

# **Attachment A**

Resolution No. 2025-13 Intent to Override ALUC's Determination

## **RESOLUTION NO. 2025-13**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF NEWPORT BEACH, CALIFORNIA, NOTIFYING THE ORANGE COUNTY AIRPORT LAND USE COMMISSION AND STATE DEPARTMENT OF TRANSPORTATION, AERONAUTICS PROGRAM OF THE CITY'S INTENTION TO FIND THAT THE AMENDMENT TO SECTION 20.28.050 (HOUSING OPPORTUNITY (HO) OVERLAY ZONING DISTRICTS) AND PENDING SECTION 21.28.070 (HOUSING OPPORTUNITY (HO) OVERLAY COASTAL ZONING DISTRICTS) OF THE NEWPORT BEACH MUNICIPAL CODE RELATED TO THE IMPLEMENTATION OF THE HOUSING ELEMENT IS CONSISTENT WITH THE 2008 JOHN WAYNE AIRPORT ENVIRONS LAND USE PLAN (PA2024-0205)**

**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**, the City Council adopted Ordinance Nos. 2024-16 and 2024-17 on September 24, 2024, amending Title 20 (Planning and Zoning) of the Newport Beach Municipal Code ("NBMC"), to establish the Housing Opportunity (HO) Overlay Zoning Districts in Section 20.28.050 (Housing Opportunity (HO) Overlay Zoning Districts) and to create multi-unit objective design standards in Section 20.48.185 (Multi-Unit Objective Design Standards) to implement Policy Actions 1A through 1G and 3A in the General Plan 6<sup>th</sup> Cycle Housing Element ("Housing Element");

**WHEREAS**, Section 20.28.050 (Housing Opportunity (HO) Overlay Zoning Districts) of the NBMC allows for new housing opportunities within five subareas consisting of the Airport Area Environs Area (HO-1), West Newport Mesa Area (HO-2), Dover-Westcliff Area (HO-3), Newport Center Area (HO-4), and Coyote Canyon Area (HO-5) to accommodate the City's 6<sup>th</sup> Cycle Regional Housing Needs Assessment ("RHNA") allocation;

**WHEREAS**, properties identified within these subareas are eligible for specified development allowances conducive to residential development at the prescribed average density of 20 to 50 dwelling units per acre along with minimum lot area, setback, height, open space, landscaping, and parking development standards;

**WHEREAS**, the City Council also adopted Resolution No. 2024-52 on July 23, 2024, authorizing submittal of the Local Coastal Program Amendment (“LCPA”) to the California Coastal Commission (“CCC”) amending the City’s Coastal Land Use Plan and Title 21 (Local Coastal Program Implementation Plan) of the NBMC and establishing the Housing Opportunity (HO) Overlay Coastal Zoning Districts and their corresponding development standards applicable to properties located within the Coastal Zone of the city to implement the Housing Element;

**WHEREAS**, the City filed the LCPA application with the CCC on August 16, 2024, and received a letter from CCC staff on January 7, 2025, confirming the City’s application is complete and pending a hearing date;

**WHEREAS**, the City Council adopted Resolution No. 2024-85 on November 19, 2024, initiating an amendment to Section 20.28.050 (Housing Opportunity (HO) Overlay Zoning Districts) of the NBMC and the pending complementary amendments in Title 21 (Local Coastal Program Implementation Plan) of the NBMC, to adjust certain development standards, including but not limited to, building height limits specified in Table 2-16 (Development Standards for Housing Opportunity Overlay Zones) of Section 20.28.050 (Housing Opportunity (HO) Overlay Zoning Districts) and pending Table 21.28-1 (Development Standards for Housing Opportunity Overlay Zones) of Section 21.28.070 of the NBMC;

**WHEREAS**, an amendment to Table 2-16 of Section 20.28.050 (Housing Opportunity (HO) Overlay Zoning Districts) and pending Table 21.28-1 of the NBMC is necessary to adjust the height limitations of certain properties within the Newport Center Area (HO-4) to accommodate potential residential development with the intended prescribed density range, and to identify a certain number of units being allocated from the respective development limits for a selected group of City-owned properties located within Airport Area Environs Area (HO-1) and Newport Center Area (HO-4) (“Amendment”);

**WHEREAS**, the Amendment includes a revision to the Housing Opportunity Overlay District Maps in Section 20.80.025 and pending Section 21.80.035 of the NBMC;

**WHEREAS**, the Planning Commission held a public hearing on January 23, 2025, in the Council Chambers at 100 Civic Center Drive, Newport Beach, California to consider the Amendment. A notice of time, place and purpose of the public hearing was given in accordance with California Government Code Section 54950 *et seq.* ("Ralph M. Brown Act") and Chapters 20.62 (Public Hearings) and 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. PC2025-004 by a unanimous vote of (5 ayes, 1 recusal) recommending the City Council approve the Amendment;

**WHEREAS**, eight of the 35 properties in Newport Center Area (HO-4) are within the John Wayne Airport ("JWA") Notification Area; however, none of the eight properties are located within any noise contour area or safety zones of the 2008 John Wayne Airport Environs Land Use Plan ("AELUP");

**WHEREAS**, the City-owned property at 1201 Dove Street in Airport Area Environs Area (HO-1) is located within Safety Zone 6 of the AELUP, 60 dBA CNEL noise contour of the AELUP, and 60 dBA CNEL noise contour of the City's Noise Element;

**WHEREAS**, due to a portion of the properties being located within the JWA Notification Area, California Public Utilities Code ("CPUC") Section 21676(b) requires the City to refer the Amendment to the Orange County Airport Land Use Commission ("ALUC") to review for consistency with the AELUP;

**WHEREAS**, on February 20, 2025, the ALUC conducted a public hearing on the Amendment and after two failed motions, the ALUC continued the Amendment to its March 20, 2025, meeting by a unanimous vote (5 ayes, 0 nays);

**WHEREAS**, on March 20, 2025, the ALUC conducted a second public hearing on the Amendment and after one failed motion, the ALUC determined the Amendment is inconsistent with the AELUP (5 ayes, 1 nay);

**WHEREAS**, pursuant to Sections 21670 and 21676 of the CPUC, the City Council may, after a public hearing, propose to overrule ALUC with a two-thirds vote, if it makes specific findings that the Amendment is consistent with the purpose of Section 21670 of the CPUC to protect the public health, safety, and welfare by ensuring the orderly expansion of airports and the adoption of land use measures that minimize the public's exposure to excessive noise and safety hazards within areas around public airports to the extent that these areas are not already devoted to incompatible uses; and

**WHEREAS**, a public hearing was held on April 15, 2025, by the City Council in the Council Chambers located at 100 Civic Center Drive, Newport Beach, California to consider the Amendment. A notice of time, place and purpose of the public hearing was given in accordance with the Ralph M. Brown Act, CPUC Section 21676(b), and Chapters 20.62 (Public Hearings) and 21.62 (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 finds the Amendment is consistent with the purposes of Section 21670 of the CPUC and the AELUP of protecting the public health, safety, and welfare by ensuring the orderly expansion of airports and the adoption of land use measures that minimize the public's exposure to excessive noise and safety hazards within areas around public airports to the extent that these areas are not already devoted to incompatible uses.

Findings and Facts in Support of Findings:

A. *The Amendment is consistent with the noise standards of the AELUP.*

The AELUP guides development proposals to provide for the orderly development of JWA and the surrounding area through implementation of the standards in Section 2 (Planning Guidelines) and Section 3 (Land Use Policies). Implementation of these standards is intended to protect the public from the adverse effects of aircraft noise, to ensure that people and facilities are not concentrated in areas susceptible to aircraft accidents, and to ensure that no structures or activities adversely affect navigable airspace.

Of the nine properties either wholly or partially within the JWA Notification Area, the City-owned site at 1201 Dove Street is the only one located within the AELUP's 60 dBA noise contour (Noise Impact Zone 2), and City's Noise Element 60 dB CNEL noise contour. The remaining eight properties are far removed from any identified noise impact zone.

Section 2.1.1 of the AELUP sets forth the CNEL standards, and Sections 3.2.3 and 3.2.4 of the AELUP define the noise exposure in the 60 dBA CNEL noise contour (Noise Impact Zone 2) as "Moderate Noise Impact". Section 3, Table 1 (Limitations on Land Use Due to Noise) of the AELUP identifies residential uses as "normally consistent" for the 60 dBA CNEL noise contour. Accordingly, residential units may

be consistent with proper sound-attenuation and careful design considerations. For any residential sites and uses within Noise Impact Zone “2,” the City will ensure future development is consistent with the AELUP considerations and the City’s General Plan Land Use and Noise Element policies and the development standards specified in the NBMC to ensure compatibility.

*B. The Amendment is consistent with the safety standards of the AELUP.*

Of the nine properties either wholly or partially within the JWA Notification Area, the City-owned site at 1201 Dove Street is the only one located within the AELUP’s Safety Zone 6, with the remaining eight being far removed from any safety zone.

Section 2.1.2 (Safety Compatibility Zones) of the AELUP sets forth allowable land uses within each safety zone of JWA environs. Allowed uses in Safety Zone 6 include residential and most nonresidential uses, excepting outdoor stadiums and similar uses with very high intensities. Uses that should be avoided include children’s schools, large day-care centers, hospitals, and nursing homes. Risk factors associated with Safety Zone 6 generally include a low likelihood of accident occurrence.

Furthermore, the City’s General Plan Safety Element Policy S 8.6 demonstrates that the City acknowledges the importance of the JWA Safety Zones in providing, “S 8.6 John Wayne Airport Traffic Pattern Zone - Use the most currently available John Wayne Airport (JWA) Airport Environs Land Use Plan (AELUP) as a planning resource for evaluation of land use compatibility and land use intensity in areas affected by JWA operations. In particular, future land use decisions within the existing JWA Clear Zone/Runway Protection Zone (Figure S5) should be evaluated to minimize the risk to life and property associated with aircraft operations.”

*C. The Amendment is consistent with the height standards of the AELUP.*

All sites within the Housing Opportunity (HO) Overlay Zones are subject to the current heights allowed by the base zoning district unless otherwise identified on the associated zoning map for each Housing Opportunity (HO) subarea. No height increase is proposed within Airport Area Environs Area (HO-1), which is nearest to JWA. All height increases are proposed in Newport Center Area (HO-4).

Furthermore, in no event will the City's rezoned height limits in Newport Center Area (HO-4) be inconsistent with the parameters outlined in Subsection 3.2.6 (Height Restriction Zone) of the AELUP and FAA standards.

**Section 2:** Based on the foregoing findings, the City Council provides this notice of intention to overrule the ALUC's determination that the Amendment is inconsistent with the AELUP.

**Section 3:** The City Council hereby directs City staff to provide ALUC and State Department of Transportation, Aeronautics Program, with notice of the City's intention to overrule the ALUC's determination that the Amendments are inconsistent with the AELUP.

**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 anyone or more sections, subsections, sentences, clauses or phrases be declared invalid or unconstitutional.

**Section 6:** The City Council finds the adoption of this resolution is not subject to the California Environmental Quality Act ("CEQA") pursuant to Sections 15060(c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment) and 15060(c)(3) (the activity is not a project as defined in Section 15378) of the CEQA Guidelines, California Code of Regulations, Title 14, Division 6, Chapter 3, because it has no potential for resulting in physical change to the environment, directly or indirectly.

Specifically, the Amendment does not have the potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment because it is limited to the City's proposal to overrule the ALUC's determination and does not commit the City to approve the Amendment. Furthermore, the Amendment has been evaluated pursuant to CEQA and independently reviewed. All potential environmental effects for the Amendment have been adequately addressed in the previously certified Final Program Environmental Impact Report ("PEIR") (SCH No. 2023060699) which was done in compliance with the California Environmental Quality

Act ("CEQA") as set forth in the Public Resources Code Section 21000 *et seq.*, Title 14, Division 6, Chapter 3 of the California Code of Regulations ("CEQA Guidelines"), and City Council Policy K-3 (Implementation Procedures for the California Environmental Quality Act) related to the 6<sup>th</sup> Cycle Housing Element Implementation involving amendments to the General Plan, Coastal Land Use Plan, Title 20 (Planning and Zoning) and Title 21 (Local Coastal Program Implementation Plan) of the NBMC. Lastly, the Amendment does not constitute substantial changes to the circumstances under which the project shall be undertaken that would result in new or more severe environmental impacts than previously addressed in the PEIR, nor has any new information regarding the potential for new or more severe significant environmental impacts been identified as detailed in the prepared CEQA Consistency Memorandum.

**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 15th day of April, 2025.

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Joe Stapleton  
Mayor

**ATTEST:**

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Leilani I. Brown  
City Clerk

**APPROVED AS TO FORM:**  
CITY ATTORNEY'S OFFICE

  
\_\_\_\_\_  
Aaron C. Harp  
City Attorney