

# **Attachment No. PC 1**

Draft Resolution

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## RESOLUTION NO. PC2026-001

### **A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF NEWPORT BEACH, CALIFORNIA, WAIVING CITY COUNCIL POLICY L-6 (ENCROACHMENTS IN PUBLIC RIGHTS-OF-WAY), AND APPROVING ENCROACHMENT PERMIT NO. N2025-0390 TO ALLOW RETENTION OF SPECIFIC UNPERMITTED IMPROVEMENTS FOR THE PROPERTY LOCATED AT 520 POINSETTIA AVENUE (PA2025-0228)**

THE PLANNING COMMISSION OF THE CITY OF NEWPORT BEACH HEREBY FINDS AS FOLLOWS:

#### SECTION 1. STATEMENT OF FACTS.

1. An application was filed by Kristi Dumont on behalf of the Kristi A. Dumont Trust (“Applicant/Owner”), with respect to the property located at 520 Poinsettia Avenue, Newport Beach, California and legally described as Lot 22 of Block 543 in Corona Del Mar, in the City of Newport Beach, California as shown on a map recorded in Book 3, Pages 41 and 42 of Miscellaneous Maps, in the Office of the County Recorder of Orange County (“Property”), requesting approval of an encroachment permit.
2. The Applicant requests approval of Encroachment Permit No. N2025-0390, and a waiver of City Council Policy L-6 (Encroachments in Public Rights-of-Way) to retain non-compliant improvements within the Third Avenue and Poinsettia Avenue public rights-of-way consisting of a 30 inch high brick wall encroaching approximately 7 feet, 6 inches into the Third Avenue public right-of-way; a 33 inch high brick pilaster encroaching approximately 7 feet, 9 inches into the Third Avenue public right-of-way; a 36 inch high gate encroaching approximately 7 feet into the Third Avenue public right-of-way; existing landscaping of various heights encroaching approximately 6 feet into the Third Avenue public right-of-way; and existing hardscape encroaching approximately 9 feet, 6 inches into the Poinsettia Avenue and Third Avenue public rights-of-way (“Project”)

City Council Policy L-6 (Encroachment in Public Rights-of-Way) limits the existing walls and fences to a 1-foot encroachment into the right-of-way, as well as limits heights to 36 inches.

The following improvements are to be removed:

- a. A 30 inch high fence encroaching approximately 7 feet, 6 inches into the Third Avenue public right-of-way;
- b. An outdoor light (above an existing pilaster to remain) encroaching approximately 7 feet into the Third Avenue public right-of-way;
- c. A hedge encroaching approximately 9.5 feet into the Third Avenue public right-of-way; and
- d. Landscaping of various heights encroaching approximately 7 feet, 6 inches into the Third Avenue public right-of-way.

3. The requested approvals are not specifically provided for within City Council Policy L-6 (Encroachments in Public Rights-of-Way). Thus, the Project is prohibited under Section A (Private encroachments that are prohibited without a waiver and approval) of said Policy. Due to this prohibition, the requested encroachments may only be approved upon the waiver of City Council Policy L-6 (Encroachments in Public Rights-of-Way) with approval of the encroachments permitted by the Planning Commission.
4. The Property is not located within the coastal zone; therefore, a coastal development permit is not required.
5. A public meeting was held on January 22, 2026, in the City 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 Government Code Section 54950 *et seq.* ("Ralph M. Brown Act") and City Council Policy L-6 (Encroachments in Public Rights-of-Way). Evidence, both written and oral, was presented to, and considered by, the Planning Commission at this public hearing.

## SECTION 2. CALIFORNIA ENVIRONMENTAL QUALITY ACT DETERMINATION.

1. This Project is categorically exempt from 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), Section 15301 under Class 1 (Existing Facilities) of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3 ("CEQA Guidelines"), because the Project, consisting of a 30-inch high brick wall along with pilaster, gate and landscaping, has no potential for resulting in direct or indirect physical change to the environment. The existing improvements are consistent with structures allowed under this exemption.
2. The exceptions to this categorical exemption under Section 15300.2 are not applicable. The Project 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 3. REQUIRED FINDINGS.

In accordance with City Council Policy L-6 (Encroachments in Public Rights-of-Way), the following findings and facts in support of such findings are set forth:

### Finding:

- A. *The proposed private improvements are a detriment to the health, safety, and welfare of the public.*

Facts in Support of Finding:

1. The Third Avenue and Poinsettia rights-of-way are approximately 10 feet from the face of curb to the property line.
2. The Project does not diminish the rights of the public, present and future, along the Third Avenue and Poinsettia Avenue public rights-of-way. There are no sidewalks on Third Avenue, nor does the City currently have a plan to install sidewalks on this street. Additionally, the location and height of these encroachments do not interfere with traffic visibility for vehicles traveling along Poinsettia and Third Avenues.
3. Approval would require the Owner to enter into an Encroachment Agreement to allow the improvements, and any liability associated with the private improvements would be transferred to the Owners. Additionally, if the need for public improvements arises in the future, the Owners shall remove all encroachments at no cost to the City.

Finding:

- B. The individual circumstances applicable to this application and the proposed encroachment are not consistent with the public interest.*

Facts in Support of Finding:

1. The improvements appear complementary to the neighborhood and do not interfere with traffic visibility on either Poinsettia and Third Avenues.
2. The encroachments that are requested to be removed, such as the fence, hedge, and additional landscaping, create traffic visibility issues for vehicles and are not consistent with public interest. The existing light creates similar visibility issues and includes unauthorized electrical connections that need to be removed from the public right-of-way due to safety reasons.
3. There are no existing City utilities within the encroachment area within the Third Avenue public right-of-way.

## SECTION 4. DECISION.

**NOW, THEREFORE, BE IT RESOLVED:**

1. The Planning Commission of the City of Newport Beach finds this Project categorically exempt from 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 Section 15301 under Class 1 (Existing Facilities) of the CEQA Guidelines because the existing improvements have no potential for resulting in direct or indirect physical change to the environment.

2. The Planning Commission of the City of Newport Beach hereby waives City Council Policy L-6 (Encroachment in Public Rights-of-Way) and approves Encroachment Permit No. N2025-0390, subject to the conditions set forth in Exhibit "A," which is attached hereto and incorporated by reference.
3. This action shall become final and effective 14 days following the date this Resolution is adopted unless within such time an appeal or call for review is filed with the City Clerk in accordance with the provisions of Title 20 (Planning and Zoning), of the Newport Beach Municipal Code.

**PASSED, APPROVED, AND ADOPTED THIS 22<sup>ND</sup> DAY OF JANUARY 2026**

AYES:

NOES:

ABSTAIN:

ABSENT:

BY: \_\_\_\_\_  
Tristan Harris, Chair

BY: \_\_\_\_\_  
David Salene, Secretary

**EXHIBIT A****CONDITIONS OF APPROVAL****PUBLIC WORKS**

1. The Project shall be in substantial conformance with the approved site plan stamped and dated with the date of this approval.
2. The Project is subject to all applicable City ordinances, policies, and standards, unless specifically waived or modified by the conditions of approval.
3. The Owner shall comply with all federal, state, and local laws. Material violation of any of those laws in connection with the use may be cause for revocation of this Encroachment Permit and any associated Encroachment Agreements.
4. The Owner shall enter into an Encroachment Agreement within one calendar year upon receipt of approval, otherwise this approval shall automatically expire.
5. This Encroachment Permit allows the removal of the noted existing improvements and retention of the existing brick planter wall, brick pilaster, PVC gate, and brick hardscape within the Third Avenue public right-of-way with a waiver of City Council Policy L-6, Section A of "Private Encroachments that are Prohibited Without a Waiver and Approval".
6. If the need for public improvements arises in the future, Owners shall remove all encroachments at no cost to the City.
7. To the fullest extent permitted by law, Owners shall indemnify, defend and hold harmless the City, its City Council, its boards and commissions, officials, officers, employees, and agents from and against any and all claims, demands, obligations, damages, actions, causes of action, suits, losses, judgments, fines, penalties, liabilities, costs and expenses (including without limitation, attorney's fees, disbursements and court costs) of every kind and nature whatsoever which may arise from or in any manner relate (directly or indirectly) to City's approval of the **Kristi A. Dumont Trust Encroachment (PA2025-0228) including, but not limited to, Encroachment Permit No. N2025-0390**. This indemnification shall include, but not be limited to, damages awarded against the City, if any, costs of suit, attorneys' fees, and other expenses incurred in connection with such claim, action, causes of action, suit or proceeding whether incurred by Owners, City, and/or the parties initiating or bringing such proceeding. The Owners shall indemnify the City for all of City's costs, attorneys' fees, and damages which City incurs in enforcing the indemnification provisions set forth in this condition. The Owners shall pay to the City upon demand any amount owed to the City pursuant to the indemnification requirements prescribed in this condition.

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