

Attachment E

November 28, 2023, City Council Staff Report



CITY OF

NEWPORT BEACH

City Council Staff Report

November 28, 2023
Agenda Item No. 18

TO: HONORABLE MAYOR AND MEMBERS OF THE CITY COUNCIL

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TITLE: Ordinance No. 2023-23 and Resolution No. 2023-83: Newport Beach Municipal Code and Local Coastal Program Amendments Related to Short Term Lodging (PA2023-0116)

ABSTRACT:

For the City Council's consideration are amendments to Chapter 5.95 (Short Term Lodging Permit), Title 20 (Planning and Zoning) and Title 21 (Local Coastal Program Implementation Plan) of the Newport Beach Municipal Code (NBMC) related to short term lodging that include the following:

- Establishing regulations permitting short term lodging within the MU-W2 (Mixed-Use Water) and MU-CV/15th Street (Mixed-Use Cannery Village and 15th Street) zoning districts;
- Changing the maximum cap of short term lodging permits from 1,550 permits citywide to: 1) 1,475 permits in residential districts; and 2) 75 permits within the MU-W2 and MU-CV/15th Street zoning districts;
- Correcting an inconsistency in the definition and use of short term lodging and bed and breakfast inn to mean a rental of 30 days or less; and
- Revisions related to violations, suspensions, revocations, and permit closures.

RECOMMENDATIONS:

- a) Conduct a public hearing;
- b) Find proposed amendments to the NBMC are not subject to the California Environmental Quality Act (CEQA) pursuant to Section 15060(c)(2) and 15061(b)(3) of the CEQA Guidelines, because it would not result in a direct or reasonably foreseeable indirect physical change in the environment and is covered by the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment;
- c) Waive full reading, direct the City Clerk to read by title only, introduce Ordinance No. 2023-23, *An Ordinance of the City Council of the City of Newport Beach, California, Approving a Code Amendment to Chapter 5.95 (Short Term Lodging) and Title 20 (Planning and Zoning) of the Newport Beach Municipal Code Related to Short Term Lodging (PA2023-0116)*, and pass to second reading on December 12, 2023; and

- d) Adopt Resolution No. 2022-83, *A Resolution of the City Council of the City of Newport Beach, California, Authorizing Submittal of a Local Coastal Program Amendment to the California Coastal Commission Amending Title 21 (Local Coastal Program Implementation Plan) of the Newport Beach Municipal Code Related to Short Term Lodging (PA2023-0116)*;

or

- e) Adopt an alternative resolution that includes a 20-unit ownership requirement, Resolution No. 2022-83, *A Resolution of the City Council of the City of Newport Beach, California, Authorizing Submittal of a Local Coastal Program Amendment to the California Coastal Commission Amending Title 21 (Local Coastal Program Implementation Plan) of the Newport Beach Municipal Code Related to Short Term Lodging (PA2023-0116)*.

DISCUSSION:

On May 23, 2023, the City Council initiated amendments and directed the Planning Commission to identify opportunities to modify Titles 20 and 21 of the Newport Beach Municipal Code to facilitate new visitor-serving accommodation opportunities within the MU-W2 (Mixed-Use Water) and MU-CV/15th Street (Mixed-Use Cannery Village and 15th Street) zoning districts. The direction also included several considerations: 1) applicability to multi-unit residential developments with 20 or more residential units under common ownership, 2) requirement for professional management, 3) requirement for project amenities, and 4) where there are no parking impacts that could reduce the availability of parking in residential neighborhoods.

On June 22, 2023, the Planning Commission discussed the potential to amend the Municipal Code to facilitate new visitor-serving accommodations in the zones identified. It was discussed that the MU-W2 and MU-CV/15th Street zoning districts currently allow hotels, motels, and timeshares subject to a conditional use permit. Bed and breakfast operations are allowed in the MU-CV/15th Street zone with a conditional use permit, but they are not permitted in the MU-W2 zone. Short term rentals are not allowed in any mixed-use zones currently. The Planning Commission directed staff to return at a future date with a report and recommendations focused on the matter (Attachment C - meeting minutes).

On October 19, 2023, the Planning Commission held a public hearing and reviewed the proposed amendments to allow short term rentals in specified mixed-use zones. Some Planning Commissioners were not supportive of a proposed permit criterion requiring a permit holder to own 20 or more eligible properties. The Planning Commission ultimately recommended approval of the proposed amendments with the removal of the ownership requirements. The Planning Commission resolutions are included as Attachments D and E and the meeting minutes are included as Attachment F.

The proposed amendments to Title 20 and Title 21 of the NBMC would reinstate short term lodging as an allowable use within the MU-W2 and MU-CV/15th Street zoning districts (Attachment G), subject to existing short term lodging regulations and additional eligibility criteria identified by the City Council from the May 23, 2023, meeting. Redline strikeouts illustrating the revised code provisions are included as Attachment H.

Changes to Maximum Cap

The existing maximum cap of short term lodging permits in the city is 1,550 permits. The amendment would not increase the total number of permits, but it would allow up to 75 permits in the MU-W2 and MU-CV/15th Street zoning districts and 1,475 permits in residential districts. This would maintain the total allowance for this type of visitor accommodations in the city without altering existing regulations on short term lodging previously adopted that protect residential neighborhoods. In fact, lowering the number of short term lodging permits in residential neighborhoods would enhance protection of residential neighborhoods.

Changes to Waiting List

There are currently 546 applicants on the citywide waiting list. With the proposed change to create two separate maximum caps, each maximum cap would maintain a separate waiting list. By creating separate waiting lists, transitioning of the 75 short term lodging permits to the allowed mixed-use zones can occur in the near-term while the permits in the residential zones will reduce to the new 1,475 residential cap through attrition.

Eligibility

To be eligible for a new short-term lodging permit in the MU-W2 and MU-CV/15th Street zoning districts the proposed amendment would require an applicant to:

1. Employ professional management to ensure code requirements are met and to increase accountability.
2. Create a management plan that ensures, among other things, that on-site amenities are provided to guests, and no parking impacts are created in surrounding residential zones.
3. **[Criterion Recommended for Removal by Planning Commission]** Pursuant to City Council direction from the May 23, 2023, meeting, the initial draft presented to the Planning Commission included an eligibility requirement that a permit holder would be required to own 20 or more units within the same Statistical Area (Attachment I) located in the MU-W2 and/or MU-CV/15th St. zoning districts. Common ownership was defined as the same person, entity or managing partner holding legal and/or equitable title to no less than 50% of each property or entity.

This location requirement and minimum ownership threshold was intended help with accountability and enforcement by ensuring that the City can have a stronger working relationship with fewer operators. Ultimately, the Planning Commission recommended removing this requirement for equity purposes and to provide all property owners in the mixed-use zones an opportunity for a permit. For reference, a redline strikeout draft of the NBMC Section 21.48.115 that includes this 20-unit ownership is included as Attachment J. Should the City Council choose to incorporate the 20-unit ownership requirements into the amendment, an alternative draft resolution has been provided as Attachment K that includes the associated changes.

Definition Update

Pursuant to NBMC Chapter 3.16 (Uniform Transient Occupancy Tax), a tax is required to be paid for the privilege of occupying certain visitor accommodations, including short term lodging units. The term “transient” means any individual who exercises occupancy or is entitled to occupancy by reason of concession, permit, right of access, license or other agreement for a period of 30 consecutive calendar days or less. The term *short term* and *short term lodging* as used in Chapter 5.95 and in Title 20 and Title 21 of the NBMC define short term as a lodging unit that is rented or leased as a single housekeeping unit for a period of less than 30 consecutive calendar days. To correct this inconsistency throughout the NBMC, the durations within references to short term or short term lodging are proposed to mean “a period of 30 consecutive calendar days or less.” The duration within the definition of bed and breakfast inn is also proposed to be updated for consistency.

Updates to Violations, Suspensions, Revocations and Permit Closures

Due to the current maximum cap of short term lodging permits, the City has found that several permit holders are holding onto their permits, but not actually conducting short term lodging activities or paying transient occupancy taxes. While NBMC Section 5.95.080 (License and Permit Closure) authorizes the City to close any permit that has no short term lodging activity for a period of two consecutive annual reporting periods, an owner may reapply for reinstatement of the short term lodging permit an unlimited number of times. Therefore, to encourage permit holders to use their short term lodging privileges and to help those property owners on the waiting list obtain a short term lodging permit sooner, the amendment proposes a one-time allowance to reinstate a permit that has been closed for nonuse.

Other minor clean-up and procedural updates are proposed throughout NBMC Chapter 5.95 primarily intended to eliminate ambiguities within the Code related to violations, suspensions, revocations and permit closures.

History of Short Term Lodging in Mixed-Use Zones

Short term lodging (STL) is a dwelling unit that is rented or leased for a period of 30 days or less (as proposed to be amended). The City initially regulated short term lodging by establishing NBMC Chapter 5.95 in 1992, which includes permitting requirements, standard operating conditions, and penalties. At that time, the short term rental of residential units was allowed in all zoning districts. As they proliferated over the years, Chapter 5.95 was amended in 2004 to prohibit the establishment of short term lodging in single-family zones.

In 2010, the City's Planning and Zoning Code (Title 20) was comprehensively updated. As part of this update, short term lodging was added to the allowable uses table (Table 2-1) for residential zones and to reinforce the prohibition of STLs in the single-family zones and allowance in the two-family and multi-family zones. A reference to Chapter 5.95 for implementation was also added. Short term lodging was inadvertently not listed in the allowable uses table for mixed-use zones (Tables 2-8 and 2-9). Pursuant to NBMC Section 20.12.020(E)(1), uses not listed in a zoning district (e.g. mixed-use zones) but which are listed in another zoning district (e.g. residential zones) are considered prohibited. In 2017, the California Coastal Commission certified the City's Local Coastal Program Implementation Plan (Title 21), which incorporated similar allowable uses tables as Title 20 and thereby incorporating the same prohibition of STLs in mixed-use zoning districts.

The proposed code revisions implement the City Council's direction and correct the inadvertent omission from 2010 that excluded short-term rentals from mixed-use areas.

Affected Locations

The MU-W2 zoning district primarily encompasses Lido Village and McFadden Square, but it also covers the Cannery Village waterfront and mixed-use commercial areas on Balboa Island (Agate and Marine Avenues), and a single property located at 2890 Bay Shore Drive. The MU-CV/15th Street zoning district encompasses the Cannery Village area and the mixed-use areas along the west side of 15th Street on the Balboa Peninsula. These two zoning districts are entirely within the coastal zone area of the city. See Attachment G for map of affected zoning districts.

Current Status of Short Term Lodging Permits in Mixed-Uses Zones

Given that STLs were previously allowed in mixed-use zones prior to 2010, there is a current total of 24 nonconforming STL permits that remain active throughout the various mixed-use zoning districts. Of those 24 permits, 20 permits are located within the subject MU-W2 and MU-CV/15th Street zones and would remain legal nonconforming unless the proposed eligibility criteria are satisfied. The remaining four permits are located within MU-V zoning district, and they too would remain legal nonconforming. As proposed, all 24 legal nonconforming short term lodging permits would not count against the 75-permit limit for the MU-W2 and MU-CV/15th Street zoning districts.

Appropriateness of STLs in Mixed-Use Zones

A common complaint from residents regarding short term lodging is that it often results in the commercialization of residential neighborhoods, and it can create land use conflicts between established residents and STL users. Residents experience increased exposure to noise, trash and parking impacts. However, mixed-use zones offer an ideal location for short-term rentals because these zones apply to predominately mixed-use properties with general commercial and visitor-serving commercial, and residential dwelling units on the upper floors. Additionally, mixed-use zones are generally located in areas that do not impact or burden residential neighborhoods and the two zones that would be affected are located proximate to the beach and harbor, which are destinations for visitors.

The attached revisions were carefully drafted to allow a very limited number of short-term rentals in the two mixed use areas, MU-W2 and MU-CV/15th Street. The added requirements that will accompany each short-term rental permit issued in a mixed-use area will ensure that residential neighborhoods and the community as a whole benefit from, and are not impacted by, the issuance of the new short-term rental permits.

General Plan Consistency

The proposed amendments would serve to implement the following goals and policies of the General Plan:

Land Use Element Policy LU 2.6 (Visitor Serving Uses) states, “Provide uses that serve visitors to Newport Beach’s ocean, harbor, open spaces, and other recreational assets, while integrating them to protect neighborhoods and residents.” The amendment would allow short term lodging within the MU-W2 and MU-CV/15th St. zoning districts, subject to specific regulations that would subject the operation of short-term lodging to a permit issued by the City. In addition, the unit(s) must be managed by professional management, and the short-term lodging must not impact parking in the neighborhood. The amendment would also maintain the existing citywide maximum cap of 1,550 permits by establishing a maximum cap of 1,475 permits within residential coastal zoning districts and a maximum cap of 75 permits within the MU-W2 and MU-CV/15th St. coastal zoning districts. This would maintain the existing allowance for this type of visitor accommodations in the city without altering existing provisions and regulations on short term lodging previously adopted to protect residential neighborhoods.

Land Use Element Goal LU 4, which states, “Management of growth and change to protect and enhance the livability of neighborhoods and achieve distinct and economically vital business and employment districts, which are correlated with supporting infrastructure and public services and sustain Newport Beach’s natural setting.” In specific mixed-use zones, larger scale (20 or more units) would be permitted to operate. This provides additional opportunities for properties in the mixed-use zones to achieve and maintain economic viability and avoids new impacts on residential neighborhoods.

Local Coastal Program Consistency

The proposed Title 21 amendment serves to implement Coastal Land Use Plan (CLUP) Table 2.1.1-1 (Land Use Plan Categories) of the LCP, which establishes the type, density and intensity of land uses within the coastal zone. The amendment would allow the operation of short-term lodging within existing dwelling units in certain mixed-use coastal zoning districts. This is consistent with allowing visitor-serving accommodations in the mixed-use zones while maintaining the adopted regulations to protect residential zones.

CLUP Policy 2.3.3-6 authorizes the short-term rental of dwelling units as a means of providing lower-cost overnight visitor accommodations. To allow for the small expansion of short term lodging in the more appropriate mixed use coastal zoning districts, but maintain and protect existing maximum cap of 1,550 permits, this amendment establishes two separate caps: 1) a maximum cap of 1,475 permit with residential coastal zoning districts; and, 2) a maximum cap of 75 permit within the MU-W2 and MU-CV/15th Street coastal zoning districts.

Local Coastal Plan Amendment Process

Any amendment to the LCP, including Title 21, must be reviewed and approved by the City Council, with a recommendation from the Planning Commission, prior to submitting the amendment request to the California Coastal Commission (Coastal Commission). The Coastal Commission is the final decision-making authority on amendments to the certified LCP; however, the City retains the ability to reject an LCP amendment in its entirety if the Coastal Commission includes suggested modifications.

Upon approval of the proposed LCP Amendment by the Coastal Commission, staff will return to the City Council with an ordinance adopting the Title 21 amendment.

FISCAL IMPACT:

There is no fiscal impact related to this item.

ENVIRONMENTAL REVIEW:

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:

Pursuant to Section 13515 of the California Code of Regulations, a review draft of the LCP Amendment was made available, and a Notice of Availability was distributed on October 13, 2023, to all persons and agencies on the Notice of Availability mailing list.

In addition, notice of this amendment was published in the Daily Pilot as an eighth-page advertisement, consistent with the provisions of the Municipal Code and State law. The item also appeared on the agenda for this meeting, which was posted at City Hall and on the City website.

ATTACHMENTS:

- Attachment A – Ordinance No. 2023-23
- Attachment B – Resolution No. 2023-83
- Attachment C – June 22, 2023 Planning Commission Minutes
- Attachment D – Planning Commission Resolution No. PC2023-037
- Attachment E – Planning Commission Resolution No. PC2023-038
- Attachment F – October 19, 2023 Planning Commission Minutes
- Attachment G – MU-W2 and MU-CV/15th Street Zoning Districts Map
- Attachment H – Redline Strikeouts of Proposed Amendments
- Attachment I – Statistical Area Map
- Attachment J – Redline Strikeout of Draft Section 21.48.115 Incorporating 20-unit Ownership Requirement
- Attachment K – Alternative Draft Resolution: LCP Amendment Incorporating 20-unit Ownership Requirement