

ATTACHMENT B

RESOLUTION NO. 2023-40

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF NEWPORT BEACH, CALIFORNIA, ADOPTING A PILOT PROGRAM TO PERMIT QUALIFYING HOMEOWNER'S ASSOCIATIONS TO INSTALL PRIVATELY OPERATED SECURITY CAMERAS WITHIN THE PUBLIC RIGHT-OF-WAY, AND WAIVING CITY COUNCIL POLICY L-6, ENCROACHMENTS IN PUBLIC RIGHTS-OF-WAY, IN REGARDS THERETO

WHEREAS, the City of Newport Beach ("City") is governed, in part, by its Charter, Municipal Code, and adopted City Council Policies;

WHEREAS, it is the general policy of the City that the public rights-of-way shall be reserved for public use or open space, and that the rights of the public, present and future, shall not be diminished by the installation of private improvements within the public rights-of-way;

WHEREAS, City Council Policy L-6, Encroachments in Public Rights-Of-Way, sets forth the policy and procedure for permitting private improvements within the public rights-of-way; .

WHEREAS, City Council Policy L-6 does not provide for the installation of private cameras within the public rights-of-way;

WHEREAS, the City Council desires to adopt a pilot program ("Pilot Program") to permit qualifying homeowner's associations to install privately operated security cameras within public rights-of-way; and

WHEREAS, the City Council desires to waive City Council Policy L-6 to the extent it conflicts with the Pilot Program, and to waive any rent associated with the use of the public right-of-way for the term of the Pilot Program.

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

Section 1: The City Council does hereby approve a Pilot Program to permit qualifying homeowner's associations to install privately operated security cameras within the public rights-of-way in accordance with procedures, terms, and conditions set forth in in Exhibit 1, which is attached hereto and incorporated herein by reference.

Section 2: The City Council does hereby waive City Council Policy L-6, Encroachments in Public Rights-of-Way, through September 30, 2024, to the extent that it conflicts with the terms of the Pilot Program adopted by this resolution.

Section 3: The City Council does hereby waive any rent associated with the use of the public right-of-way for the term of the Pilot Program.

Section 4: Except as expressly modified in this resolution, all other City Council Policies shall remain unchanged and shall be in full force and effect.

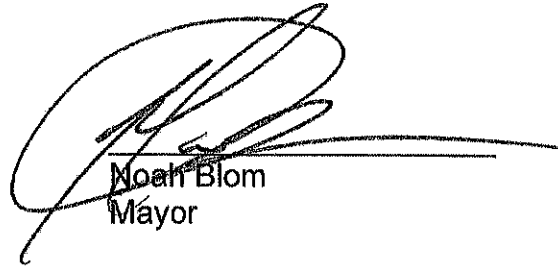
Section 5: The recitals provided in this resolution are true and correct and are incorporated into the operative part of this resolution.

Section 6: 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 7: The City Council finds the adoption of this resolution and the amendment of the specified City Council Policies 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.

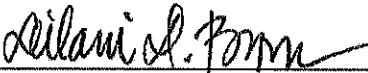
Section 8: This resolution shall take effect immediately upon its adoption by the City Council, and the City Clerk shall certify the vote adopting the resolution.

ADOPTED this 27th day of June, 2023.



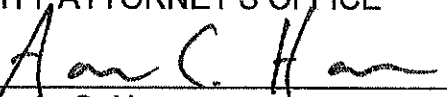
Noah Blom
Mayor

ATTEST:



Leilani I. Brown
City Clerk

APPROVED AS TO FORM:
CITY ATTORNEY'S OFFICE



Aaron C. Harp
City Attorney

Attachment: Exhibit 1 – Pilot Program

**PILOT PROGRAM TO PERMIT HOMEOWNER'S ASSOCIATIONS TO
INSTALL PRIVATELY OPERATED SECURITY CAMERAS
WITHIN THE PUBLIC RIGHTS-OF-WAY**

I. PURPOSE

The purpose of this pilot program ("Pilot Program") is to permit a qualifying Homeowner's Association ("HOA") to install private security cameras within the public rights-of-way for HOA security purposes. Additionally, the HOA may, but is not obligated to, provide information collected by the security cameras to law enforcement agencies to assist with investigations of instances of theft, vehicle burglary, property damage, traffic accidents, or other activity relevant to law enforcement that may occur in the neighborhood.

II. APPLICATION

The terms and conditions of this Pilot Program shall apply to the installation, operation, and maintenance of private security cameras within the public rights-of-way and shall be supplemental to City Council Policy L-6, Encroachments in Public Rights-of-Way. In the event of a conflict between the terms of Council Policy L-6 and the terms of this Pilot Program, the terms of this Pilot Program shall prevail.

III. TERMINATION

The City Council reserves the right to terminate this Pilot Program at any time, with or without cause. The term of the Pilot Program shall expire on September 30, 2024, unless the term is extended by the City Council.

IV. QUALIFYING HOA

A qualifying HOA shall be an HOA that: Includes at least fifty (50) single-unit dwellings within a contiguous neighborhood; is registered and in good standing with the California Secretary of State; and manages a residential planned development in compliance with the Davis-Stirling Common Interest Development Act (Civ. Code §§4000–6150). This Pilot Program will permit up to ten (10) HOAs to install private security cameras within the public right-of-way.

V. FEES

During the Pilot Program, any rent associated with the use of the public right-of-way shall be waived. If the encroachment is allowed to remain after the Pilot Program, the City Council will reassess whether to impose a charge for use of the public right-of-way.

VI. APPLICATION FOR ENCROACHMENT PERMIT

An application for an encroachment permit to install private security cameras within the public right-of-way, pursuant to this Pilot Program, shall be filed with the Public Works

Department on a form provided by the Public Works Department. The application shall include the following information:

A. A duly adopted resolution from the HOA approving, or requesting authorization for, the installation of private security cameras within the public right-of-way;

B. A copy of all governing documents of the HOA, such as the declaration, bylaws, articles of incorporation or association, the HOA's operating rules, and the HOA's statement filed with the Secretary of State;

C. Information regarding the make, manufacturer, type, and model of the security cameras to be installed;

D. Identity and contact information for the third-party contractor/operator of the security camera system and any contractor or subcontractor who will be installing the system; and

E. A site plan, drawn to scale and fully dimensioned, which accurately depicts the location, height, and extent of the proposed security cameras within the public right-of-way.

VII. CONDITIONS

The HOA shall comply with the following conditions:

A. An encroachment permit and an encroachment agreement, reviewed and approved by the City Attorney's Office, shall be fully executed prior to the installation of security cameras and appurtenant items within the public right-of-way.

B. During the Pilot Program, the HOA may install and maintain security cameras in the public right-of-way as authorized by the encroachment permit and the encroachment agreement for the term set forth in the permit, which may be extended by the City Council.

C. City approved signage shall be posted providing notice to the public of the presence and operation of the security cameras. Signs shall be kept to a minimum, utilize industry standard forms and language. Signs shall be without any advertisements, commercial logos, or company names and placed at locations approved by the City.

D. Security cameras shall be self-contained with solar or battery power and wireless communications.

E. Security cameras shall be directed solely at public areas, such as streets, roadways, sidewalks, alleys, and other public spaces, and shall not capture or record any image of a private dwelling or the curtilage of a private dwelling in areas where there is an expectation of privacy. Security cameras shall be fixed and shall not have pan, tilt, or zoom capabilities.

F. Security cameras shall not utilize facial recognition and shall not capture audio.

G. Information captured by security cameras shall be for the private use of HOA Management. The HOA and any third-party contractor hired to operate the cameras or maintain the data shall keep such data confidential, and shall not disseminate, release, license, sell or distribute the data to other third parties except as required by law, or to a public law enforcement agency for official purposes.

H. The HOA shall be solely responsible for the selection, purchase, installation, operation, and maintenance of the security camera system, including but not limited to, cameras, poles, solar power, wireless communication equipment, any other related or necessary appurtenances, and for all costs and fees associated therewith.

I. The HOA shall provide the City with an emergency contact name and phone number who shall respond to the City within 24-hours of any communications from City regarding the security cameras or other matters related thereto.

J. The HOA shall comply with all applicable provisions of law for the installation, operation, and maintenance of such systems, including but not limited to, utilizing appropriately licensed contractors, and obtaining other applicable City permits, such as a City building permit.

K. At the request of the City, the HOA shall share statistical information with the City so it can assess the Pilot Program.

L. The HOA shall agree to relocate the security camera system, or portion thereof, if requested to do so by the City.

M. The HOA shall be responsible for any damage to City property and shall agree to restore the City property to its original condition if the security camera system is relocated or removed from public property.

N. The HOA shall agree to defend, indemnify, and hold the City harmless from all claims arising out of the installation, operation, maintenance, and use of information acquired by the security cameras. The HOA shall maintain policies of insurance of the

type, amounts, terms, and conditions as required by the City Risk Manager in the encroachment agreement.

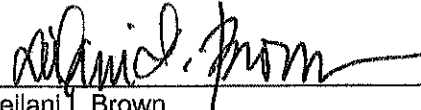
STATE OF CALIFORNIA }
COUNTY OF ORANGE }
CITY OF NEWPORT BEACH } ss.

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. 2023-40 was duly introduced before and adopted by the City Council of said City at a regular meeting of said Council held on the 27th day of June, 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, Council Member Brad Avery, Council Member Robyn Grant, Council Member Lauren Kleiman, Council Member Joe Stapleton, Council Member Erik Weigand

NAYS: None

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed the official seal of said City this 28th day of June, 2023.



Leilani I. Brown
City Clerk
Newport Beach, California

