023.





Leilani I. Brown, MMC
City Clerk
City of Newport Beach, California

City of Newport Beach