

Attachment No. PC 1

Draft Resolution

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RESOLUTION NO. PC2026-022

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF NEWPORT BEACH, CALIFORNIA, WAIVING CITY COUNCIL POLICY L-6 (ENCROACHMENTS IN PUBLIC RIGHTS-OF-WAY) AND APPROVING ENCROACHMENT PERMIT NO. N2026-0241 TO ALLOW THE REMOVAL AND RELOCATION OF PRIVATE IMPROVEMENTS WITHIN THE PUBLIC RIGHT-OF-WAY FOR THE PROPERTY LOCATED AT 700 ½ JASMINE AVENUE (PA2026-0123)

THE PLANNING COMMISSION OF THE CITY OF NEWPORT BEACH HEREBY FINDS AS FOLLOWS:

SECTION 1. STATEMENT OF FACTS.

1. An application was filed by Elena Patton (“Owner”), with respect to property located at 700 ½ Jasmine Avenue, Newport Beach, California and legally described as an undivided ½ interest in and to Lot 2, Block 737 of Corona Del Mar, as shown on a map recorded in Book 3, Pages 41 and 42 of Miscellaneous Maps in the office of the County Recorder of Orange County (“Property”), requesting approval of an encroachment permit.
2. The Owner requests approval of Encroachment Permit No. N2026-0241, and a waiver of City Council Policy L-6 (Encroachments in Public Rights-of-Way) (“Policy”) to remove existing unpermitted private improvements encroaching 8 feet into the Fourth Avenue public right-of-way (“Right-of-Way”), and relocating the private improvements closer to the Property line to encroach 5 feet and 6 inches into the Public Right-of-Way. The private improvements consist of walls, fencing, pilasters, and landscaping in a configuration that maintains a minimum 4 feet wide and approximately 40 feet long clearance measured from the back of the curb along the property frontage (“Project”). Current landscaping encroaches 10 feet into the Public Right-of-Way and shall be limited to turf or other low ground cover not to exceed 24 inches in height.
3. The requested approvals are not specifically provided for within City Council Policy L-6 (Encroachments in Public Rights-of-Way). Therefore, the Project is prohibited under Subsection A of the Section titled “Private encroachments that are prohibited without a waiver and approval” of said policy. The Project may only be approved upon the waiver of the Policy with approval of the encroachment permit by the Planning Commission.
4. The Property is not located within the coastal zone.; therefore, a coastal development permit is not required.
5. A public meeting was held on August 6, 2026, in the City 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 Government Code Section 54950 *et seq.* (“Ralph M. Brown Act”) and City Council Policy L-6 (Encroachments in Public Rights-of-

Way). Evidence, both written and oral, was presented to, and considered by, the Planning Commission at this public hearing.

SECTION 2. CALIFORNIA ENVIRONMENTAL QUALITY ACT DETERMINATION.

1. This Project is categorically exempt from the California Environmental Quality Act ("CEQA") pursuant to Section 15060(c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment), Section 15060(c)(3) (the activity is not a project as defined in Section 15378), and Section 15303 under Class 3 (New Construction or Conversion of Small Structures) of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3 ("CEQA Guidelines"), because the Project involves the removal and relocation of small accessory structures (including fences, walls, pilasters, and appurtenant lighting) and appurtenant landscaping within the Right-of-Way, and has no potential to result in a direct or indirect physical change or significant effect to the environment. There are no known exceptions listed in CEQA Guidelines Section 15300.2 that would apply.
2. The exceptions to this categorical exemption under Section 15300.2 are not applicable. The Project 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 3. REQUIRED FINDINGS.

In accordance with City Council Policy L-6 (Encroachments in Public Rights-of-Way), the following findings and facts in support of such findings are set forth:

Finding:

- A. *The proposed private improvements within the public right-of-way, as conditioned, will not be detrimental to the health, safety, and welfare of the public.*

Facts in Support of Finding:

1. Fourth Avenue is a 50-foot-wide public right-of-way along the subject frontage. The distance between the back of the curb and the adjacent property line is approximately 10 feet. Maintaining four feet wide and approximately 40 feet long clearance measured from the back of curb reserves space for pedestrian travel and future public improvements, and reduces conflict between private improvements and the public use of the Public Right-of-Way.

2. Existing unpermitted encroachments within the Right-of-Way include walls, fences pilasters, and landscaping, 4-foot-tall wooden entry fence facing the driveway, a 25 feet wide concrete wall with an attached 1-foot and 6-inch-tall wooden fence facing the street and the alley, and landscaping of various heights all encroaching between 8 feet and 10 feet into the Public Right-of-Way. Removal and relocation of these improvements, as conditioned, reduces sight-distance obstructions and improves visibility for vehicles, bicyclists, pedestrians using Fourth Avenue, and the adjacent intersections/driveways, thereby improving public safety and welfare.
3. The Project will correct existing unpermitted conditions by requiring removal of said unpermitted improvements and the relocation/construction of these improvements closer to the property line that will remain within the Public Right-of-Way. The Project will maintain a minimum 4 feet wide and approximately 40 feet long clearance zone measured from the back of the curb, and preserve an area adjacent to the curb for pedestrian travel and future public improvements.
4. The Project will improve public safety by addressing visibility and safety concerns through the required configuration by requiring removal of any unauthorized electrical connections within the Public Right-of-Way or otherwise bringing any lighting improvements into compliance with City requirements.
5. Approval would require the Owner to enter into an encroachment agreement to allow the improvements as proposed. Any liability associated with the private improvements would be transferred to the Owner. Additionally, if the need for public improvements arises in the future, the Owner shall remove all encroachments at no cost to the City.

Finding:

- B. The individual circumstances applicable to this application and the proposed encroachment within the public right-of-way, as conditioned, are consistent with the public interest.*

Facts in Support of Finding:

1. The Project corrects existing unpermitted improvements encroaching into the Right-of-Way by relocating the improvements closer to the property line within a 4-foot-wide area (measured from the back of curb). The Project will allow a limited number of private improvements to remain within the Public Right-of-Way as conditioned and shown on the approved plans.
2. The Project's configuration includes a 4-feet wide and approximately 40 feet long clearance from the back of the curb and sets limitations on improvements within said area such as turf only landscaping or other low ground cover not to exceed 24 inches in height. The proposed configuration reserves space for pedestrian travel and future public improvements, including a sidewalk.

3. The Project does not interfere with existing public utilities, nor does it hinder the use, maintenance, or future repair/replacement of public infrastructure within the Public Right-of-Way, including the existing fire hydrant.
4. Any unauthorized electrical connections and low-voltage lighting within the Public Right-of-Way will be removed and/or modified to comply with City requirements as a condition of approval, which supports public safety.

SECTION 4. DECISION.

NOW, THEREFORE, BE IT RESOLVED:

1. The Planning Commission of the City of Newport Beach finds this Project is categorically exempt from CEQA pursuant to Sections 15060(c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment), 15060(c)(3) (the activity is not a project as defined in Section 15378), and Section 15303 under Class 3 (New Construction or Conversion of Small Structures) of the CEQA Guidelines because the existing improvements have no potential for resulting in direct or indirect physical change to the environment.
2. The Planning Commission of the City of Newport Beach hereby waives City Council Policy L-6 (Encroachments in Public Rights-of-Way) and approves Encroachment Permit No. N2026-0241, subject to the conditions set forth in Exhibit "A," which is attached hereto and incorporated by reference.
3. This action shall become final and effective 14 days following the date this Resolution is adopted unless within such time an appeal or call for review is filed with the City Clerk in accordance with the provisions of Title 20 (Planning and Zoning), of the Newport Beach Municipal Code.

PASSED, APPROVED, AND ADOPTED THIS 6th DAY OF AUGUST 2026

AYES:

NOES:

ABSTAIN:

ABSENT:

BY: _____
David Salene, Chair

BY: _____
Greg Reed, Secretary

EXHIBIT A**CONDITIONS OF APPROVAL****PUBLIC WORKS DEPARTMENT**

1. The Project shall be in substantial conformance with the approved site plan stamped and dated with the date of this approval.
2. The Project is subject to all applicable City ordinances, policies, and standards, unless specifically waived or modified by the conditions of approval.
3. The Owner shall comply with all federal, state, and local laws. Material violation of any of those laws in connection with the use may be cause for revocation of this Encroachment Permit and any associated Encroachment Agreements.
4. The Owner shall enter into an Encroachment Agreement within one calendar year upon receipt of approval, otherwise this approval shall automatically expire.
5. A minimum 4-foot-wide area measured from the back of curb shall be maintained free and clear of private improvements, except for turf or other low ground cover not exceeding 24 inches in height, and except as expressly shown on the approved plans.
6. Any unauthorized electrical connections and/or low-voltage lighting within the public right-of-way shall be removed or modified to comply with all applicable City requirements to the satisfaction of the City. No electrical facilities shall remain within the public right-of-way unless expressly approved and permitted by the City.
7. If the need for public improvements arises in the future, the Owner shall remove all encroachments at no cost to the City.
8. To the fullest extent permitted by law, Owner shall indemnify, defend and hold harmless the City, its City Council, its boards and commissions, officials, officers, employees, and agents from and against any and all claims, demands, obligations, damages, actions, causes of action, suits, losses, judgments, fines, penalties, liabilities, costs and expenses (including without limitation, attorney's fees, disbursements and court costs) of every kind and nature whatsoever which may arise from or in any manner relate (directly or indirectly) to City's approval of **The Patton Residence Encroachment (PA2026-0123) including, but not limited to, Encroachment Permit No. N2026-0241**. This indemnification shall include, but not be limited to, damages awarded against the City, if any, costs of suit, attorneys' fees, and other expenses incurred in connection with such claim, action, causes of action, suit or proceeding whether incurred by Owner, City, and/or the parties initiating or bringing such proceeding. The Owner shall indemnify the City for all of City's costs, attorneys' fees, and damages which City incurs in enforcing the indemnification provisions set forth in this condition. The Owner shall pay to the City upon demand any amount owed to the City pursuant to the indemnification requirements prescribed in this condition.

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