

## **Attachment E**

City Council Staff Report dated June 13, 2023 (without attachments)



**CITY OF**

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# **NEWPORT BEACH**

## **City Council Staff Report**

June 13, 2023  
Agenda Item No. 21

**TO:** HONORABLE MAYOR AND MEMBERS OF THE CITY COUNCIL

**FROM:** Seimone Jurjis, Community Development Director - 949-644-3232,  
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**TITLE:** Ordinance No. 2023-10: Code Amendment Establishing the  
"VE" Special Flood Hazard Area Overlay District (PA2018-075)

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### **ABSTRACT:**

For the City Council's consideration are amendments to Title 20 (Planning and Zoning) and Title 21 (Local Coastal Program Implementation Plan) of the Newport Beach Municipal Code (NBMC) to establish a new Special Flood Hazard (VE) Overlay District. The VE Overlay District would modify design standards for new residential development for properties designated by the Federal Emergency Management Agency (FEMA) as being in the VE Special Flood Hazard Area (VE Zone). New development within the VE Zone is required to meet FEMA construction design criteria, which includes elevating the finished floor of new residential structures approximately 3 to 5 feet above existing grade to avoid flood hazards.

Due to the complexity of complying with FEMA construction design criteria and the City's current design standards, the proposed ordinance is meant to provide the property owner with flexibility in the design of their home. The proposed VE Overlay District would allow raised walkways, decks and stairs with necessary guardrails and handrails to encroach into the front, side and rear setback areas to provide reasonable use and site access. The raised decks and walkways would be elevated similarly to the required elevated finished floor of the new residential structure.

### **RECOMMENDATIONS:**

- a) Conduct a public hearing;
- b) Find the introduction and adoption of this ordinance is not subject to the California Environmental Quality Act (CEQA) in accordance with Section 21065 of CEQA and State CEQA Guidelines Sections 15060(c)(2), 15060(c)(3) and 15378. The action is also exempt pursuant to State CEQA Guidelines Section 15061(b)(3) because it has no potential to have a significant effect on the environment. The amendments themselves do not authorize development that would directly result in physical change to the environment. Lastly, pursuant to CEQA Guidelines Section 15265(a)(1), local governments are exempt from the requirements of CEQA in connection with the adoption of a Local Coastal Program;

- c) Waive full reading, direct the City Clerk to read by title only, and introduce 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)*, and pass to second reading on June 27, 2023; and
- d) Adopt Resolution No. 2023-37, *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 to Amend Title 21 (Local Coastal Program Implementation Plan) of the Newport Beach Municipal Code to Establish the Special Flood Hazard (VE) Overlay District (PA2018-075)*.

**BACKGROUND:**

On March 21, 2019, new FEMA Flood Insurance Rate Maps (FIRMs) went into effect in Newport Beach. The new maps include the designation of a Special Flood Hazard Area (VE Zone) affecting 166 beachfront properties in West Newport, between 24<sup>th</sup> Street and 48<sup>th</sup> Street. Figure 1 below is an excerpt of the FIRM with the affected beachfront properties identified by a red oval.

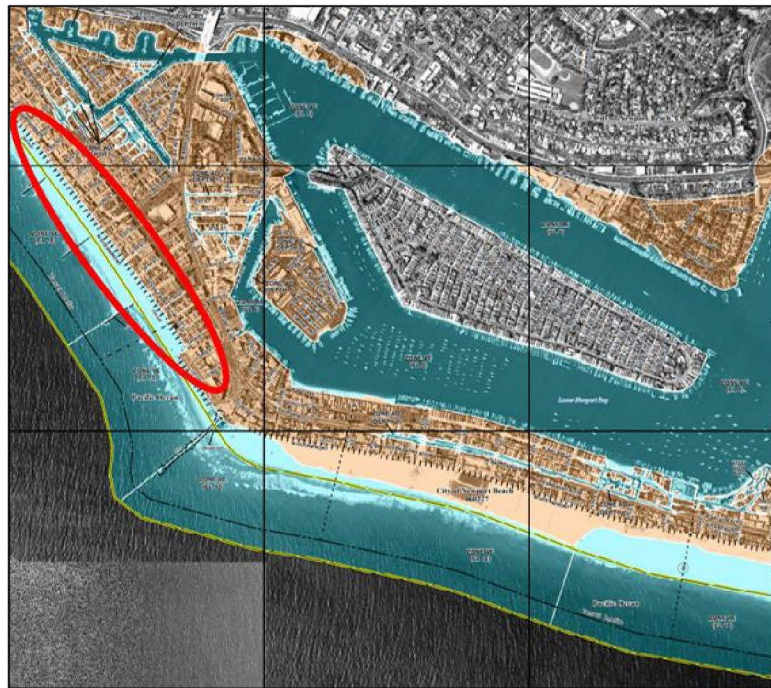


Figure 1 – Excerpt from the FIRM for West Newport

### Design Criteria for VE Zone Properties

New development and substantial remodels within the VE Zone are required to meet FEMA construction design criteria. This includes using pilings, posts, piers or columns to raise the main residential structure approximately 3 to 5 feet above the ground. The area below the elevated floor must be open and free of obstructions. In the event of wave action, these structures are designed and engineered to allow water to flow under the elevated floor system without damaging the foundation or creating substantial debris.

Of the 166 affected properties, 27 properties are in the “VE 13” area and require structures to be elevated by approximately 3 feet above the existing grade. The remaining 139 properties are in the “VE 15” area and require structures to be elevated approximately 5 feet above the existing grade. Figure 2 below provides a map of affected properties with the VE 13 designation shown in purple and the VE 15 designation shown in yellow.

Figure 3 on the following page provides an example section of a raised foundation on caissons.

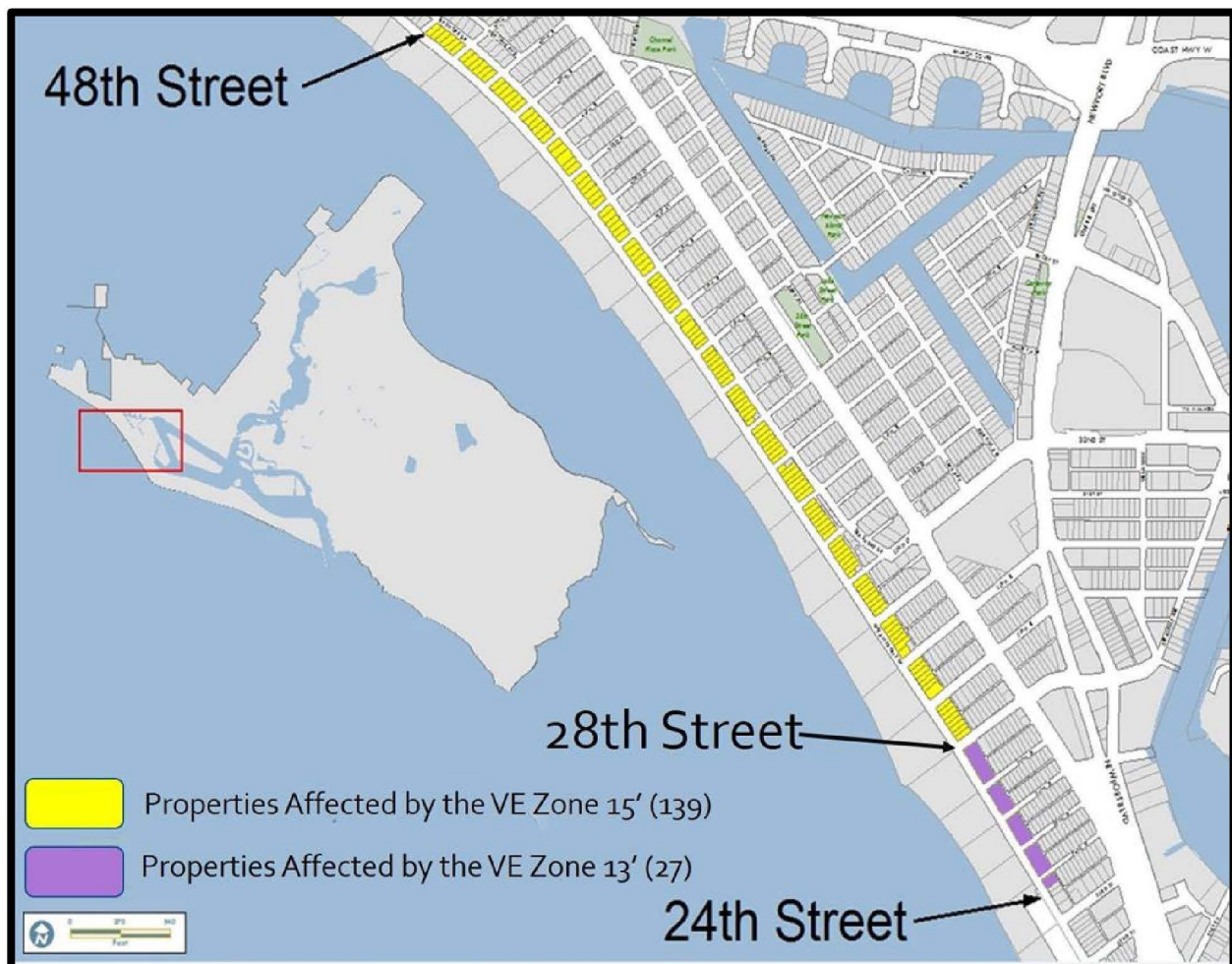


Figure 2 – Map of Affected Properties

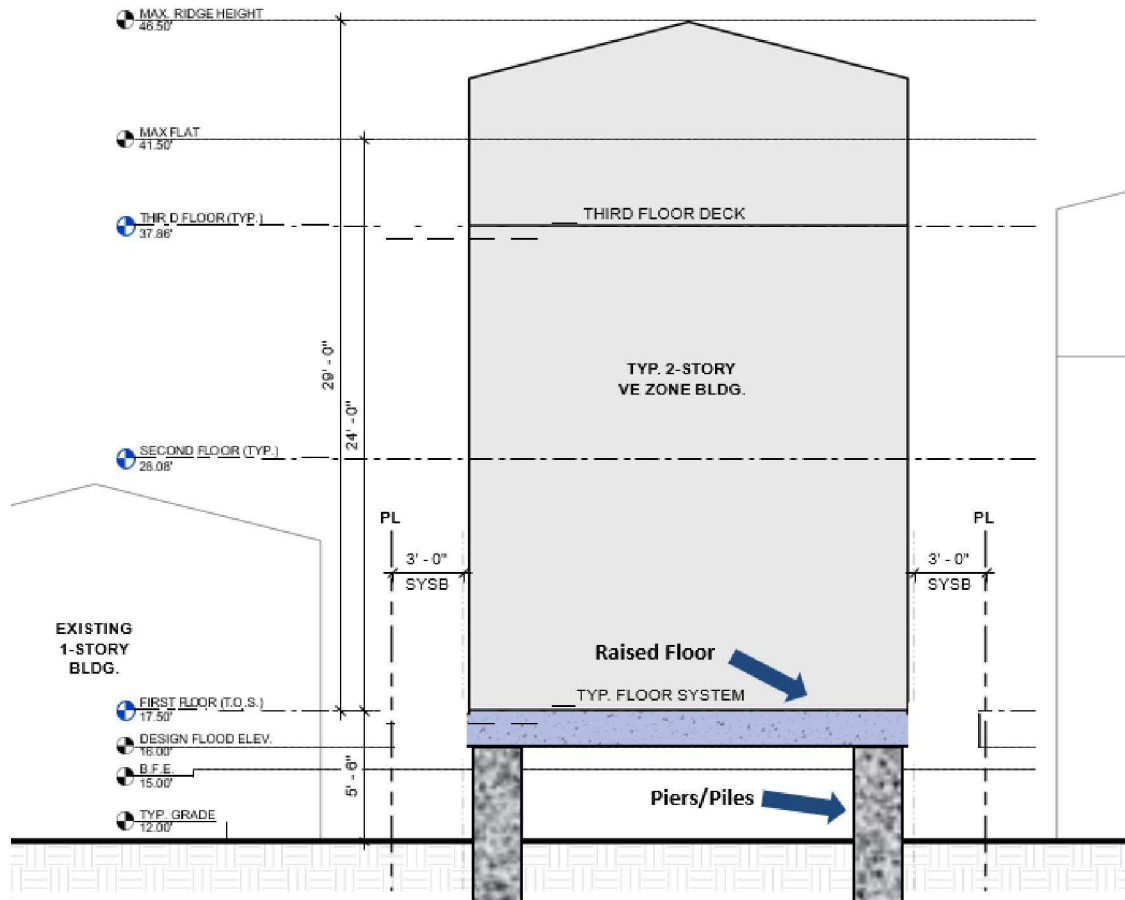


Figure 3 –Section of Raised Foundation

Compliance with FEMA’s VE Zone design criteria presents several challenges for new residential development to meet the City’s requirements of Title 20 (Planning and Zoning) and Title 21 (Local Coastal Program Implementation Plan) of the NBMC. Specifically, the VE Zone design criteria significantly limits means of access to the dwelling, as well as the usability of outdoor areas. The proposed amendments seek to remedy the challenges related to access and usability of outdoor areas.

#### Lack of Beach Access

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 for new construction since their finished floors are elevated well above the beach or boardwalk. The existing residential development standards in the NBMC limit the height of 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 elevated first floor. 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 allowable height limits in the front setback.

Similarly, access is challenging for properties in the VE zone. The current 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.

#### Proposed Solution – Code Amendment

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

The proposed code changes would allow direct access to the dwelling from the setback without the need to reduce the floor area of the dwelling to accommodate the stairs outside the setbacks. The required handrails or guardrails would also be allowed as part of the amendment to accommodate access in the setback areas.

The amendment will provide parity between residential properties located in the VE Zone and typical residential properties throughout the Coastal Zone.

#### Simulations

Visual impacts related to the proposed encroachments have been generated using 3D models to compare hypothetical residential structures with and without the encroachment areas. Figure 4 below and on the next page shows the difference between a potential new residential structure that was built with encroachments, and one that was built based on the existing code prior to any amendments. Both comply with FEMA's design criteria.





*Figure 4 – Visual Simulations of New Development Without and With Encroachments*

### City Council Initiation

On March 26, 2019, the City Council adopted Resolution No. 2019-31, initiating an amendment to Title 20 and Title 21 of the NBMC to modify the setback encroachment regulations for residential properties in the VE Flood Hazard Area. Specifically, the proposed amendment is intended to resolve conflicts in the NBMC related to height allowances in setbacks that limit or eliminate access and usability of front, side and rear setbacks.

### Public Engagement

The proposed amendments were presented to the design community on December 2, 2021, and to affected and nearby property owners on January 19, 2022, via virtual community meetings. The recommended allowance for site access encroachments into the front and side setbacks were generally supported. However, several residents raised concerns with respect to maintaining the privacy of adjacent properties, sight distance and safety impacts for corner-lot properties, and visual impacts for properties located behind VE properties. The proposed code amendments contained in the draft resolution and ordinance incorporate language that is responsive to and addresses the comments from the public to the greatest extent practicable.

### City Council - Study Session

A study session was held with the City Council on July 26, 2022, to discuss the proposed amendments and provide exhibits showing the potential design of new residential structures built in compliance with the VE Zone requirements. The exhibits showed the anticipated conditions or designs with and without the proposed code amendment. Affected owners in the VE Zone and owners within the vicinity of the VE Zone were provided a courtesy notice of the public meeting and a City “Newsplash” was posted online. At the conclusion of the study session, the City Council directed staff to complete the code amendments allowing maximum utility of setback areas and to prepare the draft language for review by the Planning Commission.

### Planning Commission Public Hearing and Recommendation

On May 4, 2023, the Planning Commission considered the proposed amendments (staff report – Attachment E) and adopted Resolution No. PC2022-022 (Attachment C) by a unanimous vote, recommending approval of the Code Amendment to the City Council and recommending the City Council to authorize submittal of the Local Coastal Program Amendment to the California Coastal Commission. Meeting minutes are included as Attachment D.

During the public comment portion of the hearing, one member of the public, Mr. Jim Mosher, provided suggestions on the draft code language for clarity purposes. Staff has considered the proposed suggestions and incorporated them as appropriate in the attached resolution and ordinance. Additional written comments were submitted prior to the hearing and are included as Attachment F. One commenter had questions, two commenters expressed concerns related to visual impacts to adjacent homes and the neighborhood, and one property owner in the VE Zone expressed support of the amendments.

### California Coastal Commission Submittal

If approved by the City Council the amendment will be submitted to the California Coastal Commission (Commission) for their review and consideration. Staff anticipates the amendment would be considered by the Commission within one year of submittal.

### **FISCAL IMPACT:**

There is no fiscal impact related to this item.

### **ENVIRONMENTAL REVIEW:**

Staff recommends the City Council find the introduction and adoption of this ordinance is not subject to the California Environmental Quality Act (CEQA) under 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 a physical change to the environment, directly or indirectly.

This action would also be considered exempt from CEQA pursuant to Section 15305 under Class 5 (Minor Alterations in Land Use Limitations) of the CEQA Guidelines, California Code of Regulations, Title 14, Division 6, Chapter 3 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 20 percent, which do not result in any changes in land use or density. The proposed 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.

Lastly, pursuant to CEQA Guidelines Section 15265(a)(1), local governments are exempt from the requirements of CEQA in connection with the adoption of a Local Coastal Program.

### **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 May 2, 2023, to all persons and agencies on the Notice of Availability mailing list.

Notice of this hearing was published in the *Daily Pilot*, mailed to all owners of property within 300 feet of the boundaries of the properties in the VE Special Flood Hazard Area (excluding intervening rights-of-way and waterways) and posted near the end of the properties in the VE Special Flood Hazard Area at least 10 days before the scheduled meeting, consistent with the provisions of the NBMC. Additionally, the item appeared on the agenda for this meeting, which was posted at City Hall and on the City website.

### **ATTACHMENTS:**

- Attachment A – Ordinance No. 2023-10 (Title 20 Amendments)
- Attachment B – Resolution No. 2023-37 (Title 21 Amendment)
- Attachment C – Planning Commission Resolution No. PC2023-022
- Attachment D – May 4, 2023 Planning Commission Meeting Minutes
- Attachment E – May 4, 2023 Planning Commission Staff Report
- Attachment F – Written Correspondence