

Attachment A

Ordinance No. 2025-5

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AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF NEWPORT BEACH, CALIFORNIA, AMENDING SECTION 15.02.095 (SECTION 105.3.4) OF THE NEWPORT BEACH MUNICIPAL CODE RELATED TO TIMEFRAMES FOR COMPLETION OF CONSTRUCTION

WHEREAS, Section 200 of the City Newport Beach's ("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, the number of construction projects on private property in the City has increased substantially over the past eleven years, which has resulted in increased impacts to residents from construction related noise, loss of on-street parking, and traffic;

WHEREAS, Chapter 15.02 (Administrative Code) of the Newport Beach Municipal Code ("NBMC"), adopts and incorporates by reference Chapter 1, Division II of the California Building Code;

WHEREAS, the City Council adopted Ordinance No. 2019-8 on April 23, 2019, adding Section 15.02.095 (Addition of Sections 105.3.3, 105.3.4, and 105.3.5), which sets a three-year time limit from the issuance of the first or original building permit for one-unit or two-unit dwellings to be completely constructed, unless the time is extended as provided in subsection 1.05.3.4;

WHEREAS, the City Council adopted Ordinance No. 2022-8 on March 22, 2022, amending Section 15.02.095 (Section 105.3.4) of the NBMC to allow for the extension of the timeframe to complete construction due to the impacts of COVID-19;

WHEREAS, it is in the interest of the residents of the City to place a reasonable time limit on the duration of construction projects and to streamline the extension request process, to balance the needs of the owner of the project with the health, safety and welfare of the neighbors; and

WHEREAS, the City Council desires to modify Section 15.02.095 (Section 105.3.4) of the NBMC to ensure that reasonable time extensions are granted, when necessary, with the primary objective of ensuring construction projects are completed promptly.

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

Section 1: Subsection 105.3.4 of Section 15.02.095 of the Newport Beach Municipal Code is hereby amended to read as follows:

Section 105.3.4 Extension of time limit to complete construction.

The maximum allowable time to complete construction, as set forth in Section 105.3.3, may be extended as follows:

1. Application for Extension to Building Official.

a) A property owner, or authorized agent of the property owner, may request an extension by filing with the Building Official, in writing and on a form provided by the Building Official, an application for extension which sets forth: (i) the address of the project site; (ii) the name of the applicant and property owner; (iii) when the first or original building permit was issued; (iv) the length of time extension requested, which shall not be greater than one hundred and eighty (180) calendar days; (v) how many previous extensions have been granted; (vi) criteria that establish the cause(s) of delay and the reason for the extension request; (vii) a comprehensive completion schedule; (viii) a brief description of the improvements that are the subject of the application; (ix) past complaints and enforcement history; and (x) any other information requested by the City.

b) Unless authorized by the Building Official in writing, an application for extension shall be submitted no later than forty-five (45) calendar days prior to the expiration of the building permit. The application for extension to the Building Official shall be accompanied by a fee adopted by resolution of the City Council.

c) Within forty-five (45) days of a request for extension, the Building Official may ministerially grant, conditionally grant or deny a request for extension for a period not to exceed one hundred and eighty (180) calendar days with a maximum of two extensions being granted by the Building Official under this subsection. The Building Official shall only grant an extension if he/she determines adequate progress has been made towards completion of construction and the request for extension is necessary for its completion. The decision of the Building Official shall be final and non-appealable.

2. Application for Additional Extension(s).

a) If construction of the project has not been completed within the timeframe authorized by the Building Official, a property owner, or authorized agent of the property owner, may request an additional extension by filing with the City Clerk, in writing and on a form provided by the City Clerk, an application for extension which sets forth: (i) the address of the project site; (ii) the name of the applicant and property owner; (iii) when the first or original building permit was issued; (iv) the length of time extension requested, which shall not be greater than one hundred and eighty (180) calendar days; (v) how many previous extensions have been granted; (vi) criteria that establishes the cause(s) of delay and the reason for the extension request; (vii) a comprehensive completion schedule; (viii) a brief description of the improvements that are the subject of the application; (ix) past complaints and enforcement history; and (x) any other information requested by the City.

b) Unless authorized by the Building Official in writing, an application for extension shall be submitted no later than forty-five (45) calendar days prior to the expiration of the building permit.

c) An application for extension filed with the City Clerk shall be accompanied by a hearing and noticing fee adopted by resolution of the City Council.

3. Scheduling and Noticing.

a) For an application for an additional extension set forth in subsection 2, a Hearing Officer, designated by the City Manager, shall hear and decide whether a third application for extension, or fourth application for extension, shall be granted, conditionally granted, or denied. The City Council shall hear and decide whether any additional application for extension, beyond four total extensions, shall be granted, conditionally granted or denied. The applicable hearing body shall be referred to herein as the "review authority."

b) For any application for extension to be heard by a Hearing Officer, the City Manager shall appoint a Hearing Officer with the requisite qualifications and experience to consider the application for extension. The Hearing Officer shall not be a City employee and the employment, performance evaluation, compensation and benefits of the Hearing Officer, if any, shall not be conditioned, either directly or indirectly, upon the outcome of any decision by the Hearing Officer.

Within seven (7) calendar days of the City Clerk's receipt of an application for extension, the City Manager or his/her designee shall notify the applicant of the name of the Hearing Officer in accordance with Section 1.08.080. If the applicant wishes to challenge the designated Hearing Officer, the applicant shall have seven (7) calendar days from the date of service of the notice to submit to the City Manager a request, in writing, to disqualify the Hearing Officer, which sets forth the basis for disqualification. A Hearing

Officer may only be disqualified for: (i) bias; (ii) prejudice; (iii) a conflict of interest; or (iv) a reason for which a judge may be disqualified after a showing of good cause under the laws of the State of California.

The City Manager will review any request for disqualification and decide as to whether a Hearing Officer shall be disqualified. The City Manager's decision shall be final. If the City Manager disqualifies a Hearing Officer, the City Manager shall designate a new Hearing Officer in accordance with the procedures in this subsection.

c) The applicant shall be notified of the time and place set for the hearing of the application, in accordance with Section 1.08.080, at least ten (10) calendar days prior to the date of the hearing. All hearings on an application to be heard by the review authority shall be noticed in the following manner:

(i) Mailed to property owners within three hundred (300) feet of the project site that is the subject of the application, at least ten (10) calendar days in advance of the hearing. The notice shall contain: the address of the project site; the length of time extension requested; the new end project date if the application is approved; the name of the applicant and property owner; a brief description of the improvements; the date, time, and place of the hearing; and a statement informing the person they have the ability to attend the hearing and provide comments; and

(ii) Posted by the applicant at the project site, that is the subject of the application, at least ten (10) calendar days before the scheduled hearing. The size, location and number of sign(s) shall be posted as determined by the City Manager or his/her designee. The applicant shall be responsible for maintaining the sign(s) in a satisfactory condition and shall remove all sign(s) within twenty-four (24) hours following the conclusion of the hearing.

The failure of any person or entity to receive notice given in compliance with this subsection shall not invalidate the actions of the applicable review authority.

4. Conduct of Hearing.

a) A hearing shall be held at the date, time, and place for which notice was given.

b) The review authority shall only consider evidence and testimony, presented by the applicant or any other interested person, relevant to whether: (i) special circumstances warrant an extension of time; (ii) the failure to meet the time limit was caused by circumstances beyond the property owner's, applicant's or their contractor's control; and (iii) any approval should contain conditions to ensure timely completion of the project in a manner that limits impacts on surrounding property owners. Any documents submitted by City staff shall constitute prima facie evidence of the respective facts contained in those documents.

c) The review authority may grant, or conditionally grant, up to a one hundred and eighty (180) calendar day extension, per application for extension, if it finds special circumstances warrant an extension of time or the failure to meet the time limit was caused by circumstances beyond the property owner's, applicant's or their contractor's control. If the review authority makes the findings to grant an extension, the review authority shall consider whether conditions are necessary to ensure timely completion of the project in a manner that limits impacts on surrounding property owners. The review authority shall deny the application if it cannot make the findings set forth in this subsection.

d) A hearing may be continued without further notice, provided the Hearing Officer or chair of the review authority announces the date, time, and place to which the hearing will be continued before the adjournment or recess of the hearing.

e) The review authority may announce a tentative decision and defer its action on a final decision until appropriate findings and/or conditions of approval have been prepared.

f) The review authority shall issue a written decision, setting forth its findings, and the decision shall be final and effective on the date the decision is made, unless otherwise specified by the review authority. The review authority shall provide the City Clerk with its final decision within three (3) calendar days of the date of decision and the City Clerk shall mail a copy of the final decision to the applicant within ten (10) calendar days of receipt of the final decision.

5. Judicial Proceeding.

Nothing herein shall prohibit the Building Official from issuing a building permit or extending a building permit if the extension is a term of an enforceable settlement agreement between the City and the property owner or a term of a court order/judgment.

6. Judicial Review.

The decision of the review authority shall not be appealable to any City body. A person shall not seek judicial review related to any application for extension until the person has first exhausted all administrative procedures set forth in Section 15.02.095.

Section 2: Any ordinance or portion thereof that conflicts with Ordinance No. 2025-5 including, but not limited to, the applicability of the sunset provision set forth in Section 5 of Ordinance No. 2022-8 is hereby repealed.

Section 3: The recitals provided in this ordinance are true and correct and are incorporated into the substantive portion of this ordinance.

Section 4: 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 5: The City Council finds 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.

Section 6: 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.

Section 7: The Mayor shall sign and the City Clerk shall attest to the passage of this ordinance. The City Clerk shall cause the ordinance, or a summary thereof, to be published pursuant to City Charter Section 414. This ordinance shall be effective thirty (30) calendar days after its adoption.

This ordinance was introduced at a regular meeting of the City Council of the City of Newport Beach held on the 25th day of March, 2025, and adopted on the 15th day of April, 2025, by the following vote, to-wit:

AYES: _____

NAYS: _____

ABSENT: _____

Joe Stapleton, Mayor

ATTEST:

Leilani I. Brown, City Clerk

APPROVED AS TO FORM:
CITY ATTORNEY'S OFFICE



Aaron C. Harp, City Attorney