Attachment A

Draft Resolution No. 2026-__

RESOLUTION NO. 2026-__

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF NEWPORT BEACH, CALIFORNIA, DENYING AN APPEAL AND UPHOLDING THE DECISION OF THE PLANNING COMMISSION TO DENY EMPLOYEE AND DELIVERY VEHICLE USE OF AN EMERGENCY ACCESS DRIVEWAY AT AN EXISTING PROFESSIONAL OFFICE BUILDING LOCATED AT 2350 BRISTOL STREET (PA2025-0112)

WHEREAS, Section 200 of the City Charter, of the City of Newport Beach ("City"), 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 City 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, an application was filed by Mira Patel of Newmeyer Dillon Law Firm, ("Applicant") concerning property located at 2350 Bristol Street, and legally described as Lots 4, 5, and 23 of Tract 1499 ("Property");

WHEREAS, the Property was originally within the jurisdiction of the County of Orange ("County") before being annexed into the City in September of 2002;

WHEREAS, the Property is developed with a three-story, 18,136-square-foot office building and an adjoining 65-space surface parking lot that was approved by the County Board of Supervisors on August 20, 1986, pursuant to Use Permit No. UP86-21P and Site Development Permit No. SP86-52P;

WHEREAS, UP86-21P and SP86-52P have two approved site plans, Option A and Option B, that both include a driveway at the rear of the Property, connecting the Property to Zenith Avenue ("Zenith Driveway");

WHEREAS, both Option A and Option B depict movable bollards with language denoting the bollards are movable for emergency access;

WHEREAS, a revised plan stamped and dated July 23, 1987, depicts the bollards removed, however, the revised plan also includes a large "X" through the revised design for the Zenith Driveway and handwritten notation that an unrestricted driveway configuration was not approved, to see the original approval, and to see a subsequent controlled emergency access plan approved by the Orange County Fire Prevention Bureau;

WHEREAS, the Controlled Emergency Access plan, stamped and dated July 18, 1990, depicts the Zenith Driveway to be constructed with a heavy-duty chain and a lock, keyed for Fire Department access;

WHEREAS, in December 2024, the City's Code Enforcement Division began receiving complaints regarding use of the Zenith Driveway by employees and issued a Notice of Violation on December 18, 2024, for violation of Section 10.50.020(H) (Nuisance – Violation of Permit) of the Newport Beach Municipal Code ("NBMC");

WHEREAS, in response to the Notice of Violation, the Applicant requested use of the Zenith Driveway by employees and delivery drivers ("Project") which requires a staff approval consistent with Section 20.54.070 (Changes to an Approved Project) of the NBMC;

WHEREAS, while Section 20.54.070 (Changes to an Approved Project) of the NBMC allows the Community Development Director ("Director") to authorize minor changes to an approved plan, the Director referred the Project to the Planning Commission for review, consistent with Section 20.12.020(A) (Rules of Interpretation – Authority) of the NBMC;

WHEREAS, the Property is designated General Commercial Office (CO-G) by the General Plan Land Use Element and is located within Business Park (BP) District of the Santa Ana Heights Specific Plan (SP-7);

WHEREAS, the Property is not located within the coastal zone; therefore, a coastal development permit is not required;

WHEREAS, on March 19, 2026, a public hearing was held by the Planning Commission, in the Council Chambers at 100 Civic Center Drive, Newport Beach, California 92660. A notice of the time, place, and purpose of the hearing was given in accordance with 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 hearing;

WHEREAS, at the hearing, the Planning Commission adopted Resolution No. PC2026-008 denying the Project by a majority vote (5 ayes, 0 nays, 2 absent) on the basis that Use Permit No. UP86-21P and Site Development Permit No. SP86-52P restricting the Zenith Driveway to emergency access only is clear and unambiguous, the application was incomplete such that the required findings could not be made, and any safety concerns raised by the Applicant could be addressed with a complete application required for the Staff Approval;

WHEREAS, on April 2, 2026, the Applicant filed a timely appeal of the Planning Commission's decision, citing three primary grounds: the development was approved by the County in 1986 which makes the existing uses vested; the City incorrectly interpreted the Zenith "Emergency Access" Driveway as allowing for emergency access only; and the application was not necessary as the City advised the Applicant to apply for the modification and the Applicant did so out of an abundance of caution;

WHEREAS, in conjunction with the appeal grounds listed above, the Applicant cited a number of justifications for the Project, including that: the application was superfluous; the City has waived any defenses that the application was incomplete; the Zenith Driveway is not restricted to emergency vehicles only and the County already determined (via resolution) there are no impacts to other uses within the vicinity nor to public health, safety, or welfare; both driveways are necessary for the Property's safe operations; the continued use of the Zenith Driveway is vested, may constitute a legal non-conforming use, and the City is estopped from challenging the County approvals 40 years later; other nearby properties have two driveways- one within close proximity to Zenith Avenue; any decision to limit or revoke the use of the Zenith Driveway would constitute a compensable taking, a dangerous condition, and a substantial impairment of access to the Property; the Owner is still waiting for public records from the County of Orange County Department of Public Works and the Orange County Board of Supervisors related to the Orange County Board of Supervisor's resolution and Bristol Street operations, accidents, etc.; and the application is not necessary and non-emergency Zenith Driveway use is existing and should continue; and

WHEREAS, a public hearing was held by the City Council on July 14, 2026, in the City Council Chambers at 100 Civic Center Drive, Newport Beach, California 92660. A notice of time, place and purpose of the public hearing was given in accordance with the Ralph M. Brown Act and 20.62 (Public Hearings) of the NBMC. Evidence, both written and oral, was presented to, and considered by, the City Council at this public hearing.

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

Section 1: The City Council of the City of Newport Beach hereby upholds the Planning Commission's decision and denies the Project filed as PA2025-0112, based upon the findings set forth in Exhibit "A," which is attached hereto and incorporated herein by reference.

Section 2: The City Council finds the adoption of this resolution is exempt from environmental review pursuant to Section 15270 of the California Environmental Quality

Act ("CEQA") Guidelines, California Code of Regulations, Title 14, Division 6, Chapter 3, as projects which a public agency rejects or disapproves are not subject to CEQA review.

Section 3: The recitals provided in this resolution are true and correct and are incorporated into the operative part of this resolution.

Section 4: If any section, subsection, sentence, clause or phrase of this resolution 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 resolution. The City Council hereby declares that it would have passed this resolution, 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: This resolution shall take effect immediately upon its adoption by the City Council, and the City Clerk shall certify the vote adopting the resolution.

ADOPTED this 14th day of July, 2026.

_____
Lauren Kleiman
Mayor

ATTEST:

_____
Lena Shumway
City Clerk

APPROVED AS TO FORM:
CITY ATTORNEY'S OFFICE

_____ for
Aaron C. Harp
City Attorney

Attachments: Exhibit "A" – Findings and Facts in Opposition of Findings

EXHIBIT "A"

FINDINGS IN OPPOSITION OF STAFF APPROVAL (PA2025-0112)

The City Council may approve a Staff Approval for substantial conformance with Use Permit No. UP86-21P and Site Development Permit No. SP86-52P only after making all four required findings set forth in Section 20.54.070 (Changes to an Approved Project) of the NBMC. In this case, the City Council was unable to substantiate the four required findings based upon the following, and the City Council upholds the Planning Commission's decision:

I. Findings Required to Authorize Changes to an Approved Project:

A. *The changes are consistent with all applicable provisions of this Zoning Code;*

B. *The changes do not involve a feature of the project that was a basis for or subject of findings or exemptions in a negative declaration or Environmental Impact Report for the project;*

C. *The changes do not involve a feature of the project that was specifically addressed or was the subject of a condition(s) of approval for the project or that was a specific consideration by the applicable review authority in the project approval; and*

D. *The changes do not result in an expansion or change in operational characteristics of the use.*

Facts Not in Support of Finding:

1. Pursuant to Section 20.90.130(B) (Professional and Administrative Office District: SP-7) of the NBMC, professional and administrative offices in the PA subarea of the SP-7 Zoning District are an allowed land use, subject to the approval of a minor use permit. The existing office building at the Property is permitted under County Use Permit No. UP86-21P and Site Development Permit No. SP86-52P, which restricts the Zenith Driveway to emergency access only. Requested operational changes to the Property include the use of the Zenith Driveway for delivery and employee vehicles. Condition of Approval No. 18 of UP86-21P requires that construction details for the controlled emergency access driveway be approved by the Fire Chief, and shall include width, clear height, and means of emergency vehicle override. The plans originally submitted for the Project identify the Zenith Driveway as emergency access and subsequent associated plans approved by the Fire Chief in accordance with UP86-21P and SP 86-52P include a heavy-duty chain blocking vehicle access with a lock accessible only by a Fire Department access key. Since the current request includes non-emergency use of the Zenith Driveway, the proposed operational changes would therefore involve and conflict with a feature of the original project that was specifically addressed or was a condition of approval and would constitute a substantial change from the existing approval.

2. The Project conflicts with Section 20.90.190(B) (Public Improvements – Circulation Plan) of the NBMC. Section 20.90.190 acknowledges that Santa Ana Heights has been heavily impacted by nonresidential traffic attempting to avoid congested conditions on

surrounding arterials. A primary consideration of the circulation plan was the reduction of traffic within residential areas. With the development of business park uses within areas adjacent to residential uses, another consideration was the separation of business park and residential traffic including street improvements to mitigate business park uses' traffic impacts to residential neighborhoods. Street Improvement Feature 3, which is approximately 500 feet from the Project, required construction of a cul-de-sac and improvement of Cypress Street south of South Bristol Street. Adding nonresidential traffic into the residential neighborhood is inconsistent with Section 20.90.190(B).

3. The requested operation of the Zenith Driveway for employee and delivery use would impact the operational characteristics of the use. Code Enforcement has received several complaints involving employee vehicles using the Zenith Driveway as well as complaints regarding employees parking on adjacent residential streets. Permitting employee use of the Zenith Driveway is negatively impactful to the adjacent residential neighborhood.

4. The Project was reviewed by the City's Public Works Department, which expressed concerns with allowing unrestricted use of the Zenith Driveway as proposed. The Zenith Driveway provides a depth of approximately 16 feet from the property line to the existing gate. Public Works issued comments noting that, for unrestricted use of the Zenith Driveway, the gated entry would need to be set back so that vehicles using the Zenith Driveway do not impact the public right-of-way, including the sidewalk. The existing condition does not support vehicles queuing while waiting to enter the Property. It should also be noted that, regardless of location, vehicle queueing is not permitted within the public right-of-way.

II. <u>Findings in Response to the Applicant's Project Justification</u>:

1. **The existing approvals restrict the Zenith Driveway to controlled emergency access only**. The approved plans and the plain text of Use Permit No. UP86-21P establish that the southwest driveway was limited to emergency access—not general ingress/egress for employees or deliveries. The plans expressly note "Conc. Bollards – Movable for Emergency Access," and a later Controlled Emergency Access Plan required a heavy-duty chain and Fire Department lock, reflecting controlled emergency-only functionality; the constructed sliding gate is consistent with restricted, not unrestricted, access. The Condition of Approval No. 18 require construction details "for the controlled emergency access" to be approved by the Fire Chief (including width, clear height, and means of emergency vehicle override) and to be "operational in a manner" approved by the City, confirming the driveway's controlled status. Subsequent agency approvals implemented controlled access only, requiring a heavy-duty chain and lock keyed for Fire Department access—measures incompatible with general employee or delivery use. A 1987 submittal proposing an unrestricted configuration was expressly rejected, with a notation directing back to the original approval and later controlled-access plan. Staff's comprehensive review of approvals, conditions, permits, and the Applicant's materials concluded that any non-emergency use would be a change requiring City approval.

2. **The application was required; the appeal's vested rights and nonconforming use claims are unsupported.** Vested rights arise from uses that were lawfully established. The evidence before the City demonstrates that employee and delivery vehicle use of the Zenith Driveway was not approved as part of UP86-21P or SP86-52P. Because the existing entitlements identify the Zenith Driveway as controlled emergency access, converting it to employee and delivery use would modify the approved Project and therefore requires City review under applicable procedures. The City is interpreting and applying existing conditions, not revoking any approved use; the approved configuration—primary access from Bristol Street with controlled emergency access to Zenith—remains intact. Additionally, vested rights arise only from lawfully established uses, and the record shows that employee and delivery use of the Zenith Driveway was not approved.

3. **Evidence of operational necessity or safety grounds to override the emergency-only restriction have not been demonstrated.** The building has operated for decades with primary access from Bristol Street and controlled emergency access to Zenith; the evidence does not establish that unrestricted Zenith access is necessary for safe operation. Although some delivery vehicles may face height limitations, the Applicant did not show the Property cannot safely function using its approved Bristol access. The City Traffic Engineer determined that an alleged neighboring sign does not obstruct sight distance if drivers inch forward toward Bristol, undermining claims of unsafe egress warranting unrestricted Zenith use. At hearing, the Commission identified the application's lack of substantive materials, including a traffic analysis, necessary to support findings for the requested change and found the emergency-access restriction clear and unambiguous.

4. **The record confirms emergency-only restrictions; there is no prior County approval for unrestricted use.** The original site plans identify emergency access at the Zenith Driveway, and later Fire Prevention Bureau plans depict controlled access with a heavy-duty chain and Fire Department lock—evidence that unrestricted ingress/egress was never approved. Code Enforcement complaints regarding employee use of the Zenith Driveway further reflect operational impacts inconsistent with the emergency-only entitlement.

5. **Traffic-separation policies weigh against introducing nonresidential traffic onto Zenith.** Santa Ana Heights has been heavily impacted by nonresidential traffic avoiding arterials; the circulation plan prioritizes reducing traffic in residential areas and separating business park and residential traffic. Allowing employee and delivery use of the Zenith Driveway would introduce additional nonresidential traffic into the adjacent residential neighborhood, contrary to Section 20.90.190(B) of the NBMC.

6. **Operational impacts confirm a change in use and support denial under Section 20.54.070 of the NBMC.** Complaints about employees using the Zenith Driveway and parking on adjacent residential streets indicate that the requested change would expand and alter operational characteristics, adversely affecting the neighborhood. Public Works identified safety and right-of-way concerns: the driveway depth from property line to the existing gate is approximately 16 feet, and for unrestricted use the gate would need to be set back to prevent queuing into the public right-of-way;

vehicle queuing in the right-of-way is not permitted. The application therefore fails to provide the basis for required findings under Section 20.54.070 of the NBMC.

7. **Comparisons to nearby properties are irrelevant to the governing approvals for the Property.** Each property is controlled by its own entitlements and conditions. The question here is compliance with this Project's approvals and whether findings under Section 20.54.070 of the NBMC can be made for this operation.

8. **Application of the existing approvals do not constitute a taking.** The Fifth Amendment provides that private property shall not be taken for public use without just compensation and California's Constitution similarly requires that private property may be taken or damaged for a public use only when just compensation has first been paid to the owner (Cal. Const. Art. 1, § 19). The primary framework for evaluating regulatory takings claims is the ad hoc balancing test established in Penn Central Transportation Co. v. New York City, (1978) 438 U.S. 104 ("Penn Central"). California courts, including the Court of Appeal in Lockaway Storage v. County of Alameda, (2018) 216 Cal.App.4th 161 have identified three primary factors: (1) the economic impact of the regulation on the claimant, (2) the extent to which the regulation interfered with distinct investment-backed expectations, and (3) the character of the governmental action. Moreover, certain regulatory actions are treated categorically as a taking without the necessity of the Penn Central inquiry. Moreover, under Lucas v. South Carolina Coastal Council, (1992) 505 U.S. 1003, a narrow exception to the balancing test exists for the extraordinary circumstance of a permanent deprivation of all beneficial use of land. The California Supreme Court in Hensler v. City of Glendale, (1994) 8 Cal. 4th 1 recognized this rule, noting that a regulation denying a coastal owner any construction or beneficial use of property constitutes a compensable taking if, under state law, a right to develop the land existed prior to enactment of the challenged regulation. In this case, whether applying the *Penn Central* balancing test or Lucas, the denial of the Project is not a taking. The Property remains fully operational for office use, thus, maintaining the economic viability of the Property. Moreover, it does not eliminate access in that the Property retains primary access from Bristol Street and emergency access to Zenith, preserving reasonable access in accordance with the original approvals. The City's action interprets and applies existing conditions rather than a regulatory taking.

9. **Estoppel does not apply**. In City of San Marino v. Roman Catholic Archbishop of Los Angeles, (1960) 180 Cal. App. 2d 657, the court reinforced the principle, holding that long-continued but illegal use of property, without more, creates no vested rights in the owner as against the zoning provisions.

In conclusion, the administrative record demonstrates that the Zenith Driveway was approved and constructed as controlled emergency access only. The Applicant's claims of vested rights, necessity, comparables, takings, estoppel, and procedural defects are unsupported by the approvals and evidence. Because the requested use would modify the approved operation, introduce nonresidential traffic into a residential area contrary to policy, and expand operational characteristics without the analysis needed to support required findings, the appeal should be denied and the Planning Commission's decision upheld.