

Attachment B

Ordinance No. 2023-6

ORDINANCE NO. 2023-6

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF NEWPORT BEACH, CALIFORNIA, AMENDING TITLE 20 (PLANNING AND ZONING) OF THE NEWPORT BEACH MUNICIPAL CODE RELATED TO COMMERCIAL PARKING (PA2021-104)

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, on January 26, 2021, the City Council conducted a study session regarding parking regulations and outdoor dining;

WHEREAS, at the conclusion of the session, the City Council provided direction to study potential updates to the City's parking regulations to modernize them, to address emerging trends such as rideshare and delivery services and identify other changes to support the retention of expanded outdoor dining due to the COVID-19 pandemic;

WHEREAS, the City retained a parking consultant, Nelson\Nygaard, to help study best practices and returned to a City Council study session on November 30, 2021, to share some of the initial findings;

WHEREAS, the City Council adopted Resolution No. 2021-121 initiating a code amendment to Title 20 (Planning and Zoning) of the NBMC ("Code Amendment") and Title 21 of the NBMC ("Local Coastal Program Amendment") related to commercial parking;

WHEREAS, on September 7, 2022, the City hosted a virtual community meeting to share potential changes to the regulations related to parking;

WHEREAS, on October 20, 2022, the Planning Commission conducted a study session to discuss and provide input and direction to City staff on the identified potential updates to the NBMC, including bicycle-based reductions, shared-mobility-based reductions, revised parking ratios, and administrative reductions by the Community Development Director;

WHEREAS, a duly noticed public hearing was held on April 20, 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 20.62 (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 Nos. PC2023-019 and PC2023-020 by a unanimous vote (6 ayes – 0 nays), recommending approval of the Zoning Code Amendment and Local Coastal Program Amendment to the City Council; and

WHEREAS, a duly noticed public hearing was held on May 9, 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 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 City Council at this public hearing.

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

Section 1: The City Council does hereby approve the Code Amendment as set forth in Exhibit "A," based upon the Findings in Exhibit "B," both of which are attached hereto and incorporated herein by reference.

Section 2: The recitals provided in this ordinance are true and correct and are incorporated into the substantive portion of this ordinance.

Section 3: If any section, subsection, sentence, clause or phrase of this ordinance 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 ordinance. The City Council hereby declares that it would have passed this ordinance 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 4: The City Council finds the introduction and adoption of this ordinance is not subject to the California Environmental Quality Act ("CEQA") in accordance with Section 20165 of the California Public Resources Code and Sections 15060(c)(2), 15060(c)(3), and 15378 of the California Code of Regulations, Title 14, Division 6, Chapter 3 ("CEQA Guidelines"). The Code Amendment is also exempt pursuant to CEQA Guidelines Section 15061(b)(3), the general rule that CEQA applies only to projects, which have the potential for causing a significant effect on the environment.

Section 5: Except as expressly modified in this ordinance, all other sections, subsections, terms, clauses and phrases set forth in the NBMC shall remain unchanged and shall be in full force and effect.

This ordinance was introduced at a regular meeting of the City Council of the City of Newport Beach held on the 9th day of May, 2023, and adopted on the 23rd day of May, 2023, by the following vote, to-wit:

NAYS: _____

RECUSED: Mayor Blom


NOAH BLOM, MAYOR


LEILANI I. BROWN, CITY CLERK




AARON C. HARP, CITY ATTORNEY

Attachments: Exhibit A – Zoning Code Amendment (PA2021-104)
Exhibit B – Findings in Support of Zoning Code Amendment
(PA2021-104)

EXHIBIT “A”

ZONING CODE AMENDMENT (PA2021-104)

- I. The row entitled “Take-Out Service, Limited” in Table 2-4 of Section 20.20.020 (Commercial Zoning Districts Land Uses and Permit Requirements) of the NBMC is amended to read as follows:

TABLE 2-4 ALLOWED USES AND PERMIT REQUIREMENTS	Commercial Office Zoning Districts Permit Requirements *				
	P Permitted by Right	CUP Conditional Use Permit (Section <u>20.52.020</u>)	MUP Minor Use Permit (Section <u>20.52.020</u>)	LTP Limited Term Permit (Section <u>20.52.040</u>)	— Not allowed *
Land Use See Part 7 of this title for land use definitions. See Chapter <u>20.12</u> for unlisted uses.	OA	OG	OM	OR	Specific Use Regulations
Eating and Drinking Establishments					
Accessory Food Service (open to public)	P	P	P	P	Section <u>20.48.090</u>
Bars, Lounges, and Nightclubs	CUP	—	—	CUP	Section <u>20.48.090</u>
Fast Food (no late hours) (1)(2)	P/MUP	P/MUP	—	—	Section <u>20.48.090</u>
Fast Food (with late hours) (1)	MUP	MUP	—	—	Section <u>20.48.090</u>
Food Service (no alcohol, no late hours) (1)(2)	P/MUP	P/MUP	P/MUP	P/MUP	Section <u>20.48.090</u>
Food Service (no late hours) (1)	MUP	MUP	MUP	MUP	Section <u>20.48.090</u>
Food Service (with late hours) (1)	CUP	CUP	CUP	CUP	Section <u>20.48.090</u>
Take-Out Service—Fast-Casual (up to 20 seats) (2)	P/MUP	P/MUP	P/MUP	P/MUP	Section <u>20.48.090</u>

- II. The row entitled “Take-Out Service, Limited” in Table 2-5 of Section 20.20.020 (Commercial Zoning Districts Land Uses and Permit Requirements) of the NBMC is amended to read as follows:

TABLE 2-5 ALLOWED USES AND PERMIT REQUIREMENTS	Commercial Retail Zoning Districts Permit Requirements *						
	P Permitted by Right CUP Conditional Use Permit (Section <u>20.52.020</u>) MUP Minor Use Permit (Section <u>20.52.020</u>) LTP Limited Term Permit (Section <u>20.52.040</u>) — Not allowed *						
Land Use See Part 7 of this title for land use definitions. See Chapter <u>20.12</u> for unlisted uses.	CC	CG	CM	CN	CV	CV-LV	Specific Use Regulations
Eating and Drinking Establishments							
Accessory Food Service (open to public)	P	P	P	P	P	P	Section <u>20.48.090</u>
Bars, Lounges, and Nightclubs	CUP	CUP	CUP	CUP	CUP	—	Section <u>20.48.090</u>
Fast Food (no late hours) (1)(2)	P/MUP	P/MUP	P/MUP	P/MUP	P/MUP	P/MUP	Section <u>20.48.090</u>
Fast Food (with late hours) (1)	MUP	MUP	MUP	MUP	MUP	MUP	Section <u>20.48.090</u>
Food Service (no alcohol, no late hours) (1)(2)	P/MUP	P/MUP	P/MUP	P/MUP	P/MUP	P/MUP	Section <u>20.48.090</u>
Food Service (no late hours) (1)	MUP	MUP	MUP	MUP	MUP	MUP	Section <u>20.48.090</u>
Food Service (with late hours) (1)	CUP	CUP	CUP	CUP	CUP	CUP	Section <u>20.48.090</u>
Take-Out Service—Fast-Casual (up to 20 seats) (2)	P/MUP	P/MUP	P/MUP	P/MUP	P/MUP	P/MUP	Section <u>20.48.090</u>

- III. The row entitled “Take-Out Service, Limited” in Table 2-8 of Section 20.22.020 (Mixed-Use Zoning Districts Land Uses and Permit Requirements) of the NBMC is amended to read as follows:

TABLE 2-8 ALLOWED USES AND PERMIT REQUIREMENTS	Mixed-Use Zoning Districts Permit Requirements				
	P Permitted by Right CUP Conditional Use Permit (Section <u>20.52.020</u>) MUP Minor Use Permit (Section <u>20.52.020</u>) LTP Limited Term Permit (Section <u>20.52.040</u>) — Not Allowed *				
Land Use See Part 7 of this title for land use definitions. See Chapter <u>20.12</u> for unlisted uses.	MU-V	MU-MM (6)	MU-DW	MU-CV/15th St. (7)	Specific Use Regulations
Eating and Drinking Establishments					
Accessory Food Service (open to public)	P	P	P	P	Section <u>20.48.090</u>
Fast Food (no late hours) (4)(5)	P/MUP	P/MUP	P/MUP	P/MUP	Section <u>20.48.090</u>
Fast Food (with late hours) (4)	MUP	MUP	P/MUP	MUP	Section <u>20.48.090</u>
Food Service (no late hours) (4)(5)	P/MUP	P/MUP	P/MUP	P/MUP	Section <u>20.48.090</u>
Food Service (with late hours) (4)	CUP	CUP	CUP	CUP	Section <u>20.48.090</u>
Take-Out Service—Fast-Casual (up to 20 seats) (5)	P/MUP	P/MUP	P/MUP	P/MUP	Section <u>20.48.090</u>

- IV. The row entitled Take-Out Service, Limited in Table 2-9 of Section 20.22.020 (Mixed-Use Zoning Districts Land Uses and Permit Requirements) of the NBMC is amended to read as follows:

<p>TABLE 2-9 ALLOWED USES AND PERMIT REQUIREMENTS</p>	<p>Mixed-Use Zoning Districts Permit Requirements</p>		
	<p>P Permitted by Right CUP Conditional Use Permit (Section <u>20.52.020</u>) Minor Use Permit MUP (Section <u>20.52.020</u>) Limited Term Permit LTP (Section <u>20.52.040</u>) — Not allowed *</p>		
<p>Land Use See Part 7 of this title for land use definitions. See Chapter <u>20.12</u> for unlisted uses.</p>	<p>MU-W1 (5)(6)</p>	<p>MU-W2</p>	<p>Specific Use Regulations</p>
Eating and Drinking Establishments			
Accessory Food Service (open to public)	P	P	Section <u>20.48.090</u>
Fast Food (no late hours) (3)(4)	P/MUP	P/MUP	Section <u>20.48.090</u>
Fast Food (with late hours) (3)	MUP	MUP	Section <u>20.48.090</u>
Food Service (no alcohol, no late hours) (3)(4)	P/MUP	P/MUP	Section <u>20.48.090</u>
Food Service (no late hours) (3)	MUP	MUP	Section <u>20.48.090</u>
Food Service (with late hours) (3)	CUP	CUP	Section <u>20.48.090</u>
Take-Out Service—Fast-Casual (up to 20 seats) (3) (4)	P/MUP	P/MUP	Section <u>20.48.090</u>

- V. The rows entitled “Food Service with/without alcohol, with/without late hours” and “Take-Out Service, Limited” in Table 3-10 (Off-Street Parking Requirements) of Section 20.40.040 (Off-Street Parking Spaces Required) of the NBMC is amended to read as follows:

**TABLE 3-10
OFF-STREET PARKING REQUIREMENTS**

Land Use	Parking Spaces Required
Eating and Drinking Establishments	
Accessory (open to public)	1 per each 3 seats or 1 per each 75 sq. ft. of net public area, whichever is greater
Bars, Lounges, and Nightclubs	1 per each 4 persons based on allowed occupancy load or as required by conditional use permit
Food Service with/without alcohol, with/without late hours	1 per 100 sq. ft., and 1 per 150 sq. ft. for outdoor dining areas
Food Service—Fast food	1 per 50 sq. ft., and 1 per 100 sq. ft. for outdoor dining areas
Take-Out Service—Fast-Casual (up to 20 seats)	1 per 250 sq. ft., including outdoor dining areas
Wine Tasting Room	1 per each 4 persons based on allowed occupancy load or as required by conditional use permit

- VI. Section 20.40.060 (Parking Requirements for Food Service Uses) of the NBMC is deleted in its entirety and replaced with the following:

20.40.060 Reserved.

- VII. Section 20.40.110 (Adjustments to Off-Street Parking Requirements) is amended to read as follows:

The number of parking spaces required by this chapter may be reduced only in compliance with the following standards and procedures.

- A. ADA Compliance. The Director may administratively reduce parking requirements due to a loss of parking spaces because of ADA requirements associated with tenant improvements.

- B. Reduction of Required Off-Street Parking. Residential and nonresidential off-street parking requirements may be reduced with the approval of a conditional use permit in compliance with Section 20.52.020 (Conditional Use Permits and Minor Use Permits) and in compliance with the following conditions:
1. The applicant has provided sufficient data, including a parking study if required by the Director, to indicate that parking demand will be less than the required number of spaces or that other parking is available (e.g., City parking lot located nearby, on-street parking available, greater than normal walk in trade, mixed-use development); and
 2. A parking management plan shall be prepared in compliance with subsection (C) of this section (Parking Management Plan).
- C. Parking Management Plan. When a parking management plan to mitigate impacts associated with a reduction in the number of required parking spaces is required by this chapter, the parking management plan may include, but is not limited to, the following when required by the review authority:
1. Restricting land uses to those that have hours or days of operation so that the same parking spaces can be used by two or more uses without conflict;
 2. Restricting land uses with high parking demand characteristics;
 3. Securing off-site parking in compliance with Section 20.40.100 (Off-Site Parking);
 4. Providing parking attendants and valet parking; and
 5. Other appropriate mitigation measures.
- D. Reduction of Required Off-Street Parking by Director. Nonresidential off-street parking requirements may be reduced by a maximum of 20 percent with the approval of the Director using any combination of the following:
1. The applicant has provided sufficient data, including a parking study if required by the Director, to indicate that parking demand will be less than the required number of spaces or that other parking is available (e.g., City parking lot located nearby, on-street parking available, greater than normal walk in trade, mixed-use development).

2. On-Site Bicycle Facilities. Required nonresidential off-street parking may be reduced where there is a demonstrated use of bicycles as a mode of transportation. The Director may reduce the number of required parking spaces by one space for every three bicycle parking spaces provided on the same site they serve, up to five percent of the total requirement in compliance with the following conditions:
 - a. The applicant has provided sufficient evidence to substantiate that there exists a demand for bicycle parking; and
 - b. The bicycle parking spaces are located completely within the private property they serve.
 - c. An additional five percent reduction may be allowed when enhanced end-of-trip facilities are provided on the same site they serve, including, but not limited to showers and locker facilities.
3. Space for Shared Mobility. Required nonresidential off-street parking may be reduced by up to ten percent in compliance with the following conditions:
 - a. Exclusive of curb space needed for emergency access purposes (e.g., a fire lane), the development includes at least 20 linear and contiguous feet of on-site dedicated curb-space located entirely on private property; or
 - b. There is one off-street parking space designated and with proper signage for the use of shared-mobility vehicles and/or pick-up/drop-off located on private property and on the same site it is intended to serve.
- E. Joint Use of Parking Facilities. Required nonresidential off-street parking may be reduced where two (2) or more nonresidential uses on the same site have distinct and differing peak parking demands (e.g., a theater and a bank). The Director may grant a joint use of parking spaces between the uses that results in a reduction in the total number of required parking spaces in compliance subject to the following conditions:
 1. The most remote space is located within a convenient distance to the use it is intended to serve;
 2. The amount of reduction is no greater than the number of spaces required for the least intensive of the uses sharing the parking;

3. The probable long-term occupancy of the structures, based on their design, will not generate additional parking demand;
4. The applicant has provided sufficient data, including a parking study if required by the Director, to indicate that there is no conflict in the peak parking demand for the uses proposing to make joint use of the parking facilities; and
5. A parking management plan shall be prepared in compliance with subsection (C) of this section (Parking Management Plan).

F. Required Data. In reaching a decision to allow a reduction of required parking spaces, the review authority shall consider data submitted by the applicant or collected/prepared at the applicant's expense.

The definition of "Take-out service, limited" in Section 20.70.020 (Definitions of Specialized Terms and Phrases) of the NBMC is amended as follows:

8. "Take-out service—Fast-casual" means an establishment that sells food or beverages and that has all of the following characteristics:
 - a. Sales are primarily for off-site consumption;
 - b. Customers order and pay for food at either a counter or service window;
 - c. No more than a total of 20 seats, including seats in interior areas and seats in outdoor dining areas, may be provided for on-site consumption of food or beverages; and
 - d. Alcoholic beverages are not sold, served, or given away on the premises.

Typical uses include bakeries, candy, coffee, nut and confectionery stores, ice cream and frozen dessert stores, small delicatessens, small restaurants, and similar establishments.

EXHIBIT “B”

FINDINGS IN SUPPORT OF ZONING CODE AMENDMENT (PA2021-104)

An amendment to Title 20 (Planning and Zoning) of NBMC is a legislative act. Neither Chapter 20.66 (Planning and Zoning, Amendments) of Title 20 (Planning and Zoning) of NBMC, or Article 2 (Adoption of Regulations) of Chapter 4 (Zoning Regulations) of Division 1 (Planning and Zoning) of Title 7 (Planning and Land Use) of the California Government Code set forth any required findings for either approval or denial of such amendments.

Notwithstanding the foregoing, the Zoning Code Amendment is consistent with the City Council’s initiation and is in furtherance of the General Plan’s Goals and, specifically, the following Policies:

Policies:

1. **LU 5.3.6** (Parking Adequacy and Location).

Require that adequate parking be provided and is conveniently located to serve tenants and customers.

2. **LU 6.2.5** (Neighborhood Supporting Uses).

Requires uses shall be designed to ensure compatibility with adjoining residential addressing such issues as noise, lighting, and parking.

3. **CE 8.1.1** (Required Parking).

Require that new development provide adequate, convenient parking for residents, guests, business patrons, and visitors.

4. **CE 8.1.11** (Parking Requirements for Pedestrian-Oriented and Local-Serving Uses).

Consider revised parking requirements for small scale neighborhood serving commercial uses in areas that derive most of their trade from walk-in business, especially where on-street or other public parking is available.

Fact in Support of Policies:

The Code Amendment includes revisions to the parking requirements for take-out service and full service eating and drinking establishments (i.e., “restaurants”). The Code Amendment leaves all other parking requirements intact.

Policies:

1. **LU 6.8.4** (Shared Parking Facilities).

Encourage the development of shared parking facilities and management programs among private property owners that provides for adequate parking for residents, guests, and business patrons.

2. **LU 6.16.4** (Shared Parking Facilities).

Work with property owners and developers to encourage more efficient use of parcels for parking that can be shared by multiple businesses.

3. **LU 6.20.2** (Shared Parking Structures).

Accommodate the development of structures that provide parking for multiple businesses along the [Corona del Mar] corridor, provided that the ground floor of the street frontage is developed for pedestrian-oriented retail uses.

4. **CE 8.1.9** (Shared Parking Facilities).

Consider allowing shared parking in mixed use and pedestrian oriented areas throughout the City.

Fact in Support of Policies:

The Code Amendment would allow the Community Development Director to administratively allow shared parking for multiple businesses when there is a clear and demonstrated offset in operational hours.

Policies:

1. **CE 6.1.4** (Rideshare Vehicles).

Monitor the volume and proliferation of on demand rideshare services (e.g., Uber and Lyft) and respond with appropriate level of design guidance and regulation of curbside uses (including loading zone) and parking lot utilization.

2. **CE 7.1.5** (Facilities for Alternative Modes).

Require new development projects to provide facilities commensurate with the development type and intensity to support alternative modes, such as preferential parking for carpools, bike racks, bike stations, bicycle lockers, showers, commuter information areas, rideshare vehicle loading areas, water transportation docks, and bus stop improvements.

3. **CE 8.1.2** (Parking Considerations of Rideshare Vehicles).

Develop parking demand statistics that consider the efficiency of rideshare services and the potential for reduction in parking requirements.

Fact in Support of Policies:

The Code Amendment considers alternative modes of transportation and encourages them through offering reduced parking requirements when onsite accommodations are provided.

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

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; that the foregoing ordinance, being Ordinance No. 2023-6 was duly introduced on the 9th day of May, 2023, at a regular meeting, and adopted by the City Council at a regular meeting duly held on the 23rd day of May, 2023, and that the same was so passed and adopted by the following vote, to wit:

AYES: Mayor Pro Tem Will O'Neill, Council Member Brad Avery, Council Member Robyn Grant, Council Member Lauren Kleiman, Council Member Joe Stapleton, Council Member Erik Weigand

NAYS: None

RECUSED: Mayor Noah Blom

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed the official seal of said City this 24th day of May, 2023.



Leilani I. Brown

Leilani I. Brown, MMC
City Clerk
City of Newport Beach, California

CERTIFICATE OF PUBLICATION

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

I, LEILANI I. BROWN, City Clerk of the City of Newport Beach, California, do hereby certify that Ordinance No. 2023-6 has been duly and regularly published according to law and the order of the City Council of said City and that same was so published in *The Daily Pilot*, a newspaper of general circulation on the following dates:

Introduced Ordinance: May 9, 2023
Adopted Ordinance: May 23, 2023

In witness whereof, I have hereunto subscribed my name this 8th ^{June} day of May, 2023.



Leilani I. Brown

Leilani I. Brown, MMC
City Clerk
City of Newport Beach, California

City of Newport Beach