

Attachment C

Resolution No. 2023-76

RESOLUTION NO. 2023-76

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 RELATED TO THE COMPREHENSIVE MUNICIPAL CODE UPDATE (PA2022-0219)

WHEREAS, Section 200 of the City of Newport Beach (“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, Section 30500 of the California Public Resources Code requires each county and city to prepare a Local Coastal Program (“LCP”) for that portion of the coastal zone within its jurisdiction;

WHEREAS, in 2005, the City adopted the City of Newport Beach LCP Coastal Land Use Plan, as amended from time to time;

WHEREAS, the California Coastal Commission effectively certified the City’s LCP Implementation Plan on January 13, 2017, and the City added Title 21 (Local Coastal Program Implementation Plan) (“Title 21”) of the City of Newport Beach Municipal Code (“NBMC”) whereby the City assumed coastal development permit-issuing authority on January 30, 2017;

WHEREAS, on September 13, 2022, the City Council adopted Resolution No. 2022-58 establishing the Municipal Code Review Ad Hoc Committee to review and make recommended revisions to the NBMC and Council Policies;

WHEREAS, the City Council further directed board and commissions, including the Planning Commission, to establish ad hoc committees to review the NBMC and City Council Policies within that particular body’s area of expertise to comprehensively review and amend the NBMC to reduce regulations, streamline processes, and generally eliminate outdated information;

WHEREAS, at its August 3, 2023, meeting, the Planning Commission ad hoc committee recommended revisions to Title 19 (Subdivisions), Title 20 (Planning and Zoning) (“Zoning Code Amendment”) and Title 21 (Local Coastal Program Implementation Plan) (“Local Coastal Program Amendment”) of the NBMC in accordance with the Council’s direction which include:

- Report of Residential Building Records – Make the existing mandatory process voluntary;
- Tentative Parcel Map Review – Eliminate the public hearing requirements for parcel maps for condominium purposes;
- Bluff Overlay District – Eliminate conflicting code provisions by deleting the bluff overlay areas in Title 20 that are included in Title 21;
- Take-Out Service – Fast-Casual – Change threshold for when a fast-casual take-out restaurant with no late hours requires a minor use permit (discretionary review); and
- Conversion or Demolition of Affordable Housing – Eliminate Chapters 20.34 and 21.34 as they are no longer applicable to the City;

WHEREAS, additional revisions were incorporated into the Zoning Code Amendment and Local Coastal Program Amendment that eliminate conflicting review authority for reasonable accommodations and modify the review authority for alcohol sales with late hours;

WHEREAS, the Planning Commission held a duly noticed public hearing on October 19, 2023, in the 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 the California Government Code Section 54950 *et seq.* (“Ralph M. Brown Act”) and Chapter 21.62 (Public Hearings) of the NBMC. Evidence, both written and oral, was presented to, and considered by, the Planning Commission at this public hearing;

WHEREAS, at the conclusion of the public hearing, the Planning Commission adopted Resolution No. PC2023-039 by a unanimous vote (5 ayes, 0 nays) recommending approval of the Zoning Code Amendment and Local Coastal Program Amendment to the City Council;

WHEREAS, pursuant to Title 14 of the California Code of Regulations (“CCR”) Section 13515 (Public Participation), drafts of the Local Coastal Program Amendment were made available and a Notice of Availability was distributed at least six weeks prior to the final action date; and

WHEREAS, the City Council held a duly noticed public hearing on November 14, 2023, in the Council Chambers located at 100 Civic Center Drive, Newport Beach, California. A notice of time, place and purpose of the hearing was given in accordance with the Ralph M. Brown Act, Section 13515, and Chapter 21.62 (Public Hearings) of the NBMC. Evidence, both written and oral, was presented to, and considered by, the City Council at this hearing.

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

Section 1: The City Council authorizes staff to submit the Local Coastal Program Amendment as set forth in Exhibit "A," based upon the Facts in Support of Local Coastal Program Amendment set forth in Exhibit "B," both of which are attached hereto and incorporated by reference, to the California Coastal Commission.

Section 2: This Local Coastal Program Amendment shall not become effective until approval by the California Coastal Commission and adoption, including any modifications suggested by the California Coastal Commission, by resolution and/or ordinance of the City Council of the City of Newport Beach.

Section 3: The LCP, including this Local Coastal Program Amendment, will be carried out in full conformity with the California Coastal Act.

Section 4: The recitals provided in this resolution are true and correct and are incorporated into the operative part of this resolution.

Section 5: 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 6: The City Council finds this Local Coastal Program Amendment 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 California Code of Regulations, Title 14, Division 6, Chapter 3 ("CEQA Guidelines"), because it has no potential for resulting in physical change to the environment, directly or indirectly. The Local Coastal Program Amendment simply creates consistency throughout the NBMC by eliminating conflicting provisions, standardizing provisions throughout, reducing regulations, streamlining processes, and generally eliminating outdated information.

The City Council also finds this Local Coastal Program Amendment is exempt categorically from CEQA pursuant to Section 15305 under Class 5 (Minor Alterations in Land Use Limitations) of the CEQA Guidelines, 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 twenty percent, which do not result in any changes in land use or density. As stated above, the Local Coastal Program Amendment creates consistency throughout the NBMC by eliminating conflicting provisions, standardizing provisions throughout, reducing regulations, streamlining processes, and generally eliminating outdated information.

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.


Section 7: 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 November, 2023.



Noah Blom
Mayor

ATTEST:



Leilani I. Brown
City Clerk



APPROVED AS TO FORM:
CITY ATTORNEY'S OFFICE



Aaron C. Harp
City Attorney

Attachment(s): Exhibit A – Local Coastal Program Amendment (PA2022-0219)
 Exhibit B – Facts in Support of Local Coastal Program Amendment
 (PA2022-0219)

Exhibit “A”
LOCAL COASTAL PROGRAM AMENDMENT (PA2022-0219)

Section 1: The Table of Contents for Title 21 (Local Coastal Program Implementation Plan) of the Code is hereby amended to read as follows:

Title 21
LOCAL COASTAL PROGRAM IMPLEMENTATION PLAN

Chapters:

Part 1. Implementation Plan Applicability

- 21.10 Purpose and Applicability of the Implementation Plan**
- 21.12 Interpretation of Implementation Plan Provisions**
- 21.14 Coastal Maps**

Part 2. Coastal Zoning Districts, Allowable Land Uses, and Coastal Zoning District Standards

- 21.16 Development and Land Use Approval Requirements**
- 21.18 Residential Coastal Zoning Districts (R-A, R-1, R-BI, R-2, and RM)**
- 21.20 Commercial Coastal Zoning Districts (CC, CG, CM, CN, CV, CV-LV, OG)**
- 21.22 Mixed-Use Coastal Zoning Districts (MU-V, MU-MM, MU-CV/15th St., MU-W1, MU-W2)**
- 21.26 Special Purpose Coastal Zoning Districts (OS, PC, PF, PI, PR, and TS)**
- 21.28 Overlay Coastal Zoning Districts (MHP, PM, B, C and H)**

Part 3. Site Planning and Development Standards

- 21.30 Property Development Standards**
- 21.30A Public Access and Recreation**
- 21.30B Habitat Protection**
- 21.30C Harbor and Bay Regulations**
- 21.35 Water Quality Control**
- 21.38 Nonconforming Uses and Structures**
- 21.40 Off-Street Parking**
- 21.44 Transportation and Circulation**
- 21.46 Transfer of Development Rights**

Part 4. Standards for Specific Land Uses

- 21.48 Standards for Specific Land Uses**
- 21.49 Wireless Telecommunications Facilities**

Part 5. Planning Permit Procedures

- 21.50 Permit Application Filing and Processing**
- 21.52 Coastal Development Review Procedures**
- 21.54 Permit Implementation, Time Limits, and Extensions**

Part 6. Implementation Plan Administration

- 21.62 Public Hearings**
- 21.64 Appeals and Calls for Review**
- 21.68 Enforcement**

Part 7. Definitions

- 21.70 Definitions**

Part 8. Maps

- 21.80 Maps**

Part 9. Specific Plans

- 21.90 Santa Ana Heights Specific Plan**

Part 10. Appendices

Appendix A Sea Level Rise

Appendix B Coastal Access Signing Program

Appendix C Oceanfront Encroachment Policy Guidelines

Section 2: Subsection (A) of Section 21.10.030 (Authority–Relationship to Coastal Land Use Plan) of Chapter 21.10 (Purpose and Applicability of the Implementation Plan) of Title 21 of the Code is hereby amended to read as follows:

A. Authority. This Implementation Plan is adopted pursuant to the authority contained in Cal. Gov. Code Section 65850 et seq., Division 20 of the Cal. Pub. Resources Code (California Coastal Act), and 14 CCR Section 13001 et seq. (California Coastal Commission Regulations).

Section 3: Subsection (A)(1) of Section 21.16.060 (Additional Permits and Approvals May Be Required) of Chapter 21.16 (Development and Land Use Approval Requirements) of Title 21 of the Code is hereby amended to read as follows:

(A)(1) Other provisions of this Code (e.g., conditional use permits, minor use permits, limited-term permits, site development review, zoning clearances, building permits,

grading permits, other construction permits, live entertainment permit, or a business license); or

Section 4: Table 21.18-4 Notes (7) of Section 21.18.030 (Residential Coastal Zoning Districts General Development Standards) of Chapter 21.18 (Residential Coastal Zoning District (R-A, R-1, R-BI, R-2, and RM)) of Title 21 of the Code is hereby amended to read as follows:

(7) Density bonuses may be granted for the development of housing that is affordable to lower-, low-, and moderate-income households and senior citizens in compliance with Cal. Gov. Code Sections 65915 through 65917. Any housing development approved pursuant to Cal. Gov. Code Section 65915 shall be consistent, to the maximum extent feasible, and in a manner most protective of coastal resources, with all otherwise applicable Local Coastal Program policies and development standards.

Section 5: Footnote (6) of Table 21.22-3 of Section 21.22.030 (Mixed-Use Coastal Zoning Districts General Development Standards) of Chapter 21.22 (Mixed-Use Coastal Zoning Districts (MU-V, MU-MM, MU-CV/15TH ST., MU-W1, MU-W2)) of Title 21 of the Code is hereby amended to read as follows:

(6) Density bonuses may be granted for the development of housing that is affordable to lower-, low-, and moderate-income households and senior citizens in compliance with Cal. Gov. Code Sections 65915 through 65917. Any housing development approved pursuant to Cal. Gov. Code Section 65915 shall be consistent, to the maximum extent feasible, and in a manner most protective of coastal resources, with all otherwise applicable Local Coastal Program policies and development standards.

Section 6: Footnote (7) of Table 21.22-4 of Subsection (C) of Section 21.22.030 (Mixed-Use Coastal Zoning Districts General Development Standards) of Chapter 21.22 (Mixed-Use Coastal Zoning Districts (MU-V, MU-MM, MU-CV/15TH ST., MU-W1, MU-W2)) of Title 21 of the Code is hereby amended to read as follows:

(7) Density bonuses may be granted for the development of housing that is affordable to lower-, low-, and moderate-income households and senior citizens in compliance with Cal. Gov. Code Sections 65915 through 65917. Any housing development approved pursuant to Cal. Gov. Code Section 65915 shall be consistent, to the maximum extent feasible, and in a manner most protective of coastal resources, with all otherwise applicable Local Coastal Program policies and development standards.

Section 7: Subsection (C)(2) of Section 21.26.045 (Planned Community Coastal Zoning District Land Uses) of Chapter 21.26 (Special Purpose Coastal Zoning Districts (OS, PC, PF, PI, PR, AND TS)) of Title 21 of the Code is hereby amended to read as follows:

(C)(2) Subject to approval of the Community Development Director after a determination that the parking provided is adequate to serve demand and that the uses will not adversely impact other land uses in the area.

Section 8: Subsections (A)(1) and (C)(3) of Section 21.28.020 (Mobile Home Park (MHP) Overlay Coastal Zoning District) of Chapter 21.28 (Overlay Coastal Zoning Districts (MHP, PM, B, C and H)) of Title 21 of the Code are hereby amended to read as follows:

(A)(1) Mobile Home Parks. Mobile home parks as regulated by the State of California pursuant to the Mobile Home Parks Act (Cal. Health & Saf. Code Section 18300) and the California Coastal Act (Cal. Pub. Resources Code Division 20).

(C)(3) A mobile home park phase out plan and report on the impact of conversion, closure, or cessation of the use on the displaced residents of the mobile home park has been prepared, reviewed, and found to be acceptable and consistent with the provisions of the Cal. Gov. Code.

Section 9: Subsections (B)(1)(b) and (B)(5) of Section 21.30.105 (Cultural Resource Protection) of Chapter 21.30 (Property Development Standards) of Title 21 of the Code are hereby amended to read as follows:

(B)(1)(b) A site where evidence of potentially significant historical resources is found in an initial study conducted in compliance with the California Environmental Quality Act (CEQA) (Cal. Pub. Resources Code Section 21000 et seq.).

(B)(5) Offer for Relocation of Historic Structure. Before issuance of a permit by the Community Development Director for the demolition of an historic structure the applicant shall first offer the structure for relocation by interested parties.

Section 10: Subsection (B)(1) of Section 21.30A.040 (Determination of Public Access/Recreation Impacts) of Chapter 21.30A (Public Access and Recreation) of Title 21 of the Code is hereby amended to read as follows:

(B)(1) Land Use. The project's impact on use of private lands suitable for visitor-serving commercial recreational facilities designed to enhance public opportunities for coastal recreation and other priority uses specified in Cal. Pub. Resources Code Sections 30222 and 30223.

Section 11: Subsection (B)(1) of Section 21.30B.040 (Wetlands, Deepwater Areas, and Other Water Areas) of Chapter 21.30B (Habitat Protection) of Title 21 of the Code is hereby amended to read as follows:

(B)(1) Methodology. Wetland delineations shall be conducted in accordance with the definitions of wetland boundaries contained in 14 CCR Section 13577(b)

Section 12: Subsection (D) of Section 21.30C.070 (Dredging Permits) of Chapter 21.30C (Harbor and Bay Regulations) of Title 21 of the Code is hereby amended to read as follows:

D. Limits on Development and Uses. Development involving diking, filling, or dredging of open coastal waters, wetlands, and estuaries shall be limited to uses consistent with the Section 30233 of the Cal. Pub. Resources Code (Coastal Act) and Section 21.30B.040(E)(2).

Section 13: Chapter 21.34 (Conversion or Demolition of Affordable Housing) of Chapter 21.34 (Conversion or Demolition of Affordable Housing) of Title 21 of the Code is hereby deleted in its entirety.

Section 14: Subsection (D)(3) of Section 21.38.070 (Landmark Structures) of Chapter 21.38 (Nonconforming Uses and Structures) of Title 21 of the Code is hereby amended to read as follows:

(D)(3) Any permit required by other titles of this Code (other than this title) shall be obtained before the initiation or intensification of an accessory use of a landmark structure;

Section 15: Subsection (C) of Section 21.44.045 (Vacations and Abandonments) of Chapter 21.44 (Transportation and Circulation) of Title 21 of the Code is hereby amended to read as follows:

C. Procedure. Vacations and abandonments shall be processed by filing an application for vacation or abandonment pursuant to Cal. Sts. & Hy. Code Sections 8300 through 8363 and by filing an application for a coastal development permit pursuant to Chapters 21.50 and 21.52.

Section 16: Subsections (A) and (B) of Section 21.44.055 (Temporary Street Closures) of Chapter 21.44 (Transportation and Circulation) of Title 21 of the Code are hereby amended to read as follows:

A. General. Temporary closing of portions of any street for celebrations, parades, local special events, and other purposes when necessary for public safety shall be permitted pursuant to Section 21101 of the Cal. Veh. Code.

B. West Newport. Temporarily closing certain streets in West Newport for a period of no more than twenty-four (24) hours during the Independence Day holiday shall be permitted when, in the opinion of the Police Chief, the closure is necessary to protect the public safety. In no event shall any street closure prevent or interfere with the public's access to the beach or bay.

Section 17: Subsections (A), (B)(4), and (J) of Section 21.48.200 (Accessory Dwelling Units) of Chapter 21.48 (Standards for Specific Land Uses) of Title 21 of the Code are hereby amended to read as follows:

A. Purpose. The purpose of this section is to establish the procedures for the creation of accessory dwelling units and junior accessory dwelling units, as defined in Part 7 (Definitions) of this title and in Cal. Gov. Code Sections 65852.2 and 65852.22, in areas designated for residential use, including as part of a planned community development plan or specific plan, and to provide development standards to ensure the orderly development of these units in appropriate areas of the City.

(B)(4) Required to correct a legally established nonconforming zoning condition. This does not prevent the City from enforcing compliance with applicable building standards in accordance with Cal. Health & Saf. Code Section 17980.12.

J. Historic Resources. Accessory dwelling units and/or junior accessory dwelling units proposed on residential or mixed-use properties that are determined to be historic shall be approved ministerially, in conformance with Cal. Gov. Code Sections 65852.2 and 65852.22. However, any accessory dwelling unit or junior accessory dwelling unit that is listed on the California Register of Historic Resources shall meet all Secretary of the Interior standards, as applicable.

Section 18: Subsection (R) of Section 21.49.030 (Definitions) of Chapter 21.49 (Wireless Telecommunications Facilities) of Title 21 of the Code is hereby amended to read as follows:

R. Wireless Tower. "Wireless tower" means any structure built for the sole or primary purpose of supporting antennas used to provide wireless services authorized by the FCC. A distributed antenna system (DAS) installed pursuant to a Certificate of Public Convenience and Necessity (CPCN) issued by the California Public Utilities Commission on a water tower, utility tower, streetlight, or other structures built or rebuilt or replaced primarily for a purpose other than supporting wireless services authorized by the FCC, including any structure installed pursuant to Cal. Pub. Util. Code Section 7901, is not a wireless tower for purposes of this definition. For an example only, a prior-existing streetlight standard which is replaced with a new streetlight standard to permit the addition of antennas shall not be considered a wireless tower, but rather a replacement streetlight standard.

Section 19: Subsections (F)(3)(b), (F)(6)(b)(i), and (J)(2) of Section 21.49.050 (General Development and Design Standards) of Chapter 21.49 (Wireless Telecommunications Facilities) of Title 21 of the Code are hereby amended to read as follows:

(F)(3)(b) New or replacement vertical structures may be allowed when authorized by this Code and approved by the Public Works Department. Replacement poles or streetlights shall be consistent with the size, shape, style, and design of the existing pole,

including any attached light arms. New poles or streetlights may be installed, provided they match existing or planned poles within the area.

(F)(6)(b)(i) Where existing utilities services (e.g., telephone, power, cable TV) are located underground, the support equipment shall be placed underground if required by other provisions of this Code. Flush-to-grade underground vault enclosures, including flush-to-grade vents, or vents that extend no more than twenty-four (24) inches above the finished grade and are screened from public view, may be incorporated. Electrical meters required for the purpose of providing power for the proposed telecom facility may be installed above ground on a pedestal in a public right-of-way provided they meet applicable standards of Title 13 unless otherwise precluded by this Code.

(J)(2) All graffiti on any components of the telecom facility shall be removed promptly in accordance with this Code.

Section 20: Footnote (7) of Table 21.50-1 (Review Authority) of Section 21.50.020 (Authority for Decisions) of Chapter 21.50 (Permit Application Filing and Processing) of Title 21 of the Code is hereby amended to read as follows:

(7) All development on tidelands, submerged lands, and public trust lands as described in Cal. Pub. Resources Code Section 30519(b) and in deferred certification areas designated by the Local Coastal Program shall require a permit issued by the Coastal Commission in accordance with procedures specified by the Coastal Commission, in addition to other permits or approvals required by the City.

Section 21: Subsections (B) and (C) of Section 21.50.025 (Projects Bisected by Jurisdictional Boundaries) of Chapter 21.50 (Permit Application Filing and Processing) of Title 21 of the Code are hereby amended to read as follows:

B. Projects Bisected by City and Coastal Commission Jurisdiction. Where a proposed development is located within both the Coastal Commission's and City's coastal development permit jurisdictions, coastal development permits are required by both the City and the Coastal Commission. Alternatively, if the applicant, the City and the Coastal Commission agree, the Coastal Commission can process a consolidated coastal development permit application pursuant to the procedures in Cal. Pub. Resources Code Section 30601.3.

C. Projects Bisected by Different Local Government Jurisdictions. If a project straddles the boundaries of the City and another local government, the applicant must obtain separate coastal permits from each jurisdiction. An exception is possible for public agencies that, pursuant to Cal. Pub. Resources Code Section 30605, may obtain one "Public Works Plan" approval from the Coastal Commission, in lieu of locally issued coastal permits.

Section 22: Section 21.52.010 (Purpose) of Chapter 21.52 (Coastal Development Review Procedures) of Title 21 of the Code is hereby amended to read as follows:

This chapter provides procedures to ensure that all public and private development in the coastal zone is consistent with the California Coastal Act of 1976 (Division 20 of the Cal. Pub. Resources Code) as amended, in accordance with the City's Local Coastal Land Use Plan and the City's Local Coastal Program. The provisions of this chapter shall apply in the coastal zone, as defined by the Coastal Act. Furthermore, the provisions of this chapter, and as applicable the Coastal Act and regulations, shall be utilized to determine whether or not a proposal in the City's permitting jurisdiction constitutes development and whether or not that development requires a coastal development permit or is exempt. No provision contained in any other chapter of the Implementation Plan, nor in any other City policy or regulations, shall be used in such determinations.

Section 23: Subsections (B)(1) and (H) of Section 21.52.015 (Coastal Development Permits) of Chapter 21.52 (Coastal Development Review Procedures) of Title 21 of the Code are hereby amended to read as follows:

(B)(1) Coastal Development Permit Issued by the Coastal Commission. Developments on tidelands, submerged lands, and public trust lands as described in Cal. Pub. Resources Code Section 30519(b) and in deferred certification areas designated by the certified Local Coastal Program require a permit or exemption issued by the Coastal Commission in accordance with the procedure as specified by the Coastal Act. Areas of Coastal Commission permit jurisdiction and deferred certification areas are generally depicted on the Post-LCP Certification Permit and Appeal Jurisdiction Map.

H. Notice of Final Action. Within seven calendar days of the date of the City's final local action on an exemption or coastal development permit application and meeting the requirements of 14 CCR Section 13570, a notice of its final action shall be sent, by first class mail, to the applicant, the Coastal Commission, and any persons who specifically request such notice by submitting a self-addressed, stamped envelope to the City. Such notice shall be accompanied by a copy of the exemption, denial, or coastal development permit approval with conditions of approval and written findings and the procedures for appeal of the action to the Coastal Commission.

Section 24: Subsections (C) introductory paragraph, (C)(1)(d)(i), (C)(2)(d)(i), (C)(4)(d), and (C)(7) of Section 21.52.035 (Projects Exempt from Coastal Development Permit Requirements) of Chapter 21.52 (Coastal Development Review Procedures) of Title 21 of the Code are hereby amended to read as follows:

C. Coastal Act Exemptions. Developments not located within the Coastal Commission's permit jurisdiction determined to be exempt from the coastal development permit requirements pursuant to Cal. Pub. Resources Code Section 30610. The following types of projects shall be so exempted unless they involve a risk of adverse environmental effects:

(C)(1)(d)(i) An increase of ten (10) percent or more of the floor area of existing structure(s) on the building site or an additional improvement of ten (10) percent or less where an

improvement to the structure has previously been undertaken pursuant to Cal. Pub. Resources Code Section 30610(a) and/or this subsection.

(C)(2)(d)(i) An increase of ten (10) percent or more of the internal floor area of existing structure(s) on the building site or an additional improvement of ten (10) percent or less where an improvement to the structure has previously been undertaken pursuant to Cal. Pub. Resources Code Section 30610(a) and/or this subsection.

(C)(4)(d) Unless destroyed by disaster, the replacement of fifty (50) percent or more of a single-family residence, seawall, revetment, bluff retaining wall, breakwater, groin or any other structure is not repair and maintenance under Cal. Pub. Resources Code Section 30610(d) but instead constitutes a replacement structure requiring a coastal development permit.

(C)(7) Time-Share Conversions. Any activity anywhere in the coastal zone that involves the conversion of any existing multiple-unit residential structure to a time-share project, estate, or use, as defined in Section 11003.5 of the Cal. Bus. & Prof. Code. If any improvement to an existing structure is otherwise exempt from the permit requirements of this part, no coastal development permit shall be required for that improvement on the basis that it is to be made in connection with any conversion exempt pursuant to this subsection. The division of a multiple-unit residential structure into condominiums, as defined in Section 783 of the Cal. Civ. Code, shall not be considered a time-share project, estate, or use for purposes of this subsection.

Section 25: Subsection (C)(8) of Section 21.52.035 (Projects Exempt from Coastal Development Permit Requirements) of Chapter 21.52 (Coastal Development Review Procedures) of Title 21 of the Code is hereby added to read as follows:

(C)(8) Tentative Parcel Maps for Condominium Purposes. Tentative parcel maps involving the subdivision of airspace within two-unit or multi-unit dwellings for condominium purposes.

Section 26: Section 21.52.045 (Categorical Exclusions) of Chapter 21.52 (Coastal Development Review Procedures) of Title 21 of the Code is hereby amended to read as follows:

A. Post-Certification Categorical Exclusions. The Coastal Commission may adopt a categorical exclusion after certification of this Implementation Plan pursuant to Cal. Pub. Resources Code Sections 30610(e) or 30610.5 and 14 CCR Section 13215 et seq. and 14 CCR Section 240 et seq. Records of such categorical exclusions shall be kept on file with the Department.

B. Notice of Exclusion. A notice of exclusion shall be provided to the Coastal Commission and to any person who has requested such notice within five (5) business days of issuance. The notice of exclusion may be issued at the time of project application but shall not become effective until all other approvals and permits required for the project

are obtained. A copy of all terms and conditions imposed by the City shall be provided to the Coastal Commission, per 14 CCR Section 13315.

Section 27: Subsection (A) of Section 21.52.075 (Coastal Commission Review of Recorded Access Documents) of Chapter 21.52 (Coastal Development Review Procedures) of Title 21 of the Code introductory paragraph is hereby amended to read as follows:

A. Standards and Procedures. Upon final approval of a coastal development permit or other authorization for development, and where issuance of the permit or authorization is conditioned upon the applicant recording a legal document which restricts the use of real property or which offers to dedicate or grant an interest or easement in land for public use, a copy of the permit conditions, findings of approval, and drafts of any legal documents proposed to implement the conditions shall be forwarded to the Coastal Commission for review and approval prior to the issuance of the permit consistent with the following procedures and 14 CCR Section 13574:

Section 28: Subsection (B) of Section 21.54.030 (Effective Date of Permits – Notice of Final Action) of Chapter 21.54 (Permit Implementation, Time Limits, and Extensions) of Title 21 of the Code is hereby amended to read as follows:

B. Notice of Final Action. Final City action on permits for sites located within the City's coastal zone shall be documented by the notice of final local action which the City sends to the Coastal Commission within seven days of the City's final action on a CDP application and compliance with 14 CCR Section 13570.

Section 29: Section 21.64.035 (Appeal to the Coastal Commission) of Chapter 21.64 (Appeals and Calls for Review) of Title 21 of the Code is hereby amended to read as follows:

A final action taken by the City on a coastal development permit application for appealable development as defined in subsection (A) of this section may be appealed to the Coastal Commission in compliance with this section and 14 CCR Sections 13111 through 13120 and Coastal Act Section 30603. If there is any conflict between the provisions of this section or 14 CCR Sections 13111 through 13120 and Section 30603 of the Coastal Act, 14 CCR Sections 13111 through 13120 and Section 30603 of the Coastal Act shall control.

A. Appealable Development—Cal. Pub. Resources Code Section 30603(a). A decision by the City on a coastal development permit application within the appeal areas identified in Cal. Pub. Resources Code Section 30603(a) as generally depicted on the Post-LCP Certification Permit and Appeal Jurisdiction Map or on any development approved or denied by the City on a coastal development permit application for a project that constitutes a major public works project or energy facility may be appealed to the Coastal Commission.

B. Status of Appellant.

1. Who May Appeal. An appeal may be filed by an applicant, an aggrieved person, or two members of the Coastal Commission in compliance with Cal. Pub. Resources Code Section 30625.

2. Aggrieved Person Defined. As provided by Cal. Pub. Resources Code Section 30801, an aggrieved person is any who, in person or through a representative, appeared at a public hearing held before the Zoning Administrator, Planning Commission, or Council in connection with the decision or action appealed, or who, by other appropriate means prior to a hearing, informed the City of the nature of their concerns or who for good cause was unable to do either.

C. Exhaustion of City Appeals Required. An applicant or other aggrieved person may appeal a City decision on a coastal development permit application to the Coastal Commission only after exhausting all appeals to the Planning Commission and Council in compliance with this chapter. Exhaustion of all local appeals shall not apply to any circumstance identified in 14 CCR Section 13573(a), including, but not limited to, the following circumstances:

1. An appellant was denied the right of the initial local appeal under this chapter because City notice and hearing procedures did not comply with 14 CCR Section 13573; or
2. The local government jurisdiction changes an appeal for the filing or processing of appeals.

In addition, in accordance with 14 CCR Section 13573(b), there shall be no requirement of exhaustion of local appeals when an appeal of a City decision is filed by two members of the Coastal Commission in compliance with Cal. Pub. Resources Code Section 30625. Notice of a Coastal Commissioners' appeal shall be transmitted to the City in compliance with 14 CCR Section 13111(d). The Director may transmit the Commissioners' appeal to the local appellate body (which considers appeals from the local body that rendered the final decisions subject to the Commissioner appeal), and the Commissioners' appeal may be suspended pending a decision on the merits by that local appellate body. If the final action by an appellate body modifies or reverses the previous decision, the Coastal Commissioners shall be required to file a new appeal from that decision.

D. Grounds for Appeal to Coastal Commission—Cal. Pub. Resources Code Section 30603. The grounds for an appeal to the Coastal Commission of a City final action on a coastal development permit application are as follows:

1. For approval of a coastal development permit as described in subsection (A) of this section, an allegation that the project does not conform to the standards of the Local Coastal Program or the public access policies of the Coastal Act.

2. For denial of a development described in subsection (A) of this section, an allegation that the project conforms to the standards of the Local Coastal Program and the public access policies of the Coastal Act.

E. Notice of Final Action on Appeals within the Coastal Zone. Where a local appeal has been filed and decided on a project that is appealable to the Coastal Commission in compliance with this section, the City shall provide notice of the final action (see also the requirements of Section 21.52.015(H), Notice of Final Action).

F. Time Limit for Filing an Appeal to the Coastal Commission. An appeal of a Council decision on an appealable development shall be filed with the Coastal Commission within ten (10) working days of the receipt by the Coastal Commission of adequate notice of final City action, in compliance with this chapter and the Coastal Act. The beginning of the ten (10) working day appeal period shall be established by Coastal Commission staff.

G. Notice to City of Appeal to Coastal Commission. An appellant shall notify the applicant, any persons known to be interested in the application and the City of the filing the appeal. Notification shall be by delivering a copy of the completed notice of appeal to the domicile(s), office(s), or mailing address(es) of said parties. In any event, such notification shall be by such means as may reasonably advise said parties of the pendency of the appeal. Unwarranted failure to perform such notification may be grounds for dismissal of the appeal by the Commission.

Section 30: Subsection (C) of Section 21.68.050 (Legal Remedies) of Chapter 21.68 (Enforcement) of Title 21 of the Code is hereby amended to read as follows:

C. Enforcement Pursuant to the Coastal Act. In addition to the enforcement provisions contained in this chapter, the provisions of Cal. Pub. Resources Code Division 20, Chapter 9 shall also apply with respect to violations and enforcement and the City and the Commission shall have the enforcement powers described therein.

Section 31: Section 21.70.010 (Purpose of Part) of Chapter 21.70 (Definitions) of Title 21 of the Code is hereby amended to read as follows:

This part provides definitions of terms and phrases used in this Implementation Plan that are technical or specialized, or that may not reflect common usage. If the definitions in this part conflict with definitions in other provisions of this Code, these definitions shall control for the purposes of this Implementation Plan. If a word is not defined in this part, or elsewhere in this Implementation Plan, the most common dictionary definition is presumed to be correct.

As used in this Implementation Plan, the following terms and phrases shall have the meaning ascribed to them in this part, unless the context in which they are used clearly requires otherwise.

Section 32: The following definitions in Section 21.70.020 (Definitions of Specialized Terms and Phrases) of Chapter 21.70 (Definitions) of Title 21 of the Code are hereby amended to read as follows:

“Aggrieved person” means any person who, in person or through a representative, appeared at a public hearing held before the Zoning Administrator, Planning Commission, or Council in connection with the decision or action appealed, or who, by other appropriate means prior to a hearing, informed the City of the nature of their concerns or who for good cause was unable to do either (Cal. Pub. Resources Code Section 30801).

“Alcohol sales, off-sale, accessory only (land use)” means an establishment that has all of the following characteristics:

1. Alcoholic beverages will be or are sold, served, or given away for consumption off the premises where sold, served, or given away;
2. The establishment is applying for or has obtained an ABC License Type 20 (off-sale beer and wine—package store) or License Type 21 (off-sale general—package store); and
3. The sale of alcoholic beverages is accessory to the retail sale of food products and the display area for alcoholic beverages does not exceed thirty (30) percent of the net floor area of the use. Illustrative examples include drug stores, grocery stores, and supermarkets, but do not include convenience markets.

“Review authority” means the individual or official City or State body identified by this Implementation Plan as having the responsibility and authority to review and approve or disapprove ministerial and discretionary permit applications described in this Implementation Plan. Includes the Newport Beach City Council (“Council”), the Planning Commission (“Commission”), the Community Development Director (“Director”), the Zoning Administrator (“Zoning Administrator”), the Community Development Department (“Department”), the City Traffic Engineer, the Public Works Director and the California Coastal Commission (“Coastal Commission”).

Animal-Keeping (Land Use).

3. “Animal, wild” means an animal that is not customarily confined or cultivated by man for domestic or commercial purposes but kept for display. Includes an animal that may be imported, transported, or possessed only by first obtaining a

California Department of Fish and Game Permit, as required in 14 CCR Section 671 (Importation, Transportation and Possession of Live Restricted Animals).

“Area median income” means the median income, adjusted for family size, applicable to Orange County, established by the U.S. Department of Housing and Urban Development, and published annually by the California Department of Community Development in the 25 CCR Section 6932.

“California Environmental Quality Act (CEQA)” means a State law (Cal. Pub. Resources Code Section 21000 et seq.).

“Categorical exclusion area” means that portion of the coastal zone within an exclusion area boundary adopted in compliance with the California Coastal Act (Cal. Pub. Resources Code Section 30000 et seq.).

“Categorical exclusion order” means a decision issued by the California Coastal Commission in compliance with the Coastal Act (Cal. Pub. Resources Code Section 30610(e)), in which the Coastal Commission excludes certain categories of development from requirements to obtain coastal development permits from the Coastal Commission. A categorical exclusion order automatically terminates upon the effective date of the delegation of development review authority to a local government in compliance with 14 CCR Section 13249(b).

“Categorical exemption” means, as defined by 14 CCR Section 15354 of the State CEQA Guidelines, an exemption from CEQA for a class of projects based on a finding by the Secretary of Resources that the class of projects does not have a significant effect on the environment.

“Coastal Commission” means the California Coastal Commission, the State agency established by State law responsible for carrying out the provisions of the California Coastal Act of 1976, as amended (Cal. Pub. Resources Code Section 30000 et seq.) and for appellate review of decisions rendered by a City review authority.

“Coastal Commission exclusion areas” means the boundaries of the areas where a category of development, or a category of development within a specifically defined geographic area, is excluded from the coastal development permit requirements pursuant to Cal. Pub. Resources Code Section 30610, which shall be established by the terms and conditions applied to each categorical exclusion order by the Coastal Commission.

“Coastal Commission permit jurisdiction” means the boundaries of tidelands, submerged lands, and public trust lands described in Section 30519(b) of the Cal. Pub. Resources Code where the Coastal Commission retains permit jurisdiction.

“Coastal-dependent development or use” means any development or use which requires a site on, or adjacent to, the sea to be able to function at all (from Cal. Pub. Resources Code Section 30101).

“Coastal development permit (CDP)” means a permit for any development within the coastal zone that is required pursuant to subdivision (a) of Cal. Pub. Resources Code Section 30600.

“Coastal-related development or use” means any development or use that is dependent on a coastal-dependent development or use (from Cal. Pub. Resources Code Section 30101.3).

“Coastal zone” means the geographic zone adjacent to the shoreline, the land and water area boundaries of which are determined by the California Coastal Act of 1976, as amended (Cal. Pub. Resources Code Section 30000 et seq.).

“Code” means the Newport Beach Municipal Code.

“Condominium” means a form of property ownership providing for individual ownership of space in a structure together with an individual interest in the land or other parts of the structure in common with other owners. Includes a condominium project, community apartment project, or stock cooperative, as defined in Cal. Civ. Code Section 1351.

“Density bonus” means, as defined by Cal. Gov. Code Section 65915 et seq., an increase over the maximum density otherwise allowed by the applicable zoning district that is granted to the owner/developer of a housing project who agrees to construct a prescribed percentage of dwelling units that are affordable to very low- and low-income households. See “Very low-income household” and “Low-income household.”

“Development” means on land, in or under water, the placement or erection of solid material or a structure; discharge or disposal of dredged material or of gaseous, liquid, solid, or thermal waste; grading, removing, dredging, mining, or extraction of materials; change in the density or intensity of use of land, including, but not limited to, subdivision in compliance with the Subdivision Map Act (commencing with Cal. Gov. Code Section 66410), and another division of land, including lot splits, except where the land division is brought about in connection with the purchase of the land by a public agency for public recreational use; change in the intensity of use of water, or of access thereto; construction, reconstruction, demolition, or alteration of the size of a structure, including a facility of a private, public, or municipal utility; and the removal or harvesting of major vegetation other than for agricultural purposes and kelp harvesting.

“Dwelling unit, accessory (land use)” means a dwelling unit accessory to and attached to, detached from, or contained within the principal dwelling unit on a site zoned for residential use. An accessory dwelling unit also includes the following:

1. An efficiency unit, as defined in Cal. Health & Saf. Code Section 17958.1.
2. A manufactured home, as defined in Cal. Health & Saf. Code Section 18007.

“Emergency” means any sudden, unexpected occurrence demanding immediate action to prevent or mitigate loss of or damage to life, health, property or essential public services as used in Cal. Pub. Resources Code Section 30624.

“Emergency shelter (land use)” means, as defined in Cal. Health & Saf. Code Section 50801(e), a facility with minimal supportive services for homeless persons.

“Environmentally sensitive habitat area (ESHA)” as defined in Cal. Pub. Resources Code Section 30107.5 means an area in which plant or animal life or their habitats are either rare or especially valuable because of their special nature or role in an ecosystem and which could be easily disturbed or degraded by human activities and developments.

“Explosives” means a substance defined as an explosive by Cal. Health & Saf. Code Section 12000 et seq., and for which a permit is required by the Cal. Health & Saf. Code. See also “Hazardous materials.”

“General Plan” means the City of Newport Beach General Plan, and all amendments thereto, as adopted by the City Council under the provisions of Cal. Gov. Code Section 65300 et seq., and referred to in this Implementation Plan as the “General Plan.”

“Final map” means a subdivision map prepared in compliance with Subdivision Map Act, Article 2, Chapter 2, and approved in compliance with Subdivision Map Act, Article 4, Chapter 3 (Cal. Gov. Code Section 66410 et seq.), that is used to complete the subdivision of five (5) or more lots. See also “Parcel map” and “Tentative map.”

“Lot line adjustment” means, as provided in the Subdivision Map Act (Cal. Gov. Code Section 66412(d)), a lot line adjustment that relocates one or more lot lines between two or more existing adjacent lots, where land taken from one lot is added to an adjacent lot and where no more lots are created than originally existed.

“Major energy facility” means any public or private processing, producing, generating, storing, transmitting, or recovering facility for electricity, natural gas, petroleum, coal or other source of energy which exceeds one hundred thousand dollars (\$100,000) in its estimated cost of construction with an automatic increase in accordance with the

Engineering News Record Construction Cost Index, except for those governed by the provisions of Cal. Pub. Resources Code Section 30610, 30610.5, 30611 or 30624.

“Parcel map” means the subdivision map described by the Subdivision Map Act, Article 3, Chapter 2 (Cal. Gov. Code Section 66410 et seq.), which is required to complete a subdivision of four (4) or fewer lots. See also “Final map” and “Tentative map.”
Parks and Recreational Facilities (Land Use).

2. “Recreation, passive” means a type of outdoor recreation or activity that can be carried out with little alteration or improvement to existing topography of a site, with the use of existing natural resources, and with a minimal impact (e.g., bicycling, hiking, jogging, walking, bird-watching, picnicking, etc.).

Parolee-Probationer. A parolee-probationer includes: (1) any individual who has been convicted of a federal crime, sentenced to a United States prison, and received conditional and revocable release in the community under the supervision of a federal parole officer; (2) any individual who has served a term of imprisonment in a State prison and who is serving a period of supervised community custody, as defined in Cal. Pen. Code Section 3000, and is under the jurisdiction of the California Department of Corrections, Parole and Community Services Division; (3) an adult or juvenile sentenced to a term in the California Youth Authority and who has received conditional and revocable release in the community under the supervision of a Youth Authority Parole Officer; or (4) any individual who has been convicted of a felony, sentenced to any correctional facility, including County correctional facilities, and is under the jurisdiction of any federal, State, or County parole or probation officer. For the purposes of this definition, “felony” means a felony as defined by any California or United States statute.

“Public trust lands” means all lands subject to the Common Law Public Trust for commerce, navigation, fisheries, recreation, and other public purposes. Public trust lands include tidelands, submerged lands, the beds of navigable lakes and rivers, and historic tidelands and submerged lands that are presently filled or reclaimed and which were subject to the public trust at any time (14 CCR Section 13577). See “Submerged lands” and “Tidelands.”

“Senior citizen housing development” means a residential development developed, substantially rehabilitated, or substantially renovated for senior citizens (i.e., persons fifty-five (55) years of age or older) that has at least thirty-five (35) dwelling units and that conforms to Cal. Civ. Code Section 51.3(b)(4).

“Specific plan” means, under Cal. Gov. Code Section 65450 et seq., a policy statement and implementation tool adopted by the City Council that addresses a single project or planning problem. A specific plan may include detailed regulations, conditions, programs,

and/or proposed legislation that may be necessary or convenient for the systematic implementation of a General Plan element(s).

“Subdivision” means the division by any subdivider of any unit or units of improved or unimproved land, or any portion thereof, shown on the latest equalized county assessment roll as a unit or as contiguous units, for the purpose of sale, lease or financing, whether immediate or future. Property shall be considered as contiguous units even if it is separated by roads, streets, utility easement or railroad rights-of-way. Subdivision includes a condominium project, as defined in Cal. Civ. Code Section 1351 (f), a community apartment project, as defined in Cal. Civ. Code Section 1351 (D), or the conversion of five (5) or more existing dwelling units to a stock cooperative, as defined in Cal. Civ. Code Section 1351 (M) . [Note: same meaning as in the Subdivision Map Act.]

“Subdivision Map Act” means Division 2, Title 7 of the Cal. Gov. Code, commencing with Section 66410, regarding the subdivision of real property.

“Submerged lands” means lands that lie below the line of mean low tide (14 CCR Section 13577). See “Public trust lands.”

“Supportive housing” means housing with no limit on length of stay, that is occupied by the target population, as defined by Cal. Health & Saf. Code Section 53260 (d), and that is linked to on-site or off-site services that assist the tenant to retain the housing, improve his or her health status, maximize their ability to live and, when possible, to work in the community. Supportive housing that is provided in single-, two-, or multi-family dwelling units, group residential, parolee-probationer home, residential care facilities, or boarding house uses shall be permitted, conditionally permitted or prohibited in the same manner as the other single-, two- or multi-family dwelling units, group residential, parolee-probationer home, residential care facilities, or boarding house uses under this Code.

“Tentative map” means a subdivision map prepared in compliance with the Subdivision Map Act (Cal. Gov. Code Section 66410 et seq.) that specifies the conditions that must be satisfied and the details that must be provided before approval of a final map. See also “Final map” and “Parcel map.”

“Tidelands” means lands that are located between the lines of mean high tide and mean low tide (14 CCR Section 13577). See “Public trust lands.”

Visitor Accommodations (Land Use).

4. “Hotel” means an establishment that provides guest rooms or suites for a fee to transient guests for sleeping purposes. Access to units is primarily from interior lobbies, courts, or halls. Related accessory uses may include conference and meeting rooms, restaurants, bars, and recreational facilities. Guest rooms may or

may not contain kitchen facilities for food preparation (i.e., refrigerators, sinks, stoves, and ovens). Hotels with kitchen facilities are commonly known as extended stay hotels. A hotel operates subject to taxation under Cal. Rev. & Tax. Code Section 7280.

5. "Motel" means an establishment that provides guest rooms for a fee to transient guests for sleeping purposes. Guest rooms do not contain kitchen facilities. A motel is distinguished from a hotel primarily by direct independent access to, and adjoining parking for, each guest room. A motel operates subject to taxation under Cal. Rev. & Tax. Code Section 7280.

STATE OF CALIFORNIA }
COUNTY OF ORANGE }
CITY OF NEWPORT BEACH } ss.

I, Leilani I. Brown, City Clerk of the City of Newport Beach, California, do hereby certify that the whole number of members of the City Council is seven; the foregoing resolution, being Resolution No. 2023-76 was duly introduced before and adopted by the City Council of said City at a regular meeting of said Council held on the 14th day of November, 2023; and the same was so passed and adopted by the following vote, to wit:

AYES: Mayor Noah Blom, Mayor Pro Tem Will O'Neill, Councilmember Brad Avery
Councilmember Robyn Grant, Councilmember Lauren Kleiman, Councilmember
Joe Stapleton, Councilmember Erik Weigand
NAYS: None

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed the official seal of said City this 15th day of November, 2023.



Leilani I. Brown
City Clerk
Newport Beach, California

