AMENDED AGENDA – ITEM SS5 TITLE CHANGE

CITY OF NEWPORT BEACH
CITY COUNCIL AGENDA

STUDY SESSION AND REGULAR MEETING

SEPTEMBER 10, 2019

CITY COUNCIL CHAMBERS – 100 CIVIC CENTER DRIVE, NEWPORT BEACH, CA 92660

STUDY SESSION – 4:00 P.M. (PUBLIC WELCOME)
CLOSED SESSION FOLLOWS STUDY SESSION
REGULAR MEETING – 7:00 P.M.

DIANE B. DIXON, Mayor
WILL O'NEILL, Mayor Pro Tem
BRAD AVERY, Council Member
JOY BRENNER, Council Member
DUFFY DUFFIELD, Council Member
JEFF HERDMAN, Council Member
KEVIN MULDOON, Council Member

GRACE K. LEUNG, City Manager
AARON C. HARP, City Attorney
LEILANI I. BROWN, City Clerk
CAROL JACOBS, Assistant City Manager

NOTICE REGARDING PRESENTATIONS REQUIRING USE OF CITY EQUIPMENT
Any presentation requiring the use of the City of Newport Beach's equipment must be submitted to the City Clerk 24 hours prior to the scheduled City Council meeting.

PUBLIC HEARINGS
If in the future, you wish to challenge in court any of the matters on this agenda for which a public hearing is to be conducted, you may be limited to raising only those issues which you (or someone else) raised orally at the public hearing or in written correspondence received by the City at or before the hearing.

NOTICE TO THE PUBLIC
The City provides a yellow sign-in card for those wishing to address the City Council to assist in the preparation of the minutes. The cards are available in the lobby of the Council Chambers. Speakers are not required to submit a card as a condition to addressing the City Council. If you do fill out the card, please place it in the box at the podium. Any times listed in this agenda are provided as a courtesy and the actual item may be heard either before or after the time given.

This agenda was prepared by the City Clerk and staff reports are available at the City Clerk's Office located at 100 Civic Center Drive (Bay E, 2nd Floor). Staff reports or other written documentation have been prepared or organized with respect to each item of business listed on the agenda. If you have any questions or require copies of any of the staff reports or other documentation regarding any item of business on the agenda, please contact City Clerk staff at 949-644-3005. Agendas, minutes and staff reports are also available on the City's webpage at newportbeachca.gov/agendas.

The City of Newport Beach's goal is to comply with the Americans with Disabilities Act (ADA) in all respects. If, as an attendee or a participant at this meeting, you will need special assistance beyond what is normally provided, we will attempt to accommodate you in every reasonable manner. Please contact Leilani Brown, City Clerk, prior to the meeting to inform us of your particular needs and to determine if accommodation is feasible (949-644-3005 or cityclerk@newportbeachca.gov).

NEWPORT BEACH CITY COUNCIL AGENDA
CITY COUNCIL CHAMBERS
100 CIVIC CENTER DRIVE, NEWPORT BEACH, CA 92660
SEPTEMBER 10, 2019
STUDY SESSION – 4:00 P.M. (PUBLIC WELCOME)
CLOSED SESSION FOLLOWS STUDY SESSION
REGULAR MEETING – 7:00 P.M.

I. ROLL CALL – 4:00 p.m.

II. CURRENT BUSINESS

SS1. Clarification of Items on the Consent Calendar

SS2. Proclamation Designating *International Literacy Day*

SS3. Check Presentation from the Friends of the Library

SS4. Community Outreach by the Federal Bureau of Investigation (FBI)

SS5. Code Amendment Update Related to Residential Design Standards (PA2019-070)
Staff will make a presentation on proposed code amendments related to building height and massing, third story development standards, and beach cottage preservation.

III. PUBLIC COMMENTS

The City provides a yellow sign-in card to assist in the preparation of the minutes. The completion of the card is not required in order to address the City Council. If the optional sign-in card has been completed, it should be placed in the box provided at the podium.

The City Council of Newport Beach welcomes and encourages community participation. Public comments are invited on items listed on the agenda and non-agenda items. Speakers must limit comments to three (3) minutes per person to allow everyone to speak. Written comments are encouraged as well. The City Council has the discretion to extend or shorten the time limit on agenda or non-agenda items.

IV. CLOSED SESSION – After Study Session – Council Chambers Conference Room

A. CONFERENCE WITH LEGAL COUNSEL
ANTICIPATED LITIGATION – INITIATION OF LITIGATION
(Government Code § 54956.9(d)(4): 1 matter

B. CONFERENCE WITH REAL PROPERTY NEGOTIATORS
(Government Code § 54956.8): 1 matter

Property: 20302 Riverside Drive, Newport Beach, CA 92660
APN: 439 251 05

Agency Negotiator: Grace Leung, City Manager
Carol Jacobs, Assistant City Manager

Negotiating Parties: 20302 Riverside Dr. LLC, represented by Kathy Leonard

Under Negotiation: Instruct negotiator as to price and terms of payment

V. RECESS

VI. RECONVENE AT 7:00 P.M. FOR REGULAR MEETING

VII. ROLL CALL

VIII. CLOSED SESSION REPORT

IX. INVOCATION – Pastor Phil Eyskens, Lighthouse of Costa Mesa Church of the Nazarene, Costa Mesa

X. PLEDGE OF ALLEGIANCE

XI. NOTICE TO THE PUBLIC

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XII. CITY COUNCIL ANNOUNCEMENTS AND ORAL REPORTS FROM CITY COUNCIL ON COMMITTEE ACTIVITIES

XIII. MATTERS WHICH COUNCIL MEMBERS HAVE ASKED TO BE PLACED ON A FUTURE AGENDA

- **Develop a sign and messaging program, throughout the City, that discourages giving money directly to panhandlers and encourages donations to programs that offer services to assist persons experiencing homelessness [O'Neill]**

XIV. PUBLIC COMMENTS ON CONSENT CALENDAR

*This is the time in which Council Members may pull items from the **CONSENT CALENDAR** for discussion **(ITEMS 1 – 19)**. Public comments are also invited on Consent Calendar items. Speakers must limit comments to three (3) minutes. Before speaking, please state your name for the record. If any item is removed from the Consent Calendar by a Council Member, members of the public are invited to speak on each item for up to three (3) minutes per item.*

*All matters listed under **CONSENT CALENDAR** are considered to be routine and will all be enacted by one motion in the form listed below. Council Members have received detailed staff reports on each of the items recommending an action. There will be no separate discussion of these items prior to the time the City Council votes on the motion unless members of the City Council request specific items to be discussed and/or removed from the Consent Calendar for separate action.*

XV. CONSENT CALENDAR

READING OF MINUTES AND ORDINANCES

1. **Minutes for the August 13, 2019 City Council Meeting**
   Waive reading of subject minutes, approve as written, and order filed.

2. **Reading of Ordinances**
   Waive reading in full of all ordinances under consideration, and direct the City Clerk to read by title only.

ORDINANCES FOR ADOPTION

3. Second Reading and Adoption of Ordinance No. 2019-13 Amending PC-19 (San Joaquin Plaza Planned Community) and Ordinance No. 2019-14 Approving a Development Agreement for the Vivante Senior Housing Project Located at 850 and 856 San Clemente Drive (PA2018-185)

a) Find that the EIR Addendum for the Vivante Senior Housing Project certified by the City Council on August 13, 2019, and Museum House Project Environmental Impact Report (EIR) No. ER2016-002 (SCH No. 2016021023) certified by the City Council on November 29, 2016, by Resolution No. 2016-126 was prepared for the project in compliance with California Environmental Quality Act (CEQA), the State CEQA Guidelines, and City Council Policy K-3;
b) Conduct second reading and adopt Ordinance No. 2019-13, *An Ordinance of the City Council of the City of Newport Beach, California, Adopting Planned Community Development Plan No. PC2018-001 Amending the San Joaquin Plaza Planned Community (PC-19) Located at 850 and 856 San Clemente Drive (PA2018-185)*; and
c) Conduct second reading and adopt Ordinance No. 2019-14, *An Ordinance of the City Council of the City of Newport Beach, California, Approving Development Agreement No. DA2018-005 for the Vivante Senior Housing Project Located at 850 and 856 San Clemente Drive (PA2018-185).*

RESOLUTIONS FOR ADOPTION

4. Resolution No. 2019-77: A Request by the Newport Shores Community Association to Opt Out of the Designated High-Density Area

a) Find this action 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) 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, Chapter 3, because it has no potential for resulting in physical change to the environment, directly or indirectly;
b) Find the removal of the Newport Shores Community Association from the geographical designation of the high-density area will not negatively affect the surrounding property owners; and
c) Adopt Resolution No. 2019-77, *A Resolution of the City Council of the City of Newport Beach, California, Excluding the Geographical Boundaries of the Newport Shores Community Association from the Definition of the Designated High-Density Area Pursuant to Newport Beach Municipal Code Section 10.28.040 (F).*

5. Resolution No. 2019-78: Initiation of Zoning Code and LCP Amendments Related to Hedge Heights in Front Yard Setbacks for Lido Isle (PA2019-132)

a) Determine this action exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15262 (Feasibility and Planning Studies) of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3; and
b) Adopt Resolution No. 2019-78, *A Resolution of the City Council of the City of Newport Beach, California, Initiating Amendments to Title 20 Entitled "Planning and Zoning" and Title 21 Entitled "Local Coastal Program Implementation Plan" of the City of Newport Beach Municipal Code Related to Hedge Heights in Front Yard Setbacks within Lido Isle (PA2019-132).*

6. Resolution No. 2019-79: Update to City Council Policy F-27 – *Policy and Procedures for City Distribution of Tickets or Passes*

a) Determine this action is exempt from the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(2) and 15060(c)(3) of the CEQA Guidelines because this action will not result in a physical change to the environment, directly or indirectly; and
b) Adopt Resolution No. 2019-79, *A Resolution of the City Council of the City of Newport Beach, California, Amending City Council Policy F-27 "Policy and Procedures for City Distribution of Tickets or Passes" to Include Newly Adopted Fair Political Practices Commission Rules.*

CONTRACTS AND AGREEMENTS

7. **Approval and Award of On-Call Maintenance/Repair Services Agreements with Joslin Mobile, Inc. and Computer Deductions, Inc. for Vehicle Customization and Upfitting Services**
   a) Determine this action is exempt from the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(2) and 15060(c)(3) of the CEQA Guidelines because this action will not result in a physical change to the environment, directly or indirectly; and
   b) Approve On-Call Maintenance/Repair Services Agreements with Joslin Mobile, Inc. and Computer Deductions, Inc. for vehicle customization and upfitting services, each for a three-year term and a total amount not to exceed $450,000 per agreement, and authorize the Mayor and City Clerk to execute the agreements.

8. **Amendment No. One to On-Call Professional Services Agreement with ECO/NOMICS, Inc. (C-8478-1)**
   a) Determine this action is exempt from the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(2) and 15060(c)(3) of the CEQA Guidelines because this action will not result in a physical change to the environment, directly or indirectly; and
   b) Approve Amendment No. One to Professional Services Agreement with ECO/NOMICS, Inc. to extend the term of the agreement until May 8, 2025, and to increase the not to exceed amount by $750,000 for a total not to exceed amount of $1,050,000, and authorize the Mayor and City Clerk to execute the amendment.

9. **Amendment No. One to On-Call Maintenance and Repair Services Agreements with Academy Electric, Inc. (C-7150-1), Laughlin & White, Inc. (C-7149-1), and A.C. Pozos Electric Corp. (C-7148-1) for On-Call Electrical Repair Services**
   a) Determine this action is exempt from the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(2) and 15060(c)(3) of the CEQA Guidelines because this action will not result in a physical change to the environment, directly or indirectly;
   b) Approve Amendment No. One to On-Call Maintenance and Repair Services Agreement for On-Call Electrical Repair Services with Academy Electric, Inc. to extend the term of the agreement to five years and increase the not to exceed amount by $150,000, for a total not to exceed $250,000, and authorize the Mayor and City Clerk to execute the amendment;
   c) Approve Amendment No. One to On-Call Maintenance and Repair Services Agreement for On-Call Electrical Repair Services with Laughlin & White, Inc. to extend the term of the agreement to five years and increase the not to exceed amount by $150,000, for a total not to exceed $250,000, and authorize the Mayor and City Clerk to execute the amendment; and
   d) Approve Amendment No. One to On-Call Maintenance and Repair Services Agreement for On-Call Electrical Repair Services with A.C. Pozos Electric Corporation to extend the term of the agreement to five years and increase the not to exceed amount by $150,000, for a total not to exceed $250,000, and authorize the Mayor and City Clerk to execute the amendment.

10. **Amendment No. One to On-Call Maintenance and Repair Services Agreement for Roll-Up Door Preventative Maintenance and As-Needed Repairs with Excel Door and Gate Company, Inc.**
    a) Determine this action is exempt from the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(2) and 15060(c)(3) of the CEQA Guidelines because this action will not result in a physical change to the environment, directly or indirectly; and
    b) Approve Amendment No. One to On-Call Maintenance and Repair Services Agreement for roll-up door preventative maintenance and as-needed repairs with Excel Door and Gate Company, Inc. to extend the term of the agreement to five years and increase the not to exceed amount by $380,000 for a total not to exceed amount of $500,000, and authorize the Mayor and City Clerk to execute the amendment.

11. Approval of Amendment No. One to Professional Services Agreement with Chambers Group, Inc. for Environmental Services for the Superior Avenue Pedestrian and Bicycle Bridge and Parking Lot Project (15T09)

a) Determine this action is exempt from the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(2) and 15060(c)(3) of the CEQA Guidelines because this action will not result in a physical change to the environment, directly or indirectly; and
b) Approve Amendment No. One in the amount of $44,242.00 to the Professional Services Agreement with Chambers Group, Inc. for additional environmental services for a new not-to-exceed total price of $161,217.00, and authorize the Mayor and City Clerk to execute the Amendment.

12. Approval of Amendment No. One to Lease Agreement with Williams Scotsman, Inc. for Temporary Fire Station No. 5 Facility (15F12)

a) Determine this action is exempt from the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(2) and 15060(c)(3) of the CEQA Guidelines because this action will not result in a physical change to the environment, directly or indirectly; and
b) Approve Amendment No. One in the amount of $30,000.00 to the Lease Agreement with Williams Scotsman, Inc. for additional rental charges for a new not-to-exceed total price of $150,000.00, and authorize the Mayor and City Clerk to execute the Amendment.

13. Acceptance of the State of California Office of Traffic Safety Selective Traffic Enforcement Program Grant

a) Determine that the action is exempt from the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(2) and 15060(c)(3) of the CEQA Guidelines because it will not result in a physical change to the environment, directly or indirectly;
b) Authorize the City Council to accept a $250,000 Selective Traffic Enforcement Program (STEP) award granted to the NBPD by the OTS per Council Policies F-3 and F-25. To comply with Council Policy F-3, City Council must formally accept the award of $250,000 and create a new appropriation to expend the funds; and
c) Approve Budget Amendment No. 20-010 increasing NBPD revenue estimates and expenditure appropriations by $250,000.

14. Tentative Agreement with Newport Beach Lifeguard Management Association (NBLMA)

a) Determine this action is exempt from the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(2) and 15060(c)(3) of the CEQA Guidelines because this action will not result in a physical change to the environment, directly or indirectly; and
b) Receive and consider the Tentative Agreement between the City of Newport Beach and the Newport Beach Lifeguard Management Association.

15. Approval and Award of Printing Services Agreement with I Color Printing & Mailing Inc. for the Newport Navigator and Summer Camp Guides

a) Determine this action is exempt from the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(2) and 15060(c)(3) of the CEQA Guidelines because this action will not result in a physical change to the environment, directly or indirectly; and
b) Award a five (5) year printing services contract for the Newport Navigator brochure and summer camp guide to I Color Printing & Mailing Inc. for the total not to exceed bid price of $520,000 ($104,000 each year), and authorize the Mayor and the City Clerk to execute the contract agreement.

MISCELLANEOUS

16. Planning Commission Action Report for the August 22, 2019 Meeting

Receive and file.

17. Budget Amendment to Accept a Check from the Friends of the Newport Beach Library and Appropriate Funds to the Library's Fiscal Year 2019-20 Maintenance and Operation Budget

a) Determine this action is exempt from the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(2) and 15060(c)(3) of the CEQA Guidelines because this action will not result in a physical change to the environment, directly or indirectly; and
b) Accept a check in the amount of $185,000 from the Friends of the Newport Beach Library and approve a Budget Amendment No. 20-008 to increase revenues and expenditures by the same amount in Division 0106052 (Friends of the Library).

18. City Hall and Limited Off-Site Holiday Closure from Tuesday, December 24, 2019, through Wednesday, January 1, 2020

a) Determine that the action is exempt from the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(2) and 15060(c)(3) of the CEQA Guidelines because it will not result in a physical change to the environment, directly or indirectly; and
b) Approve closing the Civic Center and providing limited services at off-site facilities from Tuesday, December 24, 2019 through Wednesday, January 1, 2020. All facilities would reopen on Thursday, January 2, 2020. The proposed closure does not apply to public safety services or emergency on-call functions.

19. Recommendation of Parks, Beaches, and Recreation Commission with regard to Marine Avenue Tree Maintenance

a) Find that the action is exempt from the California Environmental Quality Act ("CEQA") pursuant to Sections 15060(c)(2) and 15060(c)(3) of the CEQA Guidelines, Code of Regulations, Title 14, Chapter 3 because it will not result in a physical change to the environment, directly or indirectly; and
b) Receive and file the report.

ACTION: MOVE AFFIRMATIVE ACTION OF THE CONSENT CALENDAR, EXCEPT FOR THOSE ITEMS REMOVED

XVI. ITEMS REMOVED FROM THE CONSENT CALENDAR

XVII. PUBLIC COMMENTS ON NON-AGENDA ITEMS

Public comments are invited on non-agenda items generally considered to be within the subject matter jurisdiction of the City Council. Speakers must limit comments to three (3) minutes. Before speaking, please state your name for the record.

XVIII. PUBLIC HEARINGS

20. Resolution No. 2019-80: Appeal of Reed Residential Variance for 1113 Kings Road (PA2019-060)

a) Conduct a de novo public hearing;
b) Find this project categorically exempt under Section 15303, of the California Environmental Quality Act ("CEQA") Guidelines - Class 3 (New Construction or Conversion of Small Structures), California Code of Regulations, Title 14, Division 6, Chapter 3, because it has no potential to have a significant effect on the environment; and
c) Adopt Resolution No. 2019-80, *A Resolution of the City Council of Newport Beach, California, Upholding and Affirming the Planning Commission's Approval of Variance No. VA2019-002 to Allow Portions of a New Single-Family Residence to Exceed the Maximum Height Limit for Property Located at 1113 Kings Road (PA2019-060).*

21. Community Development Block Grant Program Year 2018-2019, Consolidated Annual Performance and Evaluation Report

a) Hold a public hearing to receive comments on the Program Year 2018-19 CAPER;
b) Find this activity 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) 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, Chapter 3, because it has no potential for resulting in physical change to the environment, directly or indirectly;
c) Approve the Program Year 2018-19 CAPER; and
d) Authorize the City Manager or her designee to submit the Program Year 2018-19 CAPER to HUD.

XIX. CURRENT BUSINESS

22. Resolution No. 2019-81: Proposed Revisions to City Council Policy B-17 – *Parks, Facilities and Recreation Program Donations*

a) Determine this action is exempt from the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(2) and 15060(c)(3) of the CEQA Guidelines because this action will not result in a physical change to the environment, directly or indirectly;
b) Consider the recommendation from the Parks, Beaches, and Recreation Commission, and approve revisions to Council Policy B-17; and
c) Adopt Resolution 2019-81, *A Resolution of the City Council of the City of Newport Beach, California, Amending City Council Policy B-17 "Parks, Facilities, and Recreation Program Donations."*

23. Ordinance No. 2019-15: Amending Newport Beach Municipal Code Chapter 6.04 – *Garbage, Refuse and Cuttings* and Adding Chapter 6.06 – *State Mandated Municipal Solid Waste Diversion Programs*

a) Determine this action is exempt from the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(2) and 15060(c)(3) of the CEQA Guidelines because this action will not result in a physical change to the environment, directly or indirectly; and
b) Waive full reading, direct the City Clerk to read by title only, introduce Ordinance No. 2019-15, *An Ordinance of the City Council of the City of Newport Beach, California, Amending Portions of Chapter 6.04 and Other Related Provisions of the Newport Beach Municipal Code and Adding Chapter 6.06 to Title 6 of the Newport Beach Municipal Code to Incorporate State Mandates on the Diversion of Municipal Solid Waste*, and pass to second reading on September 24, 2019.

XX. MOTION FOR RECONSIDERATION

A motion to reconsider the vote on any action taken by the City Council at either this meeting or the previous meeting may be made only by one of the Council Members who voted with the prevailing side.

XXI. ADJOURNMENT – In memory of Jack Skinner

Testimony given before the City Council is recorded.
The timer light will turn yellow when the speaker has one-minute remaining.
The timer light will turn red when the speaker has 10 seconds remaining.

PLEASE TURN CELL PHONES OFF OR SET IN SILENT MODE

CITY OF

NEWPORT BEACH

City Council Staff Report

September 10, 2019
Agenda Item No. SS5

TO:	HONORABLE MAYOR AND MEMBERS OF THE CITY COUNCIL
FROM:	Seimone Jurjis, Community Development Director - 949-644-3232, sjurjis@newportbeachca.gov
PREPARED BY:	Jaime Murillo, Principal Planner, jmurillo@newportbeachca.gov
PHONE:	949-644-3209
TITLE:	Code Amendment Update Related to Residential Design Standards (PA2019-070)

ABSTRACT:

In May of 2019, the City Council initiated amendments to Newport Beach Municipal Code (NBMC) Title 15 (Building and Construction), Title 20 (Zoning Code) and Title 21 (Local Coastal Program Implementation Plan) related to building height and massing, third story development standards, and beach cottage preservation. Staff conducted a community meeting on August 19, 2019, presenting the proposed amendments to the public and design community.

Staff will provide an update to the City Council regarding the current amendment proposals and the comments received at the community meeting. Lastly, staff is asking for the City Council's input on the proposed amendments.

RECOMMENDATION:

Receive presentation and provide staff direction regarding proposed amendments.

BACKGROUND:

On Monday, August 19, 2019, staff held a community meeting to share potential code amendments intended to minimize bulk and mass associated with current residential development trends. Specifically, three separate amendments were proposed:

1. **Third Floor Massing-** Establish limitations regulating covered roof deck areas and redefining the definition of gross floor area to include unfinished attics with a ceiling height of 6 feet or greater.

2. **Single-Unit and Two-Unit Developments in the Multiple Residential Zoning District -** Restrict single-unit and two-unit dwellings developed on lots zoned for Multiple Residential (RM) to the development standards applicable to the standards of the Two-Unit Residential (R-2) Zoning District.

3. **Cottage Preservation-** Provide an incentive to preserve small cottages while allowing additions and alterations thereby discouraging full redevelopment of property.

The meeting was well attended by over 60 members of the public and design community. Generally, the proposed amendments related to reducing third floor massing and incentives for preservation of cottages were well received and supported by the community. However, several property owners of RM zoned lots were in attendance and shared significant concerns related to the proposed amendment to restrict height and massing of single-unit dwellings and duplex structures in the RM zone, including loss of property values and unequal application of standards to properties in the same zone. Staff also received written correspondence, which is included as Attachment A.

STUDY SESSION:

Prior to proceeding with the proposed amendments, staff will provide the City Council an overview of the proposed amendments shared during the community meeting and a summary of the comments received (Attachment B).

After receiving City Council direction at the study session, staff will present the proposed amendments to the Planning Commission for their review and recommendations, and ultimately return to the City Council for final review and adoption.

NOTICING:

The agenda item has been noticed according to the Brown Act (72 hours in advance of the meeting at which the City Council considers the item).

ATTACHMENTS:

Attachment A – Correspondence
Attachment B – Study Session Presentation

Attachment A

Written Correspondence Received

JF CARLSON
ARCHITECTS INC.

JAMES F. CARLSON AIA
jfcarlson@roadrunner.com

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NEWPORT BEACH
CALIFORNIA 92663

PHONE 949-645-3051
FAX 949-645-4851
CELL 714-606-5889

California Architectural License # C-13773

Mr. Jamie Murillo
Senior Planner
City of Newport Beach
One Civic Center
Newport Beach, California 92660

Re: Residential Design Standards:
Single Unit and Two-unit Developments in the Multiple Residential Zone

Dear: Jamie,

I attended your presentation on the Residential Design Standards this week and agree with your amendments on the items the pertain to the; ***Third Floor Massing and Cottage Preservation.***

However; I disagree with your amendment to the Single-unit and Two-Unit developments in the Multiple Residential (RM) Zoning Districts.

As an Architect who has designed multiple projects in the City of Newport Beach RM Zones for 30' foot lots in both in the 29' / 24' Foot and 33' / 28' Foot categories, I would like to offer my opinions on this proposed amendment.

I agree that the single-family developments in the RM zones should not be entitled to maximum height limits allowed in these zones.

But I disagree that the Two-Unit developments should be restricted from the maximum height limits, as this is exactly what the intention of the RM zones was created for; ***to allow for a greater density with the development of these types of projects.***

As you said yourself it's impossible to develop a 3 Unit development with these lot sizes because of the required parking requirements. ***Therefore, you are proposing a restriction that RM zones were created to allow for these increased densities.***

By allowing for these greater heights it gives the architect the opportunity to design and develop projects that create much better environments that meet all the requirements of these zones.

I have attached a project that I designed a few years ago in the RM zone with the 33'/ 28' height restrictions; it has just completed construction and is a good example of what can be accomplished with the current requirements and height restrictions.

The project is located in the Corona del Mar RM zone with 33'/ 28' foot height restrictions.
See the attached photo's the show the massing and the architectural features of the completed project.

The project is: Corona del Mar Condos
312 & 314 Dahlia Place
Newport Beach, Ca.

- The project features; Two 3 story detached Units with 7 view decks including a roof top deck
- The Front unit is approx. 2050 Sq. Ft. Rear unit is approx.1990 Sq. Ft. and was designed to be within 1.5 Sq. Ft. of the maximum allowable buildable area.
- It was Designed to meet the unique site requirements with stepped back property lines in the front and front and back easements.
- The units were designed to blend with the existing lower structures in both the front street and rear alley access points.
- They were also designed to provide separation and privacy, and even though they are condominiums they were designed to be completely separate units. ***This feature would be very difficult to achieve with the lower height restriction amendment.***
- As an added bonus they both were able to increase the outdoor areas by utilizing the un-buildable city property adjacent to the Frenleaf retaining wall. ***They would have been successful designs even without the utilization of the adjacent city property, but this was a nice added feature.***

I also think with the higher densities that will be mandated by the State of California early next year that this is not the time to further restrict the RM zone requirements for Two Unit developments.

Sincerely,

James F. Carlson

James F. Carlson, AIA

Cc: Seimone Juris
Samir Goshen
Peggy Palmer
Sandra Ayres

DJI_0110 copy.jpg



DJI_0115 copy.jpg



From:	Catherine <catherinewolcott@hotmail.com>
Sent:	Friday, August 09, 2019 11:45 AM
To:	Dixon, Diane; O'Neill, William; Avery, Brad; Duffield, Duffy; Muldoon, Kevin; Herdman, Jeff; Brenner, Joy; Weigand, Erik; Lowrey, Lee; Ellmore, Curtis; Klaustermeier, Sarah; Kleiman, Lauren; Koetting, Peter; Rosene, Mark; Leung, Grace; Jacobs, Carol; Harp, Aaron; Summerhill, Yolanda; Jurjis, Seimone; Campbell, Jim; Murillo, Jaime
Cc:	candwmartin@sbcglobal.net; bmartinworks@sbcglobal.net; Joni Martin; Cynthia Martin
Subject:	Proposed changes to RM development standards - Objection letter from Martin Family Trust
Attachments:	IMG_4094.jpg; IMG_4103.jpg; IMG_4112.jpg; IMG_4116.jpg; IMG_4124.jpg; IMG_4125.jpg; IMG_4122.jpg

Members of the Newport Beach City Council, Planning Commission, and City staff:

As I will be out of town on August 19, the date of the community outreach meeting on changes to the Residential Multifamily (RM) development standards, I hereby submit the preliminary objections of the Martin Family Trust, owner of three RM-zoned lots at 1824 West Ocean Front, to the proposed Zoning Code changes. Please note that the objections below do not apply to the City Council's direction to consider Zoning Code changes to preserve beach cottages, or to reduce the impact of improperly enclosed third-floor decks in R-2 zones. Those are different issues that should be considered separately.

Requiring R-1 and R-2 zoning standards for some but not all structures in an RM zone is a novel approach to zoning that I never saw applied or considered during the seven years I practiced municipal law. It is inconsistent with state law governing zoning in general law cities. None of the attorneys specializing in land use that I have consulted with, or any of the developers I discussed the matter with, have seen this approach suggested or implemented before. The developers, however, made it clear that losing flexibility and/or height of structures could impact our property value, particularly in a block such as ours where so many lots are already fully built up to or near the current development standard limits.

I apologize for the length of my comments below, but it is important that all my family's objections be included in the administrative record. For those of you who do not have time to wade through this entire letter, the summary of our arguments is as follows:

- The proposed changes will reduce the property values and impinge on the property rights of owners of RM-zoned property. They will create a large number of nonconforming structures. They will also spot-zone some or all of our lots down to R-2.

- The proposed changes will not address the City Council's stated objective of reducing mass and preventing excessive contrast between the heights of structures on neighboring properties.

- The proposed changes place an undue burden on RM-zoned property owners who have not already fully developed their properties, and confer an undue benefit on those that have. This is

in contravention of the uniform treatment principles of Government Code Section 65852, and the cases interpreting it.

- Quality design standards and articulation requirements would be a better solution to the City's concerns about the physical appearance of the RM zoning districts, and could enhance property values as well.

- Zoning Code changes that effectively create downzoning should be handled through the General Plan amendment process.

For the reasons set forth more fully below, I respectfully request that City elected officials and staff either:

(a) leave RM zoning and development standards as they are, with no change, <u>or</u>

(b) exempt the 1800 block of West Ocean Front, and other similarly situated RM-zoned areas, from the proposed changes to RM development standards.

1. **<u>Proposed development standard changes will result in reduction of property values and diminished rights of property owners in RM zoning districts.</u>**

My family and I are concerned that the Council's proposed changes to development standards in the RM zoning district will substantially reduce our property rights and our property's value. The majority of the similarly affected neighboring property owners that we have been able to reach share that concern.

As the Newport Beach Zoning Code is currently written, owners of properties in the RM zoning districts can build one-, two- or three-unit structures on their property. This allows owners the appropriate level of flexibility to use their property in a way that best suits their needs while allowing structures that are consistent with surrounding structures. The proposed amendments which the City Council directed staff to consider would drastically alter this.

If the proposed changes are adopted, RM owners may still build up to three units per lot (where individual lot size and location allows), but would have to apply R-1 or R-2 development standards if they chose (or were required to) build structures containing less than three dwelling units. In many cases, the highest and best use of a particular property is not a three-unit building, especially with the City's stringent onsite parking requirements.

As detailed below, only one of the buildings on the 1800 block of West Ocean Front is a three-unit building, and many are already built at or near the current allowed height. Adoption of the proposed changes would significantly increase the number of nonconforming buildings on our block, and the burden on owners of nonconforming property as well as the administrative burden of the City would be commensurately increased.

City planning staff has told us that on some or all of our lots we would have difficulty meeting the onsite parking requirements for three units because of our alley frontage measurements. Therefore, the proposed changes would effectively spot-zone some or all of our lots down to R-2, while many other

single- and two-unit properties on the block are already built to the full currently permitted height and Floor Area Ratio (FAR), while only having to provide parking for single- or two-family dwellings.

2. **Proposed development standard changes will have little or no impact on the City Council's stated justification for the changes.**

To the best of my knowledge, the only publicly stated justification the City Council provided for this proposed Zoning Code change is to reduce the impression of mass and height that taller buildings create. However, the proposed changes do nothing to address the Council's stated concerns. As noted above, many RM-zoned properties on our block have already been built to or near the maximum height allowed. If this change is adopted, owners of the remaining properties who can will simply build more three-unit buildings to the maximum height allowed in the RM zoning districts.

The visual mass of a three-unit building will have the identical impact that a similarly sized two- or one-unit building would have, no matter what those buildings contain inside. To illustrate this, I have attached photographs of some of the largest buildings on the 1800 block of West Ocean Front. Bearing in mind that only one of these buildings contains three units, I challenge members of the Council or Planning Commission to identify solely by visual inspection which of these buildings are three-unit, two-unit, or single-family dwellings.

Since the RM zoning districts are small in size and scattered throughout the City, the overall reduction in perceived mass and scale of buildings would be de minimis at best. Therefore, the proposed solution has no nexus with the desired outcome, and the legal and practical justifications for its adoption are questionable.

Now that I have raised this point with staff, I fully expect that future City communications will include references to the desirability of providing additional housing units and meeting RHNA standards. I know staff's RHNA concerns are sincere. However, at no time during my seven-and-a-half year tenure in the Newport Beach City Attorney's Office were RHNA standards met. Because of the comparatively small number of RM-zoned properties within the City, this proposed change will do little to further that goal. Furthermore, Council members did not cite providing additional dwelling units as a factor at any point during their April 23rd study session or May 28th Council meeting when they discussed this proposed change. Instead, they cited concerns about visual massing, and contrasts in heights and mass of immediately adjacent properties.

3. **On well over half the parcels in the 1800 block of West Ocean Front, either structures already exist at or near the maximum height, or the owners have expressed a desire to build to a similar height.**

I have reviewed all the buildings on the 1800 block of West Ocean Front, as well as the R-2 zoned structures in the 1700 block and R-1 zoned 1900 blocks of West Ocean Front. I encourage staff and elected officials to do the same. There are numerous tall three-story structures in all three blocks, and many of those are single- and two-unit buildings. I do not have measurements of the roof heights of all of these buildings, but here is some preliminary information:

- The structure at 1810 West Ocean Front was determined by the Newport Beach Fire Marshall to be a four-story building in 2008 or 2009. The top rail of its roof deck is over 47 feet above

finished grade; its roofline is over 45 feet above finished grade. Although this structure was originally built as a three-unit building, it has since been converted to single-family use.

- The structure at 1806 West Ocean Front is a two-unit structure; its roofline is approximately 43 feet above finished grade at the top of the roof ridge.

- 1818 West Ocean Front is a three-story, three-unit condominium building, built to the maximum height allowed.

- 1820 West Ocean Front is a three-story, two-unit condominium building under construction, built to the maximum height and FAR allowed.

- One two-story property on the 1800 block is undergoing review of plans that will allow the owner to build a single-family home with a roof ridge line at over 43 feet above finished grade.

- Owners of two of the remaining two-story single-lot buildings on the block have expressed interest in building their properties up in the future.

- My family has been aware for some time that our three lots will need to be developed and built up at some point, even if the property is kept in the family.

- This leaves only four out of 14 lots on the 1800 West Ocean Front block **(less than 30%)** whose owners have not yet either fully developed or expressed an intention to develop their property. As we have not yet spoken to all property owners, it is possible that even more owners than we are aware of are interested in developing or improving their property to a degree consistent with their neighbors.

- In the adjacent R-2 zoned 1700 block, on the 13 lots on the block there are five buildings with partial third stories in place, and a sixth under construction.

- On the 13 half-depth lots in the adjacent R-1 zoned 1900 block, there appear to be three buildings with a partial third story, and all but one of the lots appear to be built out to the maximum height allowed.

In short, adopting the proposed changes will not reduce the impression of height and massing on our block, or either adjacent block, and would unduly burden the property owners who have not yet built their properties to the maximum height allowed. Quality design standards and design articulation would be a better solution to the City's concerns about the physical appearance of the RM zoning districts, and could enhance property values as well.

4. **State law supports a policy of uniform treatment of all parcels within a zoning district.**

California Government Code Section 65852 sets forth the standard zoning principle of uniform treatment within a zoning district. The best summary of the effect of this code section's provisions is provided by Neighbors in Support of Appropriate Land Use v. County of Tuolumne (2007) 157 CA4th 997, which states:

> [Government Code] Section 65852 provides that the regulations contemplated by section 65850 must be uniform within each of the zones contemplated by section 65851, but may differ from zone to zone. The general meaning of this sequence is not difficult to understand: *Cities and counties may create rules and they may create zones; the rules should be the same for each parcel within the zone* but may be different for parcels in different zones. Our Supreme Court aptly has explained the fundamental reason for having a scheme of this nature . . . "A zoning scheme, after all, is similar in some respects to a contract; each party foregoes rights to use its land as it wishes in return for the assurance that the use of neighboring property will be similarly restricted, the rationale being that such mutual restriction can enhance total community welfare." 157 CA4th at 1008-1009 (Italics added, citations omitted)

In addition, the Neighbors in Support of Appropriate Land Use court summarized some of the policy underlying Government Code Section 65852: "If a zoning scheme is like a contract, the uniformity requirement is like an enforcement clause, allowing parties to the contract to challenge burdens unfairly imposed on them or benefits unfairly conferred on others." 157 CA4th at 1009

I am, of course, aware that the uniformity requirement of Government Code Section 65852 applies directly to general law cities and that charter cities may develop their own zoning provisions. However, Section 65852 codifies one of the basic principles of consistent, evenhanded zoning practices. Applying R-1 and R-2 development standards to selected residential structures in the RM zoning districts is inconsistent with this policy. It would burden property owners who have not already built up their properties, while depriving them of benefits enjoyed by other surrounding property owners.

5. **Zoning Code changes with this level of impact on a limited number of property owners are more properly handled through the General Plan amendment process.**

Whether or not the City Council intended it, this proposal gives the impression that the City is attempting to downzone certain RM-zoned areas without going through the required General Plan amendment. If the City wants that result, it should go through the proper General Plan amendment process, with the full public awareness that entails.

Sincere thanks for your consideration, and your time. I hope the City can develop an alternate approach which does not create an undue burden on a handful of RM property owners.

Regards,
Catherine Martin Wolcott

IMG_4094.jpg

IMG_4103.jpg

IMG_4112.jpg

SS5-15

IMG_4116.jpg

IMG_4122.jpg

SS5-17

IMG_4124.jpg

IMG_4125.jpg

TO THE NEWPORT BEACH CITY COUNCIL:

AS PROPERTY OWNERS IN THE1800 BLOCK OF WEST OCEAN FRONT WE REQUEST THAT THE ZONING AND BUILDING STANDARDS FOR THE 1800 BLOCK OF WEST OCEAN FRONT BE RETAINED AS THEY CURRENTLY EXIST

Carol Martin	1822 1824 1826
SIGNATURE	PROPERTY ADDRESS

TO THE NEWPORT BEACH CITY COUNCIL:

AS PROPERTY OWNERS IN THE1800 BLOCK OF WEST OCEAN FRONT WE REQUEST THAT THE ZONING AND BUILDING STANDARDS FOR THE 1800 BLOCK OF WEST OCEAN FRONT BE RETAINED AS THEY CURRENTLY EXIST

Marianne [illegible] — 1816 W. Oceanfront N.B.

SIGNATURE — PROPERTY ADDRESS

TO THE NEWPORT BEACH CITY COUNCIL:

AS PROPERTY OWNERS IN THE1800 BLOCK OF WEST OCEAN FRONT WE REQUEST THAT THE ZONING AND BUILDING STANDARDS FOR THE 1800 BLOCK OF WEST OCEAN FRONT BE RETAINED AS THEY CURRENTLY EXIST

J. Christopher Moodoff — 1816 W. Oceanfront Newport Beach

SIGNATURE — PROPERTY ADDRESS

TO THE NEWPORT BEACH CITY COUNCIL:

AS PROPERTY OWNERS IN THE1800 BLOCK OF WEST OCEAN FRONT WE REQUEST THAT THE ZONING AND BUILDING STANDARDS FOR THE 1800 BLOCK OF WEST OCEAN FRONT BE RETAINED AS THEY CURRENTLY EXIST

Judi Jacobs — SIGNATURE

1802 West Oceanfront — PROPERTY ADDRESS

TO THE NEWPORT BEACH CITY COUNCIL:

AS PROPERTY OWNERS IN THE1800 BLOCK OF WEST OCEAN FRONT WE REQUEST THAT THE ZONING AND BUILDING STANDARDS FOR THE 1800 BLOCK OF WEST OCEAN FRONT BE RETAINED AS THEY CURRENTLY EXIST

Tony Yeo — SIGNATURE

1810 West Ocean Front, — PROPERTY ADDRESS

TO THE NEWPORT BEACH CITY COUNCIL:

AS PROPERTY OWNERS IN THE1800 BLOCK OF WEST OCEAN FRONT WE REQUEST THAT THE ZONING AND BUILDING STANDARDS FOR THE 1800 BLOCK OF WEST OCEAN FRONT BE RETAINED AS THEY CURRENTLY EXIST

Marlene S Taylor
SIGNATURE

105 18th St
Newport Beach
PROPERTY ADDRESS

TO THE NEWPORT BEACH CITY COUNCIL:

AS PROPERTY OWNERS IN THE1800 BLOCK OF WEST OCEAN FRONT WE REQUEST THAT THE ZONING AND BUILDING STANDARDS FOR THE 1800 BLOCK OF WEST OCEAN FRONT BE RETAINED AS THEY CURRENTLY EXIST

SIGNATURE

1800 w. Ocean Front, Newport
PROPERTY ADDRESS

From: Christopher Brandon <chris@brandonarchitects.com>
Sent: Thursday, August 15, 2019 8:27 AM
To: Murillo, Jaime
Cc: Tyler Wilson; Justin Johnston; Ryan McDaniel; Caitlin Smith; Brandon Linsday
Subject: Re: Notice of Community Meeting- Residential Design Standards

Gotcha. We're on board with the reduction in the appearance of 3rd floor covered areas...and we're not surprised it's become an issue. Many bad examples out there. My initial thoughts are that this makes sense...forcing covered cabanas and roof structures back to the same setback as 3rd floor enclosed space. You might need to define other architectural details or eaves, some styles it looks nice to have a trellis or corbels or extended eaves so I would hate to be limited. I'm not sure a 50% coverage would be needed if the setbacks were enforced. I would have the same concerns here about how you calculate that with eaves, overhangs, dormers, etc...

RM zones are tricky...I expect a lot of that is coming from Marguerite in the village. I wonder if you could impose the same residential design criteria but keep the height limit? I think it could cause 2 unit or 1 unit structures to be different or out of character. I'm all for reducing the massing which I think the open space and 3rd floor setbacks and limitations could achieve but losing the extra 2 or 3 feet would hurt....and I don't think it would significantly change the look of these taller units. If the 3rd floor massing is pushed back that's much more visually impactful than the max height.

Just some quick thoughts. The cottage rules seem to make sense. Although from my experience there are way more challenges with the building code when trying to retrofit or remodel older homes. Increasing the valuation makes A LOT of sense, it's way too low.

Looking forward to hearing how things go next week. Please do what you can to keep us in the loop and let me know if you think it would be helpful to have some of us come in and chat with you and Jim or Rosalyn. Thank you!

Best Regards,

Christopher Brandon, AIA
President

BRANDON ARCHITECTS

714.754.4040
151 Kalmus Dr. G-1, Costa Mesa, CA 92626
www.BrandonArchitects.com





From: Marie Zondler <mzondler@sbcglobal.net>
Sent: Monday, August 19, 2019 5:57 PM
To: Murillo, Jaime
Subject: Meeting regarding Balboa building regulations

Sorry am out of the country, I support all regulations that will help the density and lose of Balboa charm from disappearing. I support some type restrictions and also the need for the builders tearing down old properties and building these black trim white wood or stucco houses all over, enough is enough. Thank you,
Marie Zondler. A property owner for over fifty years.

Sent from my iPhone







Residential Design Standards

Proposed Code Amendments

City Council Study Session

September 10, 2019



Proposed Code Amendments

A. Third Floor Massing

B. Cottage Preservation

C. Single-Unit and Two-Unit Dwellings in RM Zoning District



Problem

Third Floor Massing

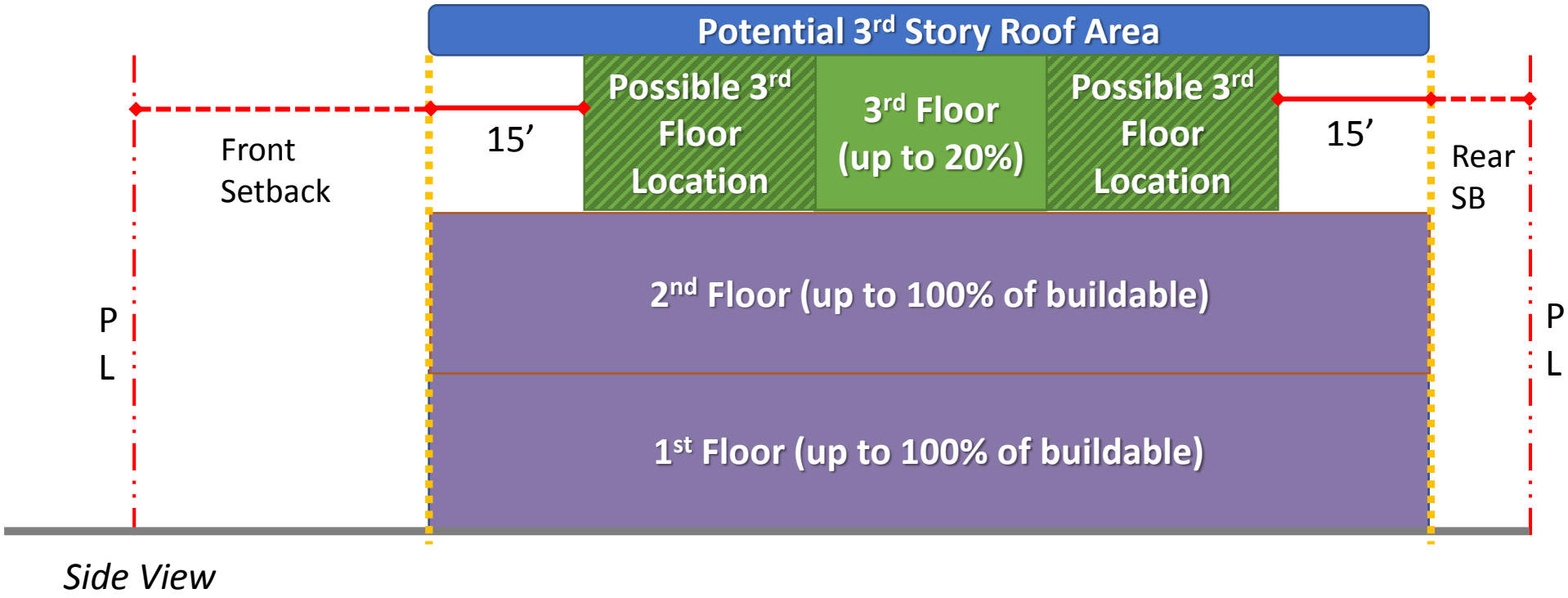


"Open" means any area open on at least one side or to the sky

Current Regulations

Third Floor Limits

- 15-ft stepbacks
- Floor area limit (15-20% of buildable area)
- No limits on non-floor area
- No limits on covers



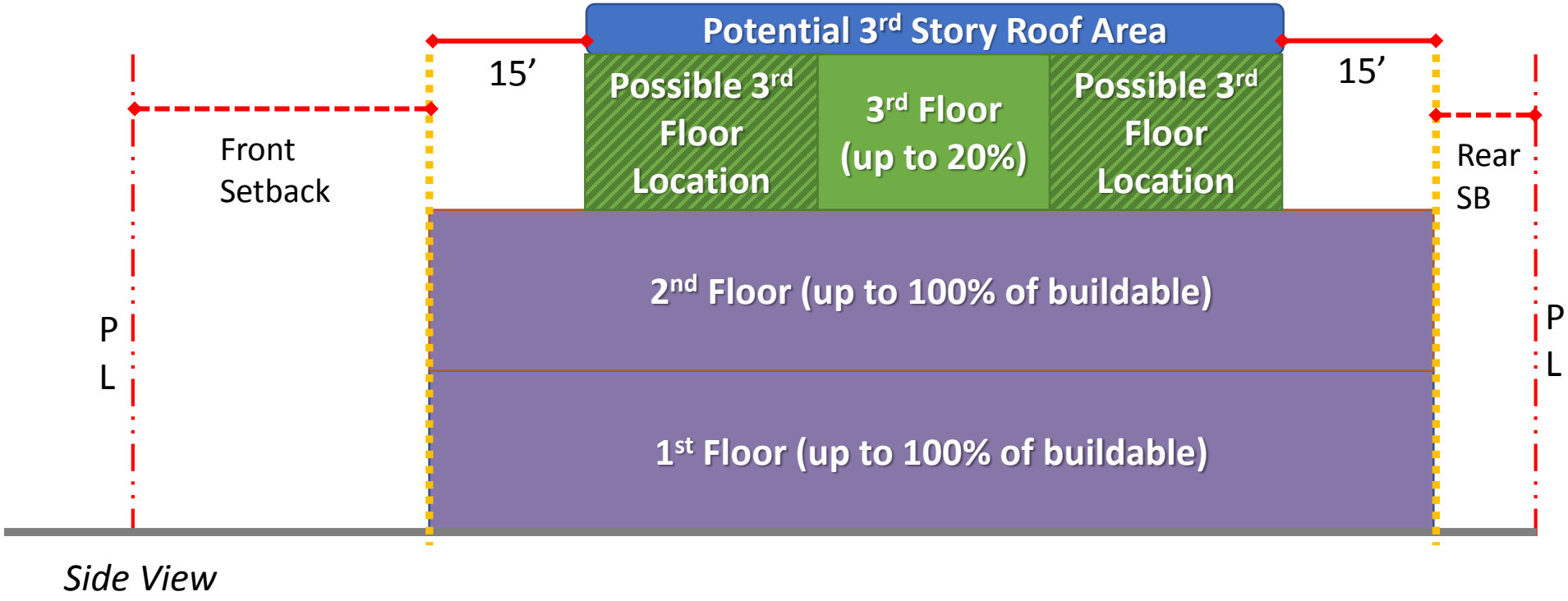
Side View

Code Amendment A

Proposed Regulations

Third Floor Limits

- 15-ft stepbacks
- Floor area limit
- **Covered 3rd floor deck areas subject to stepbacks**
- **Attics count as floor area**



Side View

Current Regulations

- 15-ft stepbacks
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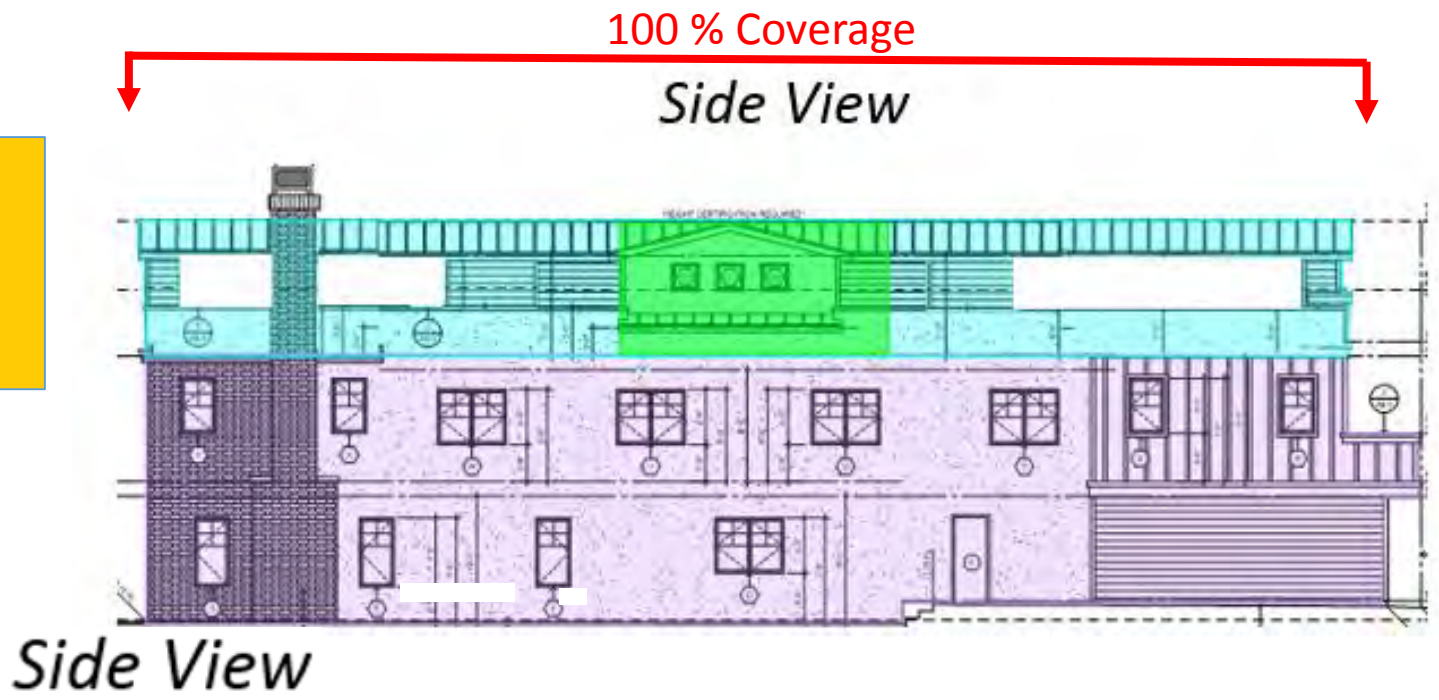
- No limits on covers



Side View

Code Amendment A ***Proposed***

All of the above, plus:

- Covered 3rd floor deck areas subject to stepbacks
- Attics count as floor area



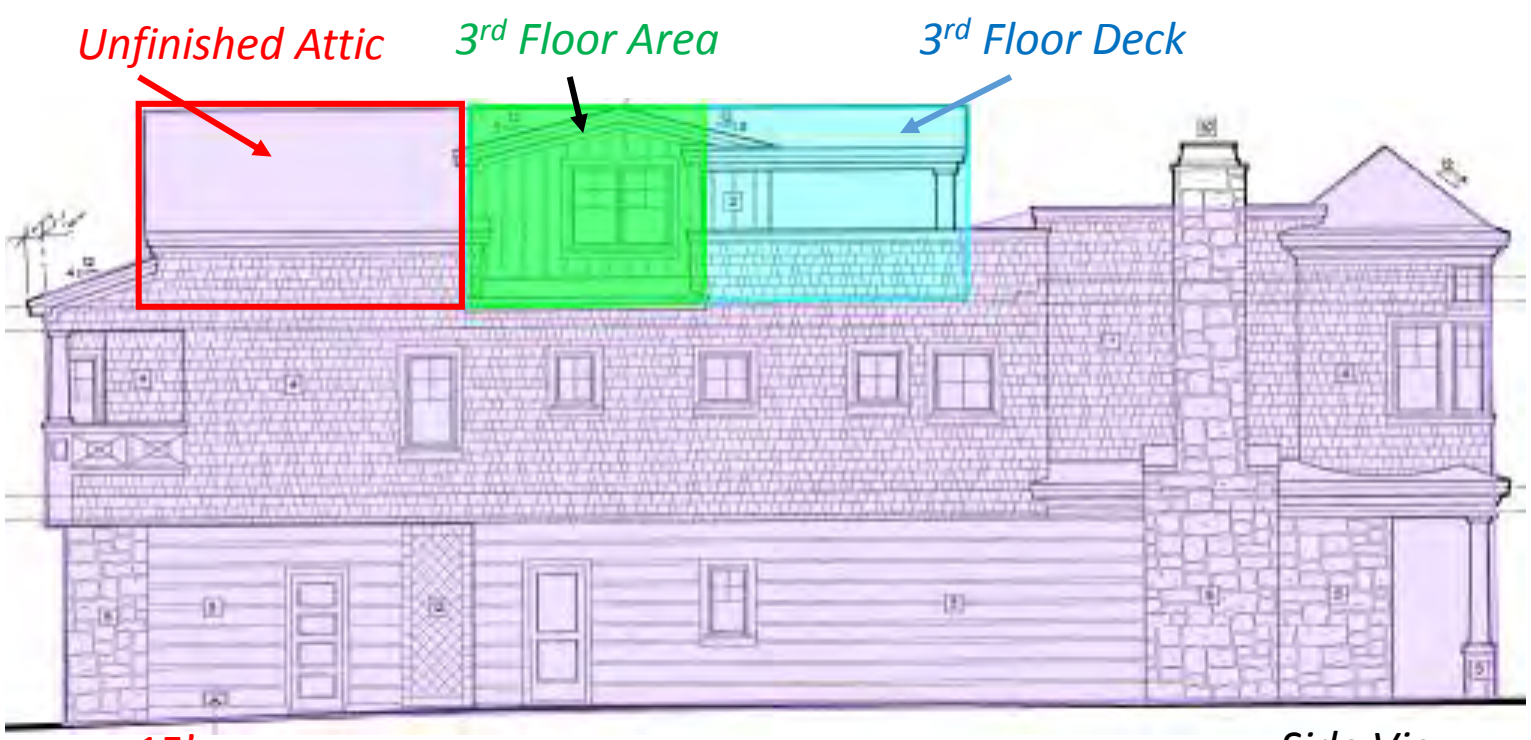
Side View

Code Amendment A

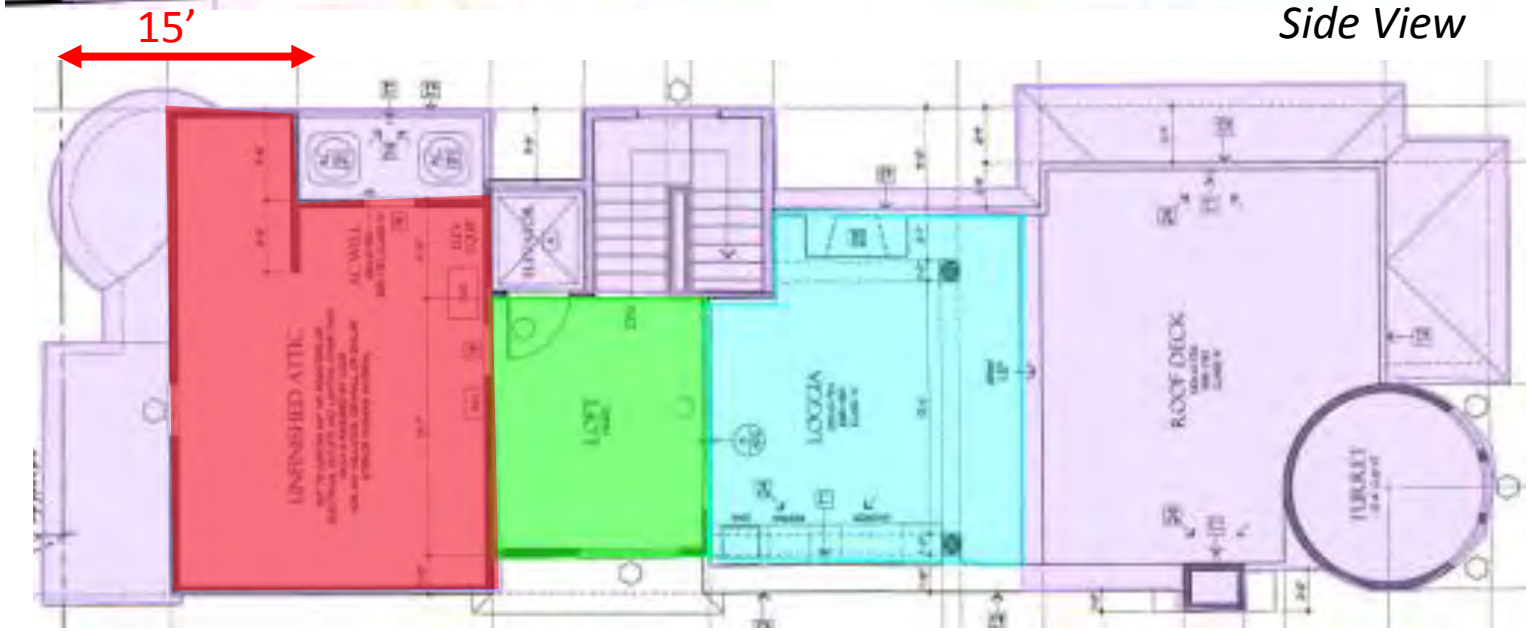
Attic Problem

Gross Floor Area

- Attics over 6 feet in height do not count as floor area is unfinished.
- Only floor area is subject to 3rd floor step backs



Side View



Overhead View

Code Amendment A

Proposed Attic Fix

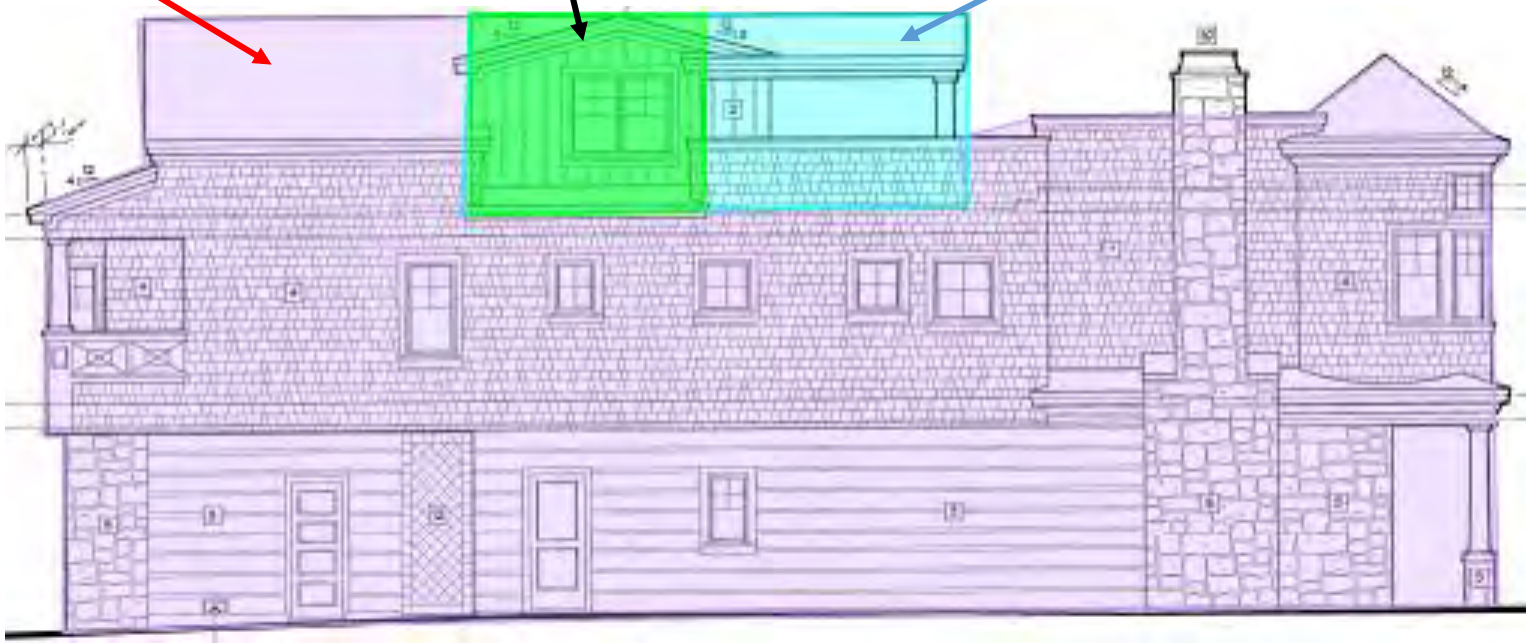
Gross Floor Area

Any interior ~~finished~~ portion of a structure that is accessible and that measures more than six feet from finished floor to ceiling.

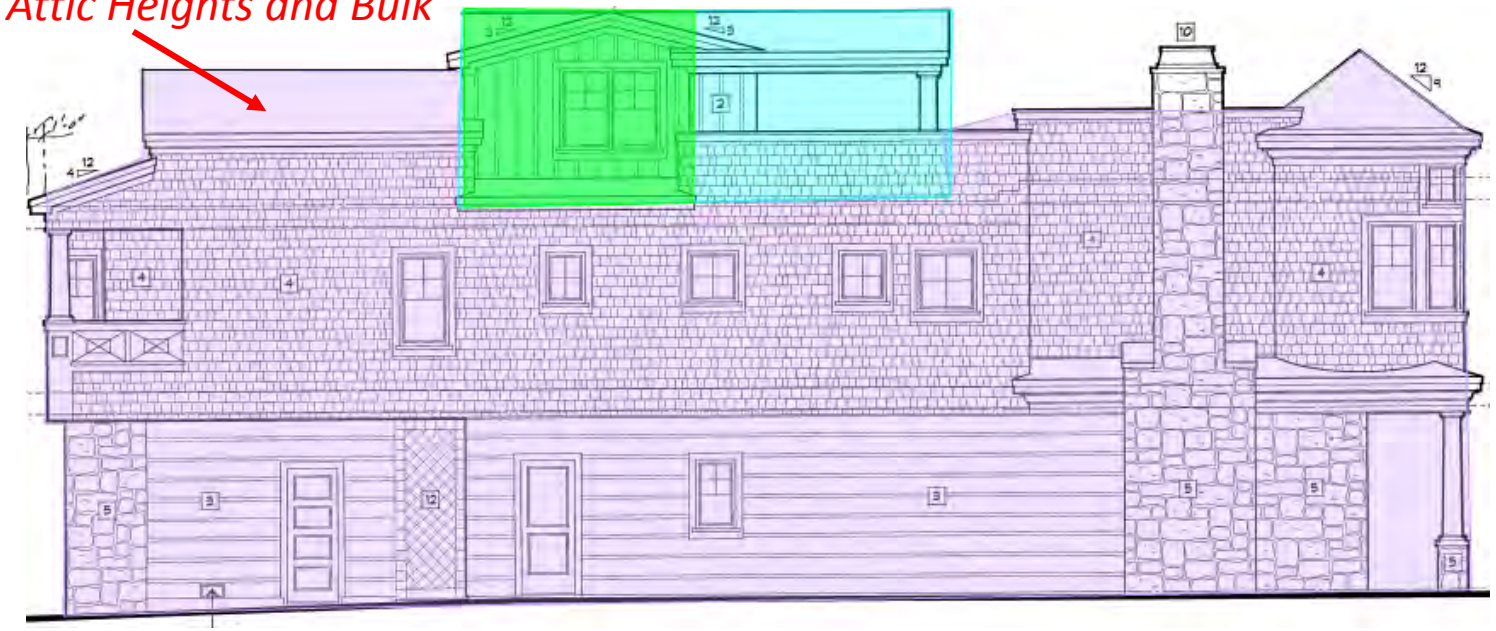
Unfinished Attic +6' Height

3rd Floor Area

3rd Floor Deck



Reduced Attic Heights and Bulk

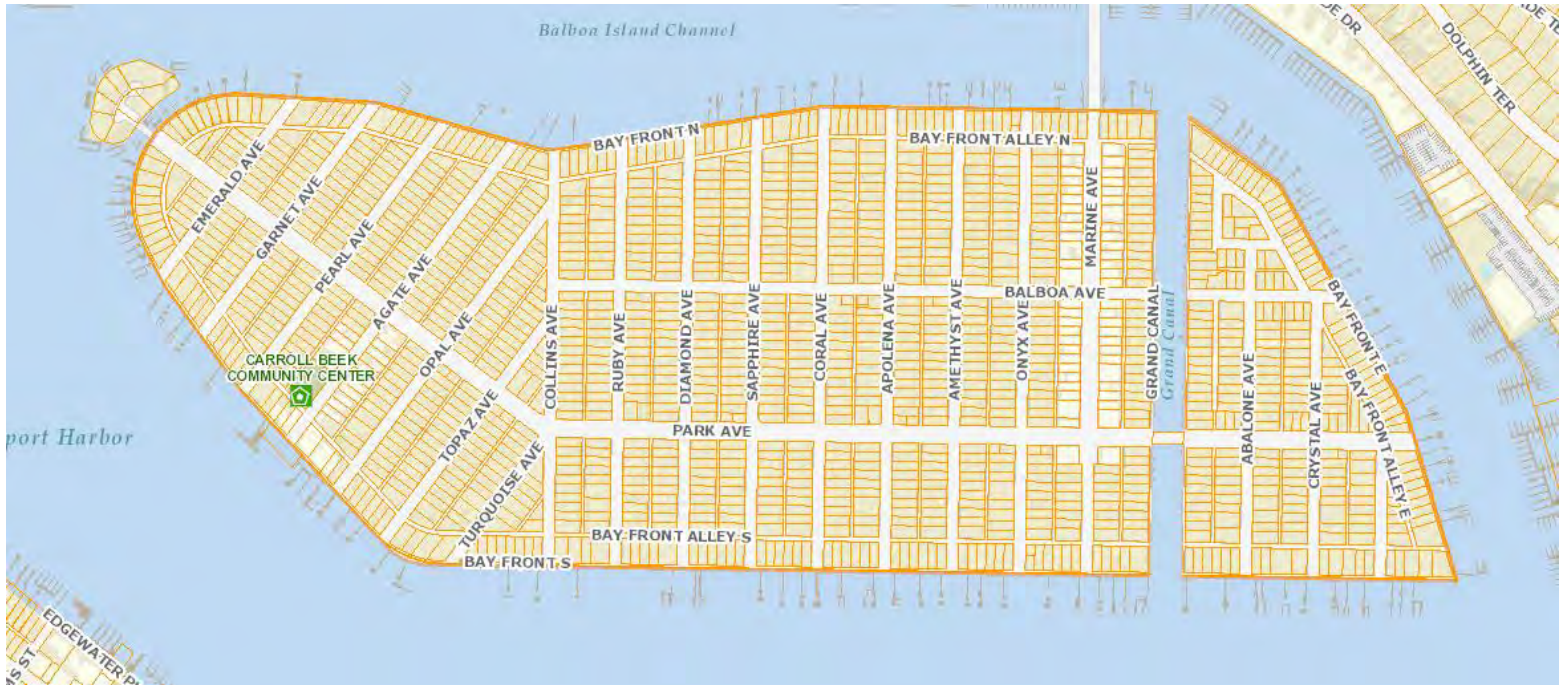




Amendment A

Balboa Island Fix

Apply third floor and open volume standards to Balboa Island too.





Amendment A
Third Floor Massing

Summary of Community Comments

Support

- Yes, overwhelming support

Concerns

- May not go far enough (i.e., dormers and 2nd floor vaulted space)
- Creation of nonconformities

Community Recommendations

- Enhanced enforcement of illegal 3rd floor enclosures
- Code Enforcement mobile app



Proposed Code Amendments

A. Third Floor Massing

B. Cottage Preservation

C. Single-Unit and Two-Unit Dwellings in RM Zoning District



Amendment B

Cottage Preservation

Why we are losing beach cottages?

- Nonconforming Parking
- Additions to existing homes limited to 10%
- Building Code limitations



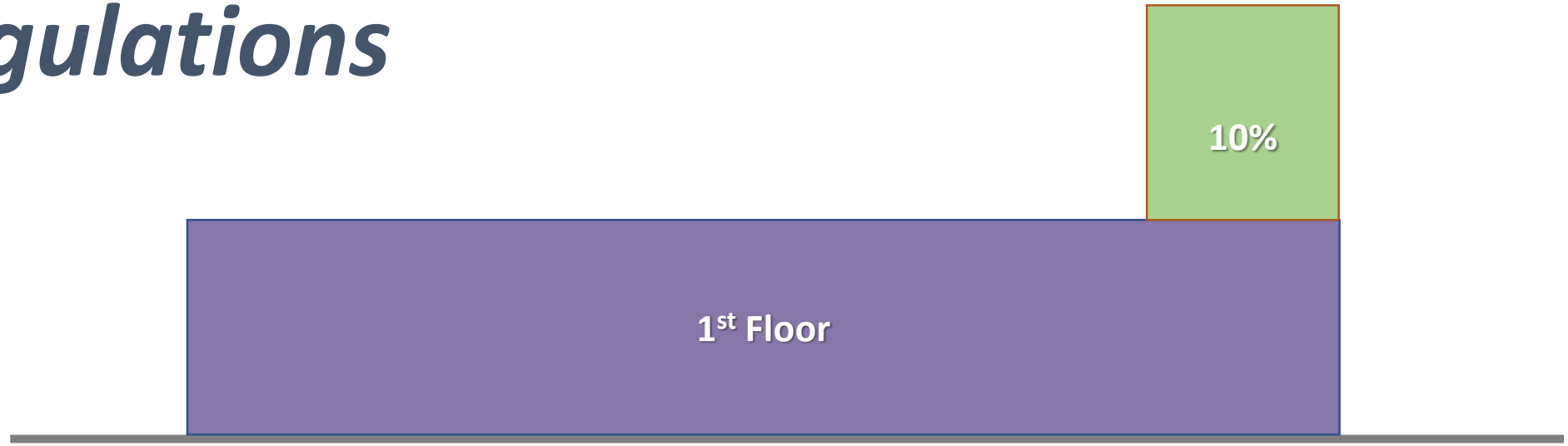
Code Amendment B
Cottage Preservation

Proposed Incentives

- Increase allowed additions for nonconforming structures due to parking from **10%** to **50%**

- Exempt from Building Code valuation thresholds that trigger full Building Code compliance (*not applicable in special floor hazard area)

Current Regulations



Side View

Code Amendment B
Cottage Preservation

Form Based Qualifications

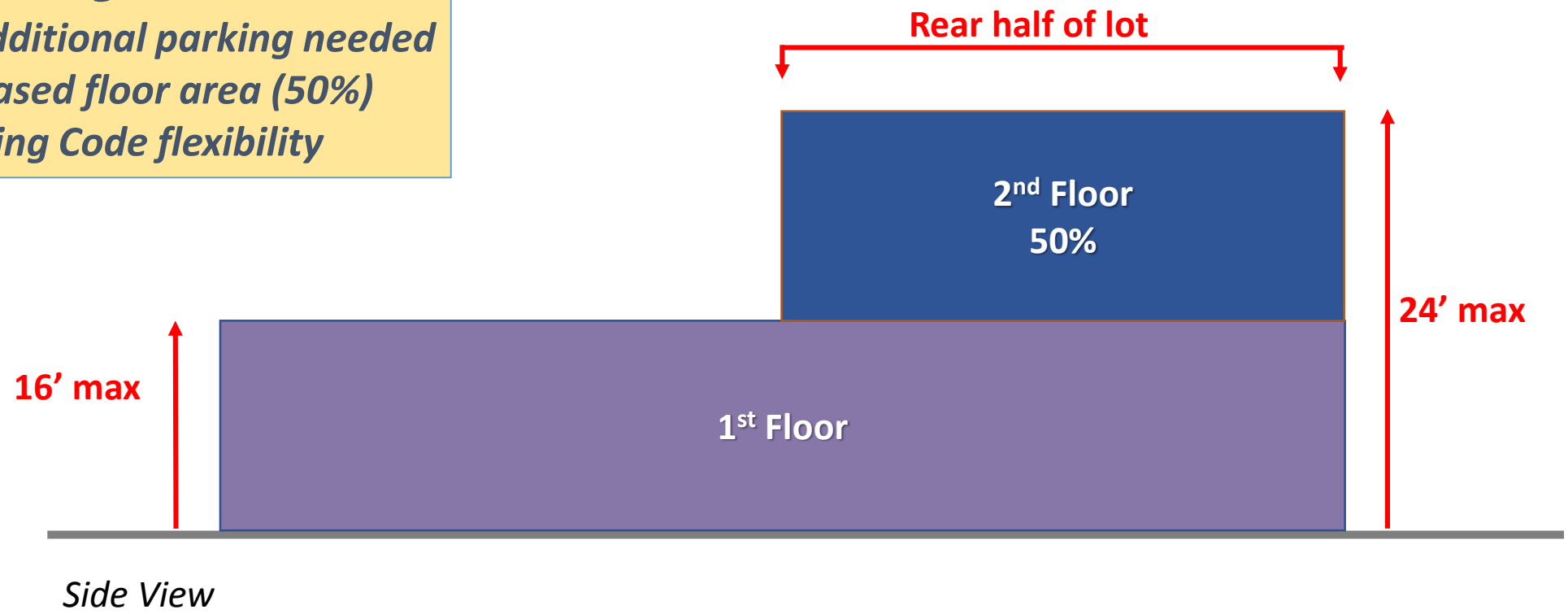
What qualifies for cottage preservation?

- 16’ max single-story
- 24’ max 2nd story
- 2nd story limited to rear half

- No third floor
- No third floor decks
- Deed restriction

Benefits

-No additional parking needed
-Increased floor area (50%)
-Building Code flexibility



Side View



Amendment B

Cottage Preservation

Example



Existing



Amendment B

Cottage Preservation

Example





Amendment B

Cottage Preservation

Summary of Community Comments

Support

- Yes, overwhelming support
- Incentive based

Concerns

- Must comply with FEMA regulations

Community Recommendations

- Waive permit fees for cottage projects
- Ease building permit restrictions



Proposed Code Amendments

A. Third Floor Massing

B. Cottage Preservation

C. Single-Unit and Two-Unit Dwellings in RM Zoning District



Amendment C

Single-Unit & Duplexes in RM Zoning



583 RM Lots



Amendment C

Single-Unit & Duplexes in RM Zoning



Problem

Single-unit dwellings and duplexes built to multi-unit standards

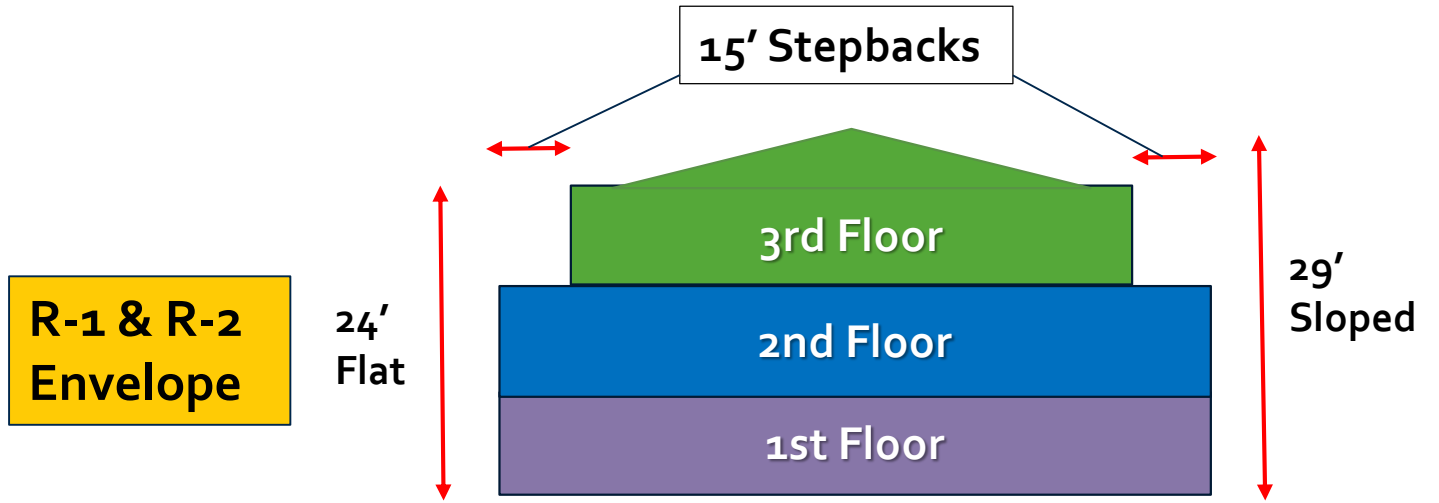
-Increased height
-Less articulation

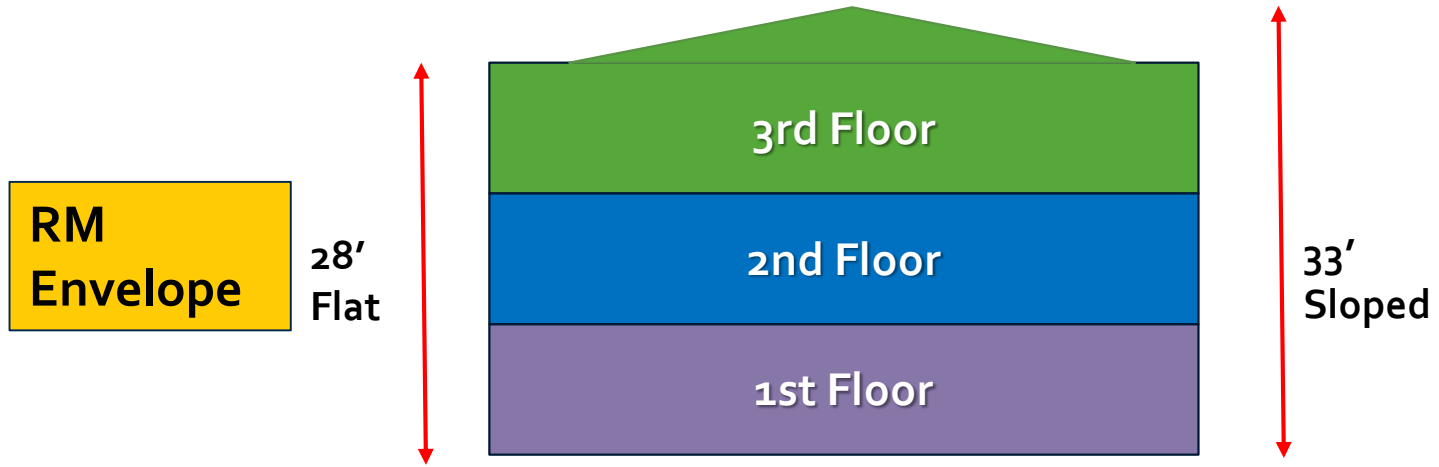




Amendment C

Single-Unit & Duplexes in RM Zoning

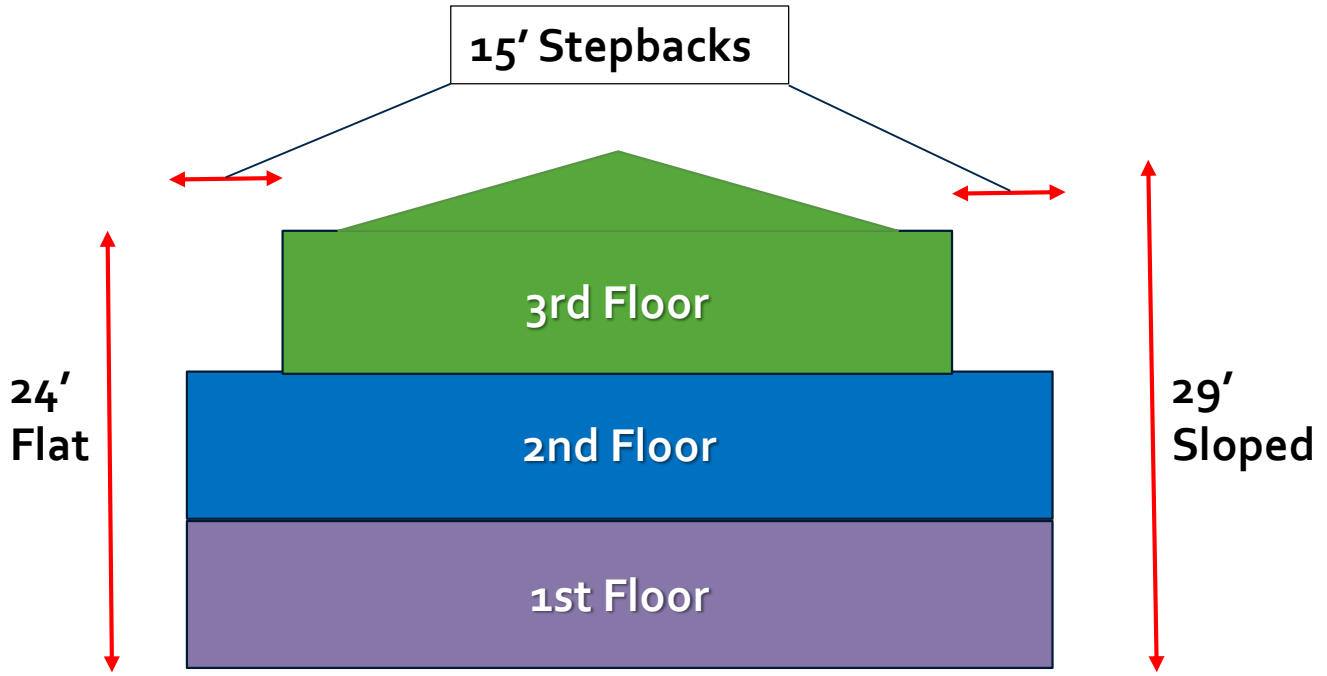






Amendment C
Single-Unit & Duplexes in RM Zoning

Proposal
-Apply Third Floor Limits
-Reduce Height





Amendment C

Single-Unit & Duplexes in RM Zoning

Summary of Community Comments

Support

- No, significant concerns from property owners

Concerns

- "Ship has sailed"
- Unequal application of standards on same blocks
- Unusual development patterns
- Financial penalty
- Taking
- Not feasible to build 3 units in many cases
- Creation of nonconformities

Community Recommendations

- Focus on neighborhoods instead of citywide
- Apply 3rd floor stepbacks but not lower height



Next Steps

- ~~Community Meeting~~
- **Receive Council direction**
- **Public Hearings:**
  - -Planning Commission: October
  - -City Council: November
- **Cottage Preservation requires LCP Amendment and Coastal Commission approval**

For additional information:

Jaime Murillo, AICP
Principal Planner
949-644-3209

jmurillo@newportbeachca.gov



CITY OF NEWPORT BEACH

City Council Minutes
Study Session and Regular Meeting
August 13, 2019

I. ROLL CALL – 4:10 p.m.

Present: Mayor Diane Dixon, Mayor Pro Tem Will O'Neill, Council Member Brad Avery, Council Member Joy Brenner, Council Member Duffy Duffield, Council Member Jeff Herdman, Council Member Kevin Muldoon

II. CURRENT BUSINESS

Mayor Dixon announced that Item SS4 would be discussed before Item SS3.

SS1. Clarification of Items on the Consent Calendar - None

SS2. Proclamation Recognizing Spaghetti Bender's 50th Anniversary

Mayor Dixon read the proclamation and presented it to Joyce Hoskinson and her son, Michael. Michael thanked the City for its support, Joyce thanked the Spaghetti Bender staff, and Council Member Brenner shared her experiences with the restaurant.

SS4. Marine Avenue Trees Maintenance

Council Member Herdman recused himself out of abundance of caution due to real property interest conflicts.

Public Works Director Webb, Deputy Public Works Director Martin, and City Arborist and Landscape Manager Pekar utilized a PowerPoint presentation to review the Marine Avenue Rehabilitation Project, discuss the maintenance and history of the Marine Avenue trees, the committee that was formed in 2017, why a design consultant was utilized for a concept plan, the options for new types of trees, the empty tree wells, the role of PB&R on tree issues/removals of Special Trees, report on fallen limbs due to recent weather events, annual tree inspections, and display examples of Eucalyptus in similar cities, confirmed that the Applegate report and Walt Warriner report were reviewed, and discussed the recommendations.

In response to Council questions, John Noyes, chair of the committee and the Balboa Island Merchants Association detailed the composition of the committee and why it was formed, and indicated former Council Member Selich requested money in the budget to hire a consultant to develop drawings.

Staff outlined the definition of Special Trees under City Council Policy G-1 (*Retention, Removal and Maintenance of City Trees*), and discussed site conditions, maintenance history and practices, the reason for trimming early in the morning, and the trial basis to plant an African Tulip tree and Ginko trees.

Council Member Brenner explained that, in the late 1980s, as Chair of the Parks, Beaches, & Recreation Commission (PB&R), they often recommended removing hazardous trees, particularly on Poppy Avenue. However, the Council at that time chose not to remove the trees which recently resulted in the removal of all the Eucalyptus trees due to sidewalk damage.

Regarding the risk of failure and liability to the City, City Attorney Harp explained the liability risk to the City based on these assessments and City Arborist Pekar reviewed the International Society of Arboriculture (ISA) tree assessment form.

In response to Council questions, staff stated that, if part of the tree is high risk, the whole tree is considered high risk, agreed there are 27 high risk trees, but there are 10 trees with the highest risk, explained the difference between the Applegate and Warriner reports, and clarified Great Scott's fees based on diameter of tree and the recent changes to their contract.

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Mayor Pro Tem O'Neill noted this issue will be addressed by PB&R on September 3, 2019, and Council will not be voting on this issue today. Staff clarified no timeline has been established for the Marine Avenue project, but it would still need to go before both PB&R and Council.

Council Member Muldoon emphasized he is trying to stop staff from removing the trees.

Council Member Brenner indicated the tree issue got mixed-up with the infrastructure project, staff is trying to work with the community, and expressed concern that, if no action is taken until all the trees are in distress, the result will be similar to what happened on Poppy Avenue. She agreed that the trees should be protected, but Council also needs to protect its citizens.

In response to Council questions, staff discussed the inventory system that goes back to 1999, indicated the 17 other trees can be reassessed, noted sidewalks ramps must follow Americans with Disabilities Act (ADA) guidelines, and discussed tree and root growth.

John Noyes briefly discussed the proposed infrastructure project and reiterated this issue will first be heard by PB&R.

Jodi Bole, Balboa Island Preservation Association (BIPA), indicated she took leaf and bark samples to a lab, displayed photos of heartwood decay, and requested Council adopt an emergency resolution to prohibit staff from taking any action on the Marine Avenue trees until PB&R action occurs.

Mark Porter, arborist, believed the City needs alternative risk strategies, discussed tree failure statistics, suggested testing all the trees, and believed BIPA's concerns are valid.

Greg Applegate, arborist, discussed the accident on Irvine Avenue, noted he did not find root decay on the Marine Avenue trees, believed only one tree needs to be removed, and suggested stopping lion tail pruning.

Jim Moloney, attorney for BIPA, highlighted a meeting he attended with staff to discuss the tree policy and indicated BIPA wants a moratorium to slow down the trimming.

Casper Yen discussed why he believed the City has not been following its tree policy.

Walt Warriner, arborist, explained why he believes 27 trees should be removed, noted Eucalyptus trees are a high risk species, and indicated he stands behind his recommendations.

Bob Rush provided a copy of a letter he sent to the Fair Political Practices Commission (FPPC) regarding Council Member Herdman's potential conflict on this issue.

Seymour Beek discouraged any plans that involve the removal of the trees.

Ed Black noted BIPA hired three arborists while the City only hired one arborist, and indicated BIPA compared all the reports and found discrepancies.

Randy Black believed the City's plan on Marine Avenue is linked to the removal of historic trees and mature trees add 20% to 30% to property values.

Dennis Bress believed the public can handle the removal of three trees, but the City needs a life cycle tree maintenance plan. He requested a moratorium on tree cutting.

Mike Sullivan believed the right trees should be planted in the right spots, and the City should consult the experts.

Dick Ashoff expressed concern for these trees, noting the City removed trees in Balboa Village and never replaced them.

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Council Member Muldoon noted the difference in the number of trees the arborists are recommending for removal, agreed a moratorium on tree removal should be enacted and the new technology should be used on these trees, and suggested consulting with all the arborists, moving forward with removing no more than three trees, planting trees in the empty wells, and cycling in trees in a more thoughtful manner.

Council Member Avery agreed with preserving trees and commended staff for their hard work.

Council Member Duffy noted Council has made performing duties as economically as possible a priority for staff, but believed, in this case, the City should spend the additional funds to use the new technology to test the trees.

Council Member Brenner agreed Council has been pushing staff for years about watching the budget, requested all the arborist reports be submitted to PB&R, and suggested changing everyone's terminology to state the City is replacing trees, not removing trees.

Mayor Pro Tem O'Neill indicated the moratorium would also need to go to PB&R and suggested providing them with options and cost details.

Mayor Dixon thanked the community for their involvement, suggested making Level 3 testing standard for special trees that are designated in the Council policy, and requested the item come back to Council after it is heard by PB&R.

SS3. 2019 Water Rate Study

Utilities Director Vukojevic, Utilities Manager Catron, and Consultant Sanjay Gaur of Raftelis utilized a PowerPoint presentation to discuss the recent water projects, the City's water system, the 2019 Water Master Plan, display photos of infrastructure failures, highlight Utilities Department customer service, the Water Enterprise Fund, background on water utilities, the goals and objectives of the water rate study, the proposed reserve policy, projected ending balance, graph of the proposed financial plan, customer impact analysis, proposed monthly water fixed charges, proposed water usage, the five year proposed water rates, and next steps.

In response to Council questions, staff and the consultant explained that, in addition for paying for the purchase of water, water customers pay a fee for the ability to use water 24 hours per day, 7 days per week, confirmed expanding the system requires a master plan, and agreed it is a big investment into the infrastructure.

Mayor Pro Tem O'Neill pointed out, if rates are not increased, the fund will go into a deficit.

In response to Tim Stoaks and Jim Mosher's questions, staff indicated that 70% of the City receives City water, the proposed rates are competitive with neighboring cities, IRWD's rates are paid through the user's property tax and only pay for the operating cost, the fixed cost for the City customers will most likely be $10 more, affordability and conservation must be maintained, and would be achieved with this structure.

Hoyin Ip expressed support for increasing the rates and believed tiered rates encourages conservation.

III. PUBLIC COMMENTS

Regarding Closed Session Item IV.B, Jim Mosher thanked staff for explaining the litigation, questioned if the decision should be appealed and if the City would really make a difference by joining the amicus, and expressed his concerns about the cost the City would incur by being involved.

City Attorney Harp reported the City Council would adjourn to Closed Session to discuss the items listed in the Closed Session agenda and read the titles.

DRAFT

IV. CLOSED SESSION – Council Chambers Conference Room

A. CONFERENCE WITH LABOR NEGOTIATORS
(Government Code § 54957.6): 1 matter
Agency Designated Representatives: Grace K. Leung, City Manager, Carol Jacobs, Assistant City Manager, Barbara Salvini, Human Resources Director, and Peter Brown; Labor Negotiators.

Employee Organization: Lifeguard Management Association (LMA)

B. CONFERENCE WITH LEGAL COUNSEL
ANTICIPATED LITIGATION – INITIATION OF LITIGATION
(Government Code § 54956.9(d)(4): 1 matter

Based upon existing facts and circumstances, the City Council will be considering joining an amicus in the case of *Robert Martin v City of Boise*, Ninth Circuit Court of Appeals Case No. 15-35845, United States District Court for the District of Idaho, Case No. 1:09-cv-00540-REB, as an amicus curia.

V. RECESSED – 6:56 p.m.

VI. RECONVENED AT 7:15 P.M. FOR REGULAR MEETING

VII. ROLL CALL

Present: Mayor Diane Dixon, Mayor Pro Tem Will O'Neill, Council Member Brad Avery, Council Member Joy Brenner, Council Member Duffy Duffield, Council Member Jeff Herdman, Council Member Kevin Muldoon

VIII. CLOSED SESSION REPORT

Regarding Item IV.B, City Attorney Harp reported that a motion was made by Mayor Pro Tem O'Neill and seconded by Council Member Brenner to join the litigation as an amicus curiae, and the motion was unanimously approved by the City Council. He listed the plaintiffs and defendant, and briefly explained the lawsuit.

IX. INVOCATION – Pastor Jorge Molina, Mariners Church, Irvine

X. PLEDGE OF ALLEGIANCE – Council Member Muldoon

XI. NOTICE TO THE PUBLIC

XII. CITY COUNCIL ANNOUNCEMENTS AND ORAL REPORTS FROM CITY COUNCIL ON COMMITTEE ACTIVITIES

Council Member Avery:
- Attended an Orange County Sanitation District meeting

Council Member Duffield:
- Provided an update on the Harbor dredging project

Council Member Muldoon:
- Announced he will be attending and presenting a proclamation at a Korean War and WWII Veterans luncheon at American Legion Post 291 on August 15, 2019

Council Member Brenner:
- Displayed slides to discuss a Homeless Task Force Subcommittee meeting at Supporting People In Need (SPIN) that she attended with Jean Wegener and Terry Moore; and a Costa Mesa Network for Homeless Solutions meeting at Costa Mesa City Hall

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- Attended an ad hoc committee meeting regarding short term lodging with Mayor Dixon and Council Member Herdman; a tour of the Melinda Hoag Smith Center for Healthy Living with Terry Moore and Michelle Rose; and the monthly meeting with the Corona del Mar Residents Association's Executive Committee
- Met with her Newport Harbor High School Mentee, Vanessa Conejo; former Mayor Evelyn Hart about possible plans to add an exercise pool at OASIS Senior Center; City Manager Leung, Public Works Director Webb, Traffic Engineer Brine, and others to ensure traffic is a consideration in project planning; and Mayor Dixon, Mayor Pro Tem O'Neill, Public Works Director Webb, Assistant City Engineer Sinacori, Balboa Island Improvement Association (BIIA) leadership, and Southern California Edison (SCE) staff regarding undergrounding utilities costs
- Filmed a tour of the new Corona del Mar Branch Library for NBTV with the head Librarian

Council Member Herdman:
- Announced he will be attending the Korean War and WWII Veterans Luncheon on August 15, 2019
- Attended the Newport Beach Police Department (NBPD) summer Teen Academy Graduation with Mayor Pro Tem O'Neill and Council Member Brenner
- Judged at the Balboa Island Sandcastle Contest
- Continued talking to people about homeless issues and responding to emails regarding the proposed Marine Avenue rehabilitation project
- Requested a future agenda item to consider if the Friends of the Newport Beach Animal Shelter (FONBAS) can be allowed to insert membership information into the City's dog license renewal mailers

Mayor Pro Tem O'Neill
- Attended NBPD's National Night Out event, the Teen Academy Graduation, and the TCA Board Meeting
- Announced office hours on September 11, 2019, from 8:00 a.m. to 10:00 a.m. at the Newport Coast Community Center
- Introduced his mentee from Newport Harbor High School, Timothy Tizon

Mayor Dixon:
- Announced that the library was the California History Section's featured City of the Month for July; the upcoming Concert on the Green on August 25, 2019; and a college application workshop in the Friends Room on August 31, 2019
- Displayed slides to discuss Earth Day messages from children in the City and a Sunday *New York Times* article, "Where Hollywood's Golden Age Stars Found Safe Harbor"

Tim Stoaks, President of FONBAS, announced that FONBAS is ready to purchase a permanent site for the animal shelter, discussed how they obtained the funding, introduced several FONBAS Board Members in the audience, and proclaimed Mayor Dixon as the first *Member of FONBAS*.

Mayor Dixon commended FONBAS members for all their efforts and recognized the benefits of public-private partnership.

XIII. PUBLIC COMMENTS ON CONSENT CALENDAR

Prior to discussing Item 14, ***Council Member Muldoon recused himself due to real property interest conflicts.***

Ruth Sanchez Kobayashi congratulated the City for joining the litigation (Item IV.B) and believed that 75% of the people served in the programs listed under Item 14 are non-residents.
Wendy Weeks from Youth Employment Center requested that Council continue to provide funding to her organization (Item 14).

XIV. CONSENT CALENDAR

DRAFT

READING OF MINUTES AND ORDINANCES

1. **Minutes for the July 23, 2019 City Council Meeting *[100-2019]***
   Waive reading of subject minutes, approve as amended, and order filed.

2. **Reading of Ordinances**
   Waive reading in full of all ordinances under consideration, and direct the City Clerk to read by title only.

RESOLUTION FOR ADOPTION

3. **Resolution No. 2019-72: Approval and Award of Professional Services Agreement with Avenu Insights and Analytics, LLC ("Avenu/MuniServices") for Sales and Use Tax Auditing and Analysis (C-8184-2) *[38/100-2019]***
   a) Determine this action is exempt from the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(2) and 15060(c)(3) of the CEQA Guidelines because this action will not result in a physical change to the environment, directly or indirectly;
   b) Authorize the Mayor and City Clerk to execute the amended one-year Professional Services Agreement with the option to extend for an additional four years, in one-year increments, with Avenu Insights and Analytics, LLC (C-8184-1), for sales and use tax auditing and analysis, for a total not-to-exceed amount of $531,000 over five years;
   c) Authorize the Mayor and City Clerk to execute a Contract Governing Access to Confidential Taxpayer Data with Avenu/MuniServices (C-8184-2) describing the legal requirements within California Revenue & Taxation Code ("RTC") 7056; and
   d) Adopt Resolution No. 2019-72, *A Resolution of the City Council of the City of Newport Beach, California, Authorizing Access to Sales or Transaction and Use Tax Records and Documents Pursuant to California Revenue & Taxation Code Section 7056(b).*

CONTRACTS AND AGREEMENTS

4. **Bayside Drive and Jamboree Road/Marine Avenue Improvements – Notice of Completion for Contract No. 7224-1 (16R12) *[38/100-2019]***
   a) Accept the completed work and authorize the City Clerk to file a Notice of Completion for the project;
   b) Authorize the City Clerk to release the Labor and Materials Bond 65 days after the Notice of Completion has been recorded in accordance with the applicable portions of Civil Code; and
   c) Release Faithful Performance Bond one year after acceptance by the City Council.

5. **Bayview Heights Drainage Project – Notice of Completion for Contract No. 7109-1 (15X11) *[38/100-2019]***
   a) Accept the completed work and authorize the City Clerk to file a Notice of Completion for the project;
   b) Authorize the City Clerk to release the Labor and Materials Bond 65 days after the Notice of Completion has been recorded in accordance with applicable portions of the Civil Code; and
   c) Release the Faithful Performance Bond one year after acceptance by the City Council.

6. **2018-2019 Playground Improvements Project – Notice of Completion for Contract No. 7582-1 (19P01) *[38/100-2019]***
   a) Accept the completed work and authorize the City Clerk to file a Notice of Completion for the project;
   b) Authorize the City Clerk to release the Labor and Materials Bond 65 days after Notice of Completion has been recorded in accordance with applicable portions of the Civil Code; and
   c) Release the Faithful Performance Bond one year after acceptance by the City Council.

7. **Cameo Highlands Street Reconstruction Project (20R21) – Approval of Professional Services Agreement with Psomas – Contract No. 7067-1 *[38/100-2019]***

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a) Determine this action is exempt from the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(2) and 15060(c)(3) of the CEQA Guidelines because this action will not result in a physical change to the environment, directly or indirectly; and
b) Approve a Professional Services Agreement with Psomas of Santa Ana, California, for the Cameo Highlands Street Reconstruction project at a not-to-exceed price of $233,235.00, and authorize the Mayor and City Clerk to execute the Agreement.

Council Member Muldoon recused himself on Item 7 due to real property interest conflicts.

8. **Via Lido Soud and Nord Water Main Replacement Project (20W12) – Approval of Professional Services Agreement with HDR Engineering, Inc. – Contract No. 7645-1** ***[38/100-2019]***
   a) Determine this action is exempt from the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(2) and 15060(c)(3) of the CEQA Guidelines because this action will not result in a physical change to the environment, directly or indirectly; and
   b) Approve a Professional Services Agreement with HDR Engineering, Inc. of Irvine, California, for the Via Lido Soud and Nord Water Main Replacement project at a not-to-exceed price of $232,700.00, and authorize the Mayor and City Clerk to execute the Agreement.

9. **Amendment No. One to Agreement with Rainbow Disposal Co., Inc. dba Rainbow Environmental Services (Rainbow) for Beach Container Refuse Collection Service (C-4709)** ***[38/100-2019]***
   a) Determine this action is exempt from the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(2) and 15060(c)(3) of the CEQA Guidelines because this action will not result in a physical change to the environment, directly or indirectly; and
   b) Approve Amendment No. One to the Agreement with Rainbow for Beach Container Refuse Collection Service to modify the compensation terms from an annual not-to-exceed to a contract not-to-exceed amount, increase the total not-to-exceed amount by $120,000.00 for a total not-to-exceed amount of $1,497,624.30, and authorize the Mayor and City Clerk to execute the agreement.

10. **Amendment No. Two with Global Power Group, Inc. for Maintenance and Repair Services of City Generators (C-6185)** ***[38/100-2019]***
    a) Determine this action is exempt from the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(2) and 15060(c)(3) of the CEQA Guidelines because this action will not result in a physical change to the environment, directly or indirectly;
    b) Approve Amendment No. Two to the Maintenance/Repair Services Agreement with Global Power Group, Inc., for preventative maintenance and as-needed repair services for City generators, adding $120,000 to the contract for a total not-to-exceed amount of $495,000 for the remainder of the term of the agreement; and
    c) Authorize the Mayor and City Clerk to execute the Agreement.

11. **Wastewater Flow Agreement with Costa Mesa Sanitary District (C-8185-1)** ***[38/100-2019]***
    a) Determine this action is exempt from the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(2) and 15060(c)(3) of the CEQA Guidelines because this action will not result in a physical change to the environment, directly or indirectly;
    b) Approve the amended Wastewater Flow Agreement with the Costa Mesa Sanitary District related to specific properties within the City of Newport Beach; and
    c) Authorize the Mayor and City Clerk to execute the Agreement.

12. **Pulled from the Consent Calendar**

MISCELLANEOUS

9. **Planning Commission Agenda for the August 8, 2019 Meeting** ***[100-2019]***
   Receive and file.

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14. Community Programs Grants for Fiscal Year 2019-20 (C-8281) ***[38/100-2019]***

a) Determine this action is exempt from the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(2) and 15060(c)(3) of the CEQA Guidelines because this action will not result in a physical change to the environment, directly or indirectly; and

b) Pursuant to City Council Policy A-12, find that the organizations listed below provide services or programs that serve residents and are beneficial to residents' quality of life and authorize the allocation of $67,000 in Community Programs Grants in the following manner:

Applicant	Recommendation
Advocates for Grandparent Grandchild Connection	$ 1,000
Balboa Island Museum	20,000
Boys & Girls Club of Central Orange County	7,000
Helping Hands, Our Lady Queen of Angels	10,000
Newport Beach Sister Cities Association	2,000
Newport-Mesa Family YMCA of Orange County	7,000
Share Our Selves	15,000
Youth Employment Services	5,000
Total	**$ 67,000**

Council Member Muldoon recused himself on Item 14 due to real property interest conflicts.

Motion by Mayor Pro Tem O'Neill, seconded by Council Member Herdman, to approve the Consent Calendar, except for the item removed (Item 12); and noting the recusal by Council Member Muldoon on Items 7 and 14, and amendments to Items 1, 3 and 11.

The motion carried unanimously.

XV. ITEM REMOVED FROM THE CONSENT CALENDAR

12. Replacement of the Outdoor Warning System (C-8186-1) ***[38/100-2019]***

Emergency Services Coordinator Eing provided the staff report to discuss the state of the current system and the proposal to replace the outdoor warning system with LRAD systems.

Mayor Dixon thanked staff for their hard work and dedication on getting the system replaced.

Brian Ouzounian voiced his concerns about being unable to hear the sirens during testing and suggested utilizing a non-corrosive material similar to the City of Hilo's system.

In response to Council questions, Deputy Director Stafford confirmed the installation of the new warning system would occur between Thanksgiving and Christmas, discussed the sirens projection range, and confirmed the sirens will be tested at full power every month. City Manager Leung confirmed that today's discussion would not be considered a meeting of the Emergency Council for Federal Emergency Management Agency (FEMA) purposes, but that meeting would be held later in the year.

Motion by Council Member Avery, seconded by Mayor Pro Tem O'Neill, to a) determine this action is exempt from the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(2) and 15060(c)(3) of the CEQA Guidelines because this action will not result in a physical change to the environment, directly or indirectly; b) approve a Purchase and Installation Agreement with Mallory Safety & Supply, LLC for the purchase and installation of an LRAD Corporation outdoor warning system equipment for a not to exceed amount of $200,534.71 plus a contingency amount of $20,000 (approximately 10%) to cover unforeseen costs, for a total not-to-exceed amount of $220,534.71, and authorize the Mayor and City Clerk to execute the Agreement; and c) approve Budget Amendment No. 20-006-CC appropriating $220,534.71 from the unappropriated General Fund capital project savings to Account No. 01201928-980000-20M15.

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The motion carried unanimously.

XVI. PUBLIC COMMENTS ON NON-AGENDA ITEMS

Jim Mosher expressed his concerns regarding the lack of viewable contracts on the City's webpage.

Arthur Pesco discussed a proposal to build a monorail through the City.

XVII. PUBLIC HEARING

15. Mesa Drive Townhomes Call for Review (PA2017-218) *[100-2019]*

Council Member Duffield recused himself due to real property interest conflicts since he is a member of the Santa Ana Country Club.

Community Development Director Jurjis, Deputy Director Campbell, and Associate Planner Westmoreland utilized a PowerPoint presentation to describe the project, display the vicinity map, site plan, and project renderings, address traffic, compatibility and density concerns, and reviewed staff recommendations.

Discussion ensued between Council and staff regarding City density versus County density, the quality of the project's building materials, the proposed lower first floor and the benefits associated with it, building height restrictions, traffic visibility, congestion at the project intersection, access to the property, the need for housing in the City, and the City's limited building design guidelines.

Mayor Dixon opened the public hearing.

Tim Stoaks, former Chair of the Santa Ana Heights Project Advisory Committee, discussed the annexation agreement with Santa Ana Heights and questioned if the City has taken the zoning changes to the County for approval. Staff clarified that this RMD area is not part of the specific plan and does not need to go back to the County.

Anastasios Nikolaou, applicant, indicated he wanted to provide more visibility for the area due to a prior accident at the intersection and noted he used the same designer as the Lido House Hotel.

Jim Mosher believed the area is considered high density, not medium density, and expressed concerns with this type of construction.

Berkley Egenes disagreed with Costa Mesa's traffic incident report, suggested installing stop signs at the intersection, and questioned if emergency vehicles would be able to utilize the driveway.

In response to Council questions, staff indicated the intersection belongs to the County, they installed the traffic light, and the Fire Department reviewed the plans and is comfortable with staging on the street in the event of an emergency.

Chris White expressed support for the project.

Jane Nikolaou, applicant, requested Council support for the project.

Hearing no further testimony, Mayor Dixon closed the public hearing.

Motion by Mayor Pro Tem O'Neill, seconded by Council Member Avery, to a) find this project exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15332 under Class 32 (In-Fill Development) of the CEQA Guidelines, because this project has no potential to have a significant effect on the environment; and b) adopt Resolution No. 2019-73, *A Resolution of the City Council of the City of Newport Beach, California, Upholding the Planning Commission's Approval of Major Site Development Review No. SD2017-008 for an Eight-Unit Residential Condominium Project Located at 1501 Mesa Drive and 20462 Santa Ana Avenue (PA2017-218).*

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With Council Member Duffield recusing himself and Council Member Muldoon voting no, the motion carried 5-1.

16. Consideration of Planning and Land Use Entitlements for Vivante Senior Housing, Located at 850 and 856 San Clemente Drive (PA2018-185) (C-8187-1) *[38/100-2019]*

Community Development Director Jurjis, Deputy Community Development Director Campbell, and Associate Planner Nova utilized a PowerPoint presentation to discuss the General Plan Amendment (GPA), display the vicinity map, and highlight the site plan, project description, required entitlements, GPA map, summary and recommendations.

Council Member Avery expressed his support for the project.

Mayor Dixon opened the public hearing.

Cory Alder and Curt Olson, Nexus Development/applicants, utilized a PowerPoint presentation to provide background, discuss the reason for the project, and explain why this Vivante project is unique.

Jim Mosher noted the City is moving forward on a General Plan Update (GPU) and expressed concerns with considering this project at this time and the housing count. Staff indicated this project is for residential units with medical needs, does not exceed 100 units, and does not trigger a Charter 423 vote.

Ruth Sanchez Kobayashi believed the project would be a great addition to the community and the neighborhood would support it if commuter safety is addressed.

Hearing no further testimony, Mayor Dixon closed the public hearing.

Mayor Dixon noted that she visited the Costa Mesa facility and would be proud to have this senior facility in Newport Beach. If approved, she reported that, in the last 18 months, the City would have approved over 350 senior housing units.

Motion by Mayor Dixon, seconded by Council Member Herdman, to a) adopt Resolution No. 2019-74, *A Resolution of the City Council of the City of Newport Beach, California, Certifying Environmental Impact Report Addendum No. ER2016-002 and Approving a Mitigation Monitoring and Reporting Program, and Adopting California Environmental Quality Act Findings of Fact and a Statement of Overriding Considerations in Accordance with the California Environmental Quality Act for the Vivante Senior Housing Project Located at 850 and 856 San Clemente Drive (PA2018-185)*; b) adopt Resolution No. 2019-75, *A Resolution of the City Council of the City of Newport Beach, California, Approving General Plan Amendment No. GP2018-003 to Change the Land Use Designation from Private Institutional (PI) to Mixed-Use Horizontal (MU-H3), for the Vivante Senior Housing Project Located at 850 and 856 San Clemente Drive (PA2018-185)*; c) waive full reading, direct the City Clerk to read by title only, introduce Ordinance No. 2019-13, *An Ordinance of the City Council of the City of Newport Beach, California, Adopting Planned Community Development Plan No. PC2018-001 Amending the San Joaquin Plaza Planned Community (PC-19) Located at 850 and 856 San Clemente Drive (PA2018-185)*, and pass on to a second reading on September 10, 2019; d) waive full reading, direct the City Clerk to read by title only, introduce Ordinance No. 2019-14, *An Ordinance of the City Council of the City of Newport Beach, California, Approving Development Agreement No. DA2018-005 for the Vivante Senior Housing Project Located at 850 and 856 San Clemente Drive (PA2018-185)*, and pass on to a second reading on September 10, 2019; and e) adopt Resolution No. 2019-76, *A Resolution of the City Council of the City of Newport Beach, California, Approving Major Site Development Review No. SD2018-003, Conditional Use Permit No. UP2018-019, and Lot Merger No. LM2018-004, and Revocation of Use Permit No. UP2005-017-017 and Modification Permit No. MD2004-059 for the Vivante Senior Housing Project Located at 850 and 856 San Clemente Drive (PA2018-185).*

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Council Member Duffield believed the team is committed and this type of housing is needed.

The motion carried unanimously.

XVIII. CURRENT BUSINESS

17. Approval of a Service Agreement for Citywide Streetlight Maintenance and Repair Services with Bear Electrical, Inc. (C-8598-1) ***[38/100-2019]***

Council Member Muldoon recused himself due to potential business interest conflicts.

Jim Mosher commended the staff report for providing bidders' technical scores and costs, and believed there was a Balboa Island assessment district that should have expired but may still be in effect. Staff indicated they will look into it.

Motion by Mayor Pro Tem O'Neill, seconded by Council Member Avery, to a) determine this action is exempt from the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(2) and 15060(c)(3) of the CEQA Guidelines because this action will not result in a physical change to the environment, directly or indirectly; b) approve the Services Agreement with Bear Electrical, Inc., for Citywide streetlight maintenance and as-needed repair services for a five-year term with a total not-to-exceed amount of $950,522; and c) authorize the Mayor and City Clerk to execute the Agreement.

With Council Member Muldoon recusing himself, the motion carried unanimously.

18. Approval of a Services Agreement for Citywide Storm Drain System Cleaning Services with Downstream Services, Inc. (C-8599-1) ***[38/100-2019]***

Motion by Council Member Avery, seconded by Council Member Muldoon, to a) determine this action is exempt from the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(2) and 15060(c)(3) of the CEQA Guidelines because this action will not result in a physical change to the environment, directly or indirectly; b) approve the Services Agreement with Downstream Service, Inc., for Citywide storm drain system cleaning services for a five-year term with a total not-to-exceed amount of $1,750,000; and c) authorize the Mayor and City Clerk to execute the Agreement.

The motion carried unanimously.

19. Park and Beach Public Restroom Janitorial Services (C-8551-2) ***[38/100-2019]***

Mayor Pro Tem O'Neill recused himself out of an abundance of caution due to potential business interest conflicts.

Deputy Public Works Director Martin and Equipment Maintenance Superintendent Brodowski utilized a PowerPoint presentation to discuss public restroom cleaning service levels, proposed service levels versus previous service levels, and staff recommendations.

Council Member Avery expressed his support for increased janitorial services and understood there would be a cost associated to do this.

In response to Council comments, staff discussed the public restroom hours of operation and the security reasons for locking certain restrooms, confirmed that, with the increased services, all public bathrooms would be cleaned and ready to use by 7:00 a.m. every day, and reported the contractor is very knowledgeable and responsive.

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Motion by Council Member Herdman, seconded by Council Member Duffield, to a) determine this action is exempt from the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(2) and 15060(c)(3) of the CEQA Guidelines because this action will not result in a physical change to the environment, directly or indirectly; b) approve a three-year Janitorial Services Agreement with Ed Building Maintenance for cleaning / servicing 30 standalone City restrooms for a total not-to-exceed amount of $2,415,000 (3 years at approximately $803,784.00 per year); and c) approve Budget Amendment No. 20-007-CC transferring $140,000 from Public Works account 01090901-811031 to the Public Works account 0109041-811012, and also appropriating $350,000 in increased expenditures from the General Fund unappropriated fund balance to the Public Works account 0109041-811012.

With Mayor Pro Tem O'Neill recusing himself, the motion carried unanimously.

20. Appointment of a New City Arts Commissioner to Fill an Unscheduled Vacancy *[24/100-2019]*

City Clerk Brown provided a brief staff report and read the ballot votes as follows:

Krystal Anderson – Herdman
Maureen Flanagan – Avery, Dixon, Duffield, Muldoon, O'Neill
Carrie Williams – Brenner

City Clerk Brown announced that Maureen Flanagan was appointed to the City Arts Commission for a term expiring June 30, 2021.

City Manager Leung and Public Works Director Webb introduced new Deputy Public Works Director Jim Houlihan.

XIX. MOTION FOR RECONSIDERATION – None

XX. ADJOURNMENT – Adjourned at 9:16 p.m. in memory of Orange County Auditor-Controller Eric H. Woolery

The agenda was posted on the City's website and on the City Hall electronic bulletin board located in the entrance of the City Council Chambers at 100 Civic Center Drive on August 8, 2019, at 4:00 p.m.

DRAFT

_____
Diane B. Dixon
Mayor

_____
Leilani I. Brown
City Clerk

CITY OF

NEWPORT BEACH

City Council Staff Report

September 10, 2019
Agenda Item No. 3

TO:	HONORABLE MAYOR AND MEMBERS OF THE CITY COUNCIL
FROM:	Seimone Jurjis, Community Development Director - 949-644-3232, sjurjis@newportbeachca.gov
PREPARED BY:	Makana Nova, Associate Planner, mnova@newportbeachca.gov
PHONE:	949-644-3249
TITLE:	Second Reading and Adoption of Ordinance No. 2019-13 Amending PC-19 (San Joaquin Plaza Planned Community) and Ordinance No. 2019-14 Approving a Development Agreement for the Vivante Senior Housing Project Located at 850 and 856 San Clemente Drive (PA2018-185)

ABSTRACT:

The second reading and adoption of these two ordinances will be the final City Council action necessary to amend the PC-19 (San Joaquin Planned Community Development Plan) and to approve a development agreement between the City of Newport Beach and Nexus Development Corporation for the Vivante Senior Housing Project located at 850 and 856 San Clemente Drive.

RECOMMENDATION:

a) Find that the EIR Addendum for the Vivante Senior Housing Project certified by the City Council on August 13, 2019, and Museum House Project Environmental Impact Report (EIR) No. ER2016-002 (SCH No. 2016021023) certified by the City Council on November 29, 2016, by Resolution No. 2016-126 was prepared for the project in compliance with California Environmental Quality Act (CEQA), the State CEQA Guidelines, and City Council Policy K-3;

b) Conduct second reading and adopt Ordinance No. 2019-13, *An Ordinance of the City Council of the City of Newport Beach, California, Adopting Planned Community Development Plan No. PC2018-001 Amending the San Joaquin Plaza Planned Community (PC-19) Located at 850 and 856 San Clemente Drive (PA2018-185)*; and

c) Conduct second reading and adopt Ordinance No. 2019-14, *An Ordinance of the City Council of the City of Newport Beach, California, Approving Development Agreement No. DA2018-005 for the Vivante Senior Housing Project Located at 850 and 856 San Clemente Drive (PA2018-185)*.

FUNDING REQUIREMENTS:

There is no budget impact related to this application. The applicant is required to reimburse the City for all costs associated with the review of the application.

DISCUSSION:

On August 13, 2019, the City Council introduced and passed to a second reading Ordinance No. 2019-13, which changes the San Joaquin Plaza Planned Community (PC-19) land use designation from Civic/Cultural/Professional/Office to Senior Housing/Memory Care for 850 and 856 San Clemente Drive and includes new land use and development standards.

The City Council also introduced and passed to second reading Ordinance No. 2019-14, which approves development agreement between the City and Nexus Development Corporation.

ENVIRONMENTAL REVIEW:

The EIR Addendum and Museum House EIR No. ER2016-002 (SCH No. 2016021023) were prepared in accordance with the implementing guidelines of CEQA, the State CEQA Guidelines, and City Council Policy K-3, which included an analysis of the proposed zoning changes and Agreement. The City Council certified the EIR addendum on August 13, 2019, by Resolution No. 2019-74 and certified the Museum House EIR on November 29, 2016, by Resolution No. 2016-126.

NOTICING:

The agenda item has been noticed according to the Brown Act (72 hours in advance of the meeting at which the City Council considers the item).

ATTACHMENTS:

Attachment A – Ordinance No. 2019-13 (PC2018-001)
Attachment B – Ordinance No. 2019-14 (DA2018-005)

Attachment A

Ordinance No. 2019-13 (PC2018-001)

ORDINANCE NO. 2019-13

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF NEWPORT BEACH, CALIFORNIA, ADOPTING PLANNED COMMUNITY DEVELOPMENT PLAN NO. PC2018-001 AMENDING THE SAN JOAQUIN PLAZA PLANNED COMMUNITY (PC-19) LOCATED AT 850 AND 856 SAN CLEMENTE DRIVE (PA2018-185)

WHEREAS, an application was filed by Nexus Development Corporation representing Vivante Newport Center, LLC ("Applicant"), with respect to property located at 850 and 856 San Clemente Drive, and legally described as Parcel 2 of Newport Beach Lot Line Adjustment No. 95-3 together with Parcel 2 of Resubdivision No. 501, Assessor's Parcel Nos. 442-261-05 and 442-261-17 ("Property");

WHEREAS, the Applicant proposes the demolition of the existing Orange County Museum of Art ("OCMA") (23,632 square feet) and associated administrative office building (13,935 square feet) to accommodate the development of a 183,983-square-foot, six-story combination senior housing (90-unit residential dwelling units) and memory care facility (27 beds) ("Project"). The approximately 2.9 acre site is located on San Clemente Drive opposite the intersection with Santa Maria Road;

WHEREAS, in order to implement the Project, the Applicant, requests the following approvals from the City of Newport Beach ("City"):

- **General Plan Amendment** – To amend Anomaly No. 49 to change the land use category from PI (Private Institutions) to MU-H3 (Mixed-Use Horizontal). The proposed amendment also includes 90 additional dwelling units and would reduce the nonresidential floor area from 45,208 square feet to 16,000 square feet in Statistical Area L1. Table LU1 is amended to reflect a total of 540 dwelling units authorized within the MU-H3 land use designation,

- **Planned Community Development Plan Amendment** – To modify the San Joaquin Plaza Planned Community Development Plan (PC-19) to include development and design standards to allow for 90 senior dwelling units and 27 memory care beds. The Applicant also requests an increase in the height limit from 65 feet to 69 feet with 10 feet for appurtenances,

- **Development Agreement** – To provide public benefits should the Project be approved pursuant to Section 15.45.020 (Development Agreement Required) of the Newport Beach Municipal Code ("NBMC") because the requested General Plan Amendment includes 50 or more dwelling units and adds dwelling units within Statistical Area L1,

- **Conditional Use Permit** – To allow the operation of the proposed senior housing and memory care facility, alcohol service for dining hall and lounge areas in the form of a Type 47 (On Sale General) and Type 57 (Special On Sale General) Alcoholic Beverage Control ("ABC") licenses, and ensure land use compatibility,

- **Major Site Development Review** – To allow the construction of 90 senior dwelling units and a 27-bed memory care facility and to ensure the Project is developed in accordance with the applicable planned community and zoning code development standards and regulations pursuant to Section 20.52.080 (Site Development Reviews) of the NBMC,

- **Lot Merger** – To merge the two (2) existing parcels into one development site,

- **Addendum to Environmental Impact Report (SCH#2016021023)** – To address reasonably foreseeable environmental impacts resulting from the legislative and project specific discretionary approvals, the City has determined that an addendum to a previously certified Environmental Impact Report ("EIR") is warranted pursuant to the California Environmental Quality Act ("CEQA");

WHEREAS, the Property is designated PI (Private Institutions) by the General Plan Land Use Element and is located within the PC-19 (San Joaquin Plaza Planned Community) Zoning District;

WHEREAS, the Property is not located within the coastal zone; therefore, a coastal development permit is not required;

WHEREAS, a Planning Commission study session was held on April 18, 2019, in the Council Chambers located at 100 Civic Center Drive, Newport Beach, California, to introduce the Project to the Planning Commission. No action was taken at the study session;

WHEREAS, on July 18, 2019, the Airport Land Use Commission ("ALUC") found the City of Newport Beach Vivante Senior Housing project to be consistent with the Airport Environs Land Use Plan for John Wayne Airport;

WHEREAS, the Planning Commission held a public hearing on July 18, 2019 in the Council Chambers at 100 Civic Center Drive, Newport Beach, California. A notice of time, place and purpose of the hearing was given in accordance with California Government Code Section 54950 *et seq.* (the "Ralph M. Brown Act") and Chapters 15.45, 20.56 and 20.62 of the NBMC. Evidence, both written and oral, was presented to, and considered by, the Planning Commission at this hearing;

WHEREAS, on July 18, 2019, the Planning Commission adopted Resolution No. PC2019-021 by a unanimous vote of 5 ayes and 0 nays, recommending approval of the Project, and the land use entitlements referenced above, to the City Council;

WHEREAS, the City Council held a public hearing on August 13, 2019, in the Council Chambers 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 Chapters 15.45, 20.56 and 20.62 of the NBMC. Evidence, both written and oral, was presented to, and considered by, the City Council at this hearing;

WHEREAS, the proposed amendment to the PC-19 (San Joaquin Plaza Planned Community) Zoning District meets the intent and purpose for a Planned Community ("PC") as specified in NBMC Section 20. 56.010 (Planned Community District Procedures, Purpose). The Property is located in the Newport Center area which includes a mixture of shopping, hotels, commercial support uses, professional offices, and residential developments. The Project's development plan and standards are consistent with the surrounding development including the standards and allowed uses of the adjoining North Newport Center Planned Community;

WHEREAS, the proposed PC-19 (San Joaquin Plaza Planned Community) amendment and zoning designation are consistent with the proposed General Plan Amendment (GP2018-003) that amends the land use category from Private Institutional (PI) to Mixed-Use Horizontal (MU-H3) with a maximum development limit for Anomaly No. 49 (Table LU2 and associated figures) of 90 units and 16,000 square feet of nonresidential floor area;

WHEREAS, the future development of the Property affected by the proposed amendments will be consistent with the goals and policies of the Land Use Element of the General Plan; and will be consistent with the purpose and intent of the proposed San Joaquin Plaza (PC) Zoning District of the NBMC;

WHEREAS, the proposed amendment to the PC-19 Zoning District meets the intent and purpose for a PC as specified in Section 20.56.010 (Planned Community District Procedures, Purpose) of the NBMC. The Property is located in the northwest portion of Newport Center, which is a regional center of business and commerce that includes major retail, professional office, entertainment, recreation, and residential development in a master planned mixed-use area. The amended PC-19 Development Plan is complementary to the surrounding development, including the development standards and allowed uses of the adjoining PC-56 (North Newport Center Planned Community) Zoning District;

WHEREAS, the proposed amendment to the PC-19 Development Plan would apply appropriate site and Project-specific setbacks, intensity, and height limits to the Project given the site's urban location and all required parking is provided on site. The Property is currently fully developed and does not support any natural resources. All potential environmental impacts associated with the Project are appropriately addressed through standard building permit procedures and the mitigation measures identified in the EIR addendum;

WHEREAS, the future development of the Property affected by the proposed amendments will be consistent with the goals and policies of the Land Use Element of the General Plan; and will be consistent with the purpose and intent of the PC-19 Development Plan; and

WHEREAS, Section 20.30.060(C)(3) (Height Limits and Exceptions, Required Findings) of the NBMC, requires findings A through D to be made to adopt a Planned Community District with an increase in the height of the structure above the previous base height limit:

Finding:

A. *The Project Applicant is providing additional project amenities beyond those that are otherwise required. Examples of project amenities include, but are not limited to:*
   - *i. Additional landscaped open space;*
   - *ii. Increased setback and open areas; and*
   - *iii. Enhancement and protection of public views; and*

Facts in Support of Finding:

1. The building design provides a high level of design with open space, landscape, residential amenities, and building setbacks that are similar or greater than those required on adjoining properties. The Project provides 15,487 square feet of landscaped area on-site and extensive common open space amenities including outdoor seating areas, raised gardens and vegetable planters, bocce ball court, outdoor kitchen, dog park, and putting green.

2. The Project provides setbacks ranging from 36 feet along the northern property nearest to residential uses up to 94 feet at the San Clemente Drive street frontage.

3. The Project does not inhibit designated public view points or coastal view corridors as identified in Figure NR3 of the General Plan. The nearest coastal view road occurs to the southwest along Jamboree Road and views are oriented toward the ocean. The Project will not be visible from this location. Further, the proposed building will fit into the height and architectural context of other office buildings and development in the Newport Center area.

Finding:

B. The architectural design of the project provides visual interest through the use of light and shadow, recessed planes, vertical elements, and varied roof planes;

Facts in Support of Finding:

1. The Project provides high quality architectural materials on the building façade including smooth-coat plaster walls, natural travertine stone, vinyl windows, metal railings, and window trims.

2. The building is designed in an L-shape with a porte-cochère located at the primary building entrance along San Clemente Drive. This feature enhances the building entry and provides visual interest at the most visible building façade.

3. Juliet balconies for each unit will provide visual interest and building articulation throughout the building.

4. The building style is complementary to surrounding office buildings in Newport Center and the façade is architecturally modeled after the office building located at 888 San Clemente Drive.

5. The building's roofline provides a roof screen and mechanical wells to adequately screen unsightly equipment and provide architectural variation at the exterior elevations.

Finding:

C. The increased height will not result in undesirable or abrupt scale changes or relationships being created between the proposed structure(s) and existing adjacent developments or public spaces. Where appropriate, the proposed structure(s) provides a gradual transition to taller or shorter structures on abutting properties; and

Facts in Support of Finding:

1. The proposed building height of 68 feet 8 inches is comparable to surrounding building heights of 61 feet 9 inches at 888 San Clemente Drive, 65 feet at the Villas Fashion Island, 80 feet at Pacific Life (700 Newport Center Drive), and 125 feet at 800 Newport Center Drive. Further, these buildings allow an additional 10 feet for architectural appurtenances, consistent with the proposed building height for the Project.

2. The Project height is cohesive with surrounding building heights particularly given the site's grade elevations along San Clemente Drive, which range from 165 feet up to 189 feet. The proposed Project would be measured from the building entrance elevation at 181 feet.

Finding:

D. The structure will have no more floor area than could have been achieved without the approval of the height increase."

Facts in Support of Finding:

1. The existing PC-19 (San Joaquin Plaza Planned Community) text does not establish a floor area limit for the subject properties since it is currently designated for private institutional land uses. The amended PC-19 text will establish a floor area consistent with the proposed building area (approximately 184,000 square feet).

2. The proposed floor area could be achieved within the current 65 foot height limit if the building footprint was enlarged. The proposed design with additional height affords additional site area to provide code-required parking, circulation, and open space amenities to serve the Project.

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

Section 1: The City Council has considered the recommendation of the Planning Commission and has determined that modifications to the Project made by the City Council, if any, are not major changes that require referral back to the Planning Commission for consideration and recommendation.

Section 2: The City Council hereby approves Planned Community Development Plan Amendment No. 2018-001 as depicted in Exhibit A, attached hereto and incorporated herein by reference, to change the San Joaquin Plaza PC land use designation from Civic/Cultural/Professional/Office to Senior Housing/Convalescent Facility/Ancillary Uses and revise the development standards to accommodate the proposed residential development.

Section 3: The recitals provided in this ordinance are true and correct and are incorporated into the operative part of this ordinance.

Section 4: 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 5: The Museum House Project Final EIR (SCH No. 2016021023) was prepared for the project in compliance with the California Environmental Quality Act ("CEQA") as set forth in California Code of Regulations, Title 14, Division 6, Chapter 3, and City Council Policy K-3. By Resolution No. 2016-126, the City Council, having final approval authority over the project, adopted and certified as complete and adequate the Museum House Project Final EIR (SCH No. 2016021023) and approved "Mitigation Monitoring and Reporting Program." Resolution No. 2016-126 is hereby incorporated by reference.

Section 6: The Vivante Senior Housing Environmental Impact Report Addendum (EIR Addendum) (SCH No. 2016021023) was prepared for the Project incompliance with CEQA, the State CEQA Guidelines, and City Council Policy K-3. By Resolution No. 2019-74, the City Council having final approval authority over the Project, adopted and certified as complete and adequate the Vivante Senior Housing Project Final Environmental Impact Report Addendum (SCH No. 2016021023) and adopted "Mitigation Monitoring and Reporting Program." Resolution No. 2019-74 is hereby incorporated by reference.

Section 7: 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

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Section 8: The Mayor shall sign and the City Clerk shall attest to the passage of this ordinance. The City Clerk shall cause the ordinance, or a summary thereof, to be published pursuant to City Charter Section 414.

This ordinance was introduced at a regular meeting of the City Council of the City of Newport Beach held on the 13th day of August, 2019, and adopted on the 10th day of September, 2019, by the following vote, to-wit:

AYES, COUNCILMEMBERS _____

_____

NOES, COUNCILMEMBERS_____

_____

ABSENT COUNCILMEMBERS _____

_____

_____
DIANE B. DIXON, MAYOR

ATTEST:

_____
LEILANI I. BROWN, CITY CLERK

APPROVED AS TO FORM:
CITY ATTORNEY'S OFFICE

_____
AARON C. HARP, CITY ATTORNEY

Exhibit A: PC-19 (San Joaquin Plaza Planned Community Development Plan)

Exhibit "A"

PC-19 (San Joaquin Plaza Planned Community Development Plan)

San Joaquin Plaza
Planned Community Development Plan
(PC 19 Amendment No. 8)

Land Uses, Development Standards & Procedures

Ordinance No. 1649, Amendment No. 455, December 22, 1975
Ordinance No. 2007-20, PC Resolution No. 1739, Amendment No. PD2007-003 (PA2007-151)
Ordinance No. 2019-__, Amendment No. PC2018-001 (PA2018-185), September 10, 2019

San Joaquin Plaza Planned Community Development Plan
(PC 19 Amendment No. 8)

Land Uses, Development Standards & Procedures

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San Joaquin Plaza PC Development Plan
Amendment No. 8

I. Introduction

A. Introduction, Purpose, and Intent of this Development Plan

The San Joaquin Plaza Planned Community District (PC-19) (the "San Joaquin Plaza PC District") for the City of Newport Beach is part of the Newport Center Development in conformance with the Newport Beach General Plan (the "General Plan"). The General Plan identifies the goal of creating a successful mixed-use district that integrates economic and commercial centers serving the needs of Newport Beach residents and the sub-region, with expanded opportunities for a variety of housing development within Newport Center.

As shown on Figure 1, the San Joaquin Plaza PC District is located in the north end of Newport Center where the concentration of building height and mass is greatest. It is generally bounded by Santa Cruz Drive on the east, San Clemente Drive to the south, and Santa Barbara Drive to the west. Surrounding uses include a parking structure to the east, office buildings and a parking structure to the west, residential apartments to the north, and office and residential apartments to the south across San Clemente Drive. The Fashion Island regional mall is approximately ¼ mile to the south. The purpose of the San Joaquin Plaza PC District is to ensure consistency with General Plan policies related to development scale in Newport Center and expectations for high quality development.

This San Joaquin Plaza PC Development Plan (as hereby amended, this "Development Plan") provides land use and development standards for the subject properties located at 850 San Clemente Drive and 856 San Clemente Drive. This Development Plan supersedes the existing San Joaquin Plaza PC Development Plan in its entirety, including the land use and development standards therein. The specifications of this Development Plan are intended to provide flexibility in both the land use and development standards for the planned buildings.

B. Relationship to the Municipal Code

Whenever the development regulations of this Development Plan conflict with the regulations of the City of Newport Beach Municipal Code (the "Municipal Code"), the regulations contained in this Development Plan shall prevail. The development regulations of the Municipal Code shall apply with respect to those regulations not addressed by this Development Plan. All words and phrases used in this Development Plan shall have the same meaning and definition as used in the Municipal Code unless defined differently in Section IV (Definitions) of this Development Plan.

C. San Joaquin Plaza Statistical Analysis

The San Joaquin Plaza PC District area consists of the following two (2) existing buildings located on the following two (2) adjoining parcels (however, this Development Plan allows for such adjoining parcels to be combined into a single parcel for development purposes):

Building 1 (850 San Clemente Drive) on Parcel 1

- Existing Use: Orange County Museum of Art Exhibition Space (23,632 Square Feet)
- Parcel Size: 1.996 acres

Building 2 (856 San Clemente Drive) on Parcel 2

- Existing Use: Orange County Museum of Art Galleries Administrative Offices and Storage (13,935 Square Feet)
- Parcel Size: 0.910 acres

Total combined Land Parcels consisting of 2.91 acres

D. Figure 1 - San Joaquin Plaza Planned Community Area Location Map



II. Land Uses and Development Regulations

A. Permitted Uses

1. General

The specific uses listed in Section II.A.2 below are permitted under this Development Plan. In addition, uses determined to be either accessory or ancillary to such permitted uses, or Support Uses to such permitted uses, are also permitted under this Development Plan. In addition, the Community Development Director may determine other uses not specifically listed herein, provided they are consistent with the Mixed- Use Horizontal (MU-H3) Land Use designation.

2. San Joaquin Plaza

a. Senior Housing (with or without congregate care), which may include a development which is licensed by the State of California as a residential care facility for the elderly ("RCFE"). Such Senior Housing may include independent, assisted-living, and/or memory care units for persons 60 years of age or older.

b. Convalescent Facility (with or without congregate care), which may include a development which is licensed by the State of California as a RCFE. Such Convalescent Facility may include assisted-living care and/or memory care units.

c. Uses that are accessory or ancillary to the foregoing permitted uses, including Support Uses for Senior Housing, are also permitted. These include, but are not limited to, the following:

i. Lobby
ii. Club Rooms
iii. Bowling alley
iv. Fitness Center
v. Business Services
vi. Rooftop Lounge
vii. Salon/Spa
viii. Commercial Kitchen & Dining Hall with ancillary on-site sale alcohol service (Type 47/57 or similar license)
ix. Laundry
x. Conference Rooms & Admin Offices
xi. Pool
xii. Putting Green
xiii. Bocce Ball Court
xiv. Dog Park
xv. Raised Herb Gardens
xvi. Similar resident serving uses

d. Telecommunications facilities are permitted in accordance with Chapter 20.49 (Wireless Telecommunications Facilities) of the NBMC.

e. Land uses that are not listed above are not allowed, except as provided by Chapter 20.12(Interpretation of Zoning Code Provisions) of the NBMC or as required by State Law.

f. Temporary uses may be allowed only upon approval of a limited term permit pursuant to Section 20.52.040 (Limited Term Permits) of the NBMC.

B. Development Limits

1. General

The following development limits in this Development Plan are consistent with those established by the General Plan:

2. San Joaquin Plaza

Up to 90 Senior Housing units are permitted within the San Joaquin Plaza PC District. Senior Housing units, associated common areas, and ancillary uses are measured on a per unit basis and not by gross floor area. Senior Housing units are comprised of separate or independent living areas for one or more persons, with area or equipment for sleeping, sanitation, and food preparation.

Up to 16,000 square feet of Convalescent Facilities or other non-residential uses (excluding Senior Housing units and associated common areas and ancillary uses) are permitted within the San Joaquin Plaza PC District. Convalescent Facilities and other non-residential uses (excluding Senior Housing units and associated common areas and ancillary uses) are measured by gross floor area.

C. Transfer of Development Rights

Development limits may be modified through the approval of a Transfer of Development Rights. The transfer of development rights among the San Joaquin Plaza PC District and to/from other areas in the Newport Center/Fashion Island District identified in the General Plan is allowed in accordance with Policy LU 6.14.3 of the General Plan and this Development Plan. The transfer of development rights shall be approved, as specified in the General Plan.

III. Site Development Standards

A. Site Setbacks

a. San Clemente Drive	15'0"
b. East Property Line (Adjacent to Parking Garage)	5'0"

c. North Property Line (Adjacent to San Joaquin Apartments)	5'0"
d. West Property Line	5'0"

Note: Carports, site walls, trash or generator enclosures, and parking spaces shall not be subject to any setback requirements.

B. Senior Housing Open Space Requirements

The following open space standards shall apply to Senior Housing:

1. Common Outdoor Open Space

The project shall provide a minimum of 5 percent common outdoor open space based on the lot area (6,330 square feet minimum). The project shall provide common outdoor open space either at grade, podium level, common level within the building or roof level. Qualifying common outdoor open space areas shall have a minimum horizontal dimension of 30 feet and may contain active and/or passive areas and a combination of hardscape and landscape features, but a minimum of 10 percent of the common outdoor open space must be landscaped. All common outdoor space must be accessible to all residents.

2. Common Indoor Open Space

The project shall provide at least one community room of at least 500 square feet for use by residents of the project. The area should be located adjacent to, and accessible from, common access point. This area may contain active or passive recreational facilities or meeting space and must be accessible through a common corridor.

3. Private Open Space

At least 40 percent of all units shall provide private open space, on a balcony, patio, or roof terrace. Private open space shall be a minimum of 30 square feet and an average horizontal dimension of 6 feet. Balconies should be proportionately distributed throughout the project in relationship to floor levels and sizes of units.

C. Parking

Off-street parking for Senior Housing units shall be provided at a ratio of not less than 1.2 parking spaces per unit. Ancillary uses, such as lobbies, club rooms, fitness center, business services, amenities and building services shall not require additional parking as they support the primary operations of the Senior Housing community and its residents.

Off-street parking for Convalescent Facilities (Memory Care) shall be provided at a ratio of not less than one (1) parking space per three beds.

D. Floor Area Ratio

a. Allowable Floor Area Ratio (FAR)	1.5:1 FAR
b. Lot Area	126,600 Square Feet
c. Allowable Floor Area	189,900 Square Feet

E. Lot Coverage

Lot Coverage is the percentage of the site area.

a. Minimum Lot Area	39,639 Square Feet
b. Allowable Lot Coverage is 25%	
c. Minimum Lot Width	150 Feet

F. Permitted Height of Structures

The maximum Building Height of all buildings shall be 69 feet as measured from Finished Grade to the top of primary structure (top of ceiling above highest occupiable living space). Finish Grade is defined as the elevation point of the main building entry point at ground floor in relation to mean sea level.

G. Rooftop Appurtenances

Rooftop Appurtenances are permitted above the primary structure and may exceed the maximum Building Height by up to 10 feet (79 feet maximum). Rooftop Appurtenances must be screened from public view; the height of Rooftop Appurtenances shall not exceed the height of the screening. Supports for window washing equipment are permitted, and are not required to be screened from view. Additional setbacks on the roof are not required.

H. Architectural Features

Architectural Features are permitted above the primary structure and may exceed the maximum Building Height by up to 10 feet (79 feet maximum). Such features must be an extension of the architectural style of the building in terms of materials, design and color.

I. Site Walls, Retaining Walls, Garage Walls and Mechanical Screens

a. Site Walls
   i. Site walls shall not exceed 8'0" from Finish Grade.
b. Retaining Walls
   i. Interior: The height of a retaining wall that faces interior to the project must not exceed 12'0" from Finish Grade to top of wall. A 42-inch guardrail is allowed above the wall where it is necessary for building and safety.
   ii. Exterior: Retaining walls that face exterior to adjacent properties and San Clemente Drive at property lines are limited in height to 12'0" from Finish

Grade not including handrail conditions that may be required above these walls. These handrail requirements may be formed by the retaining wall.

c. Garage walls that are exposed will be treated as architectural building façade.

d. Mechanical screens will be allowed to be of sufficient height to provide coverage of equipment from public view. Required grills, louvers, vents and other functional requirements of building equipment will, to the extent practical, be incorporated into the building architecture. Ground-mounted mechanical screens shall not exceed 12 feet in height. Mechanical equipment shall comply with the noise standards of the City of Newport Beach Municipal Code.

J. Refuse Collection

The Senior Housing and Convalescent Facility shall provide a minimum of 384 square feet of trash area. The trash area shall provide a dedicated area with three walls, a gate, and a solid roof cover with a drain to the sewer system in accordance with the requirements of Section 20.30.120 (Solid Waste and Recyclable Materials Storage) of the City of Newport Beach Municipal Code. All storage of cartons, containers, and trash shall be shielded from view within a building or within an area enclosed by a wall not less than 6 feet in height.

K. Landscaping

Refer to the landscape standards within the City of Newport Beach Municipal Code.

L. Lighting

Refer to the lighting standards within the City of Newport Beach Municipal Code.

M. Signs

1. General Sign Standards

A comprehensive sign program may be prepared if the applicant wishes to deviate from the sign standards identified herein. Comprehensive sign programs shall be submitted for review and consideration in accordance with the provisions of the City of Newport Beach Municipal Code.

2. Prohibited Sign Types

Signs visible from public rights-of-way are prohibited as follows:

a. Rotating, flashing, blinking or signing with animation on a permanent basis are prohibited.

b. Signs that imitate or resemble official traffic signs or signals are prohibited.

c. Wind signs or audible signs are prohibited.

d. Any other sign types identified in the City of Newport Beach Municipal Code as prohibited are also prohibited hereunder.

Animated signs visible from public streets are not allowed unless otherwise permitted by the Municipal Code.

3. Sign Standards San Joaquin Plaza

Primary building address numbers shall be visible from the street (and/or pedestrian walkways in the case of necessity) and be located on the building so that they are visible from adjacent frontage roads and designated parking areas. Secondary address signs may be located where appropriate for on-site orientation and safety. All address signs shall have a consistent color, design, and material for any given building. A single letter style sign is recommended.

Table 2 – Sign Standards for San Joaquin Plaza

Sign Type	Description	Location	Maximum Number/Area	Maximum Letter/ Logo Height
A	Entry columns or ground mounted signs in front of landscaping.	Project entry at San Clemente (minimum 5-foot setback from front property line)	4/100 square feet each	36 inches (6-foot maximum overall height clear of sight-distance areas)
B	Building sign	On building elevation or awning	1 Primary/150 square feet and 4 Secondary/100 square feet each	Primary 48 inches Secondary 36 inches
C	Building address	On building elevation	4 (additional address signs may be located where appropriate for in-site orientation)/50 square feet each or as otherwise	4 inches minimum as required by Fire Department and 24 inches maximum

			required by Fire Department	
D	Advisory signs	Entry to service	As appropriate for safety and orientation/25 square feet	As required by Fire Department or Building Code for Safety purposes

4. Temporary Signs

Temporary signs are permitted in accordance with the Newport Beach Municipal Code.

N. LEED Certification

The project shall be designed to meet the criteria of LEED Certification as based on LEED's prototype points and scorecard rating system.

O. Construction and Utility Requirements

1. Archaeological/Paleontological

Grading of the site is subject to the provisions of the City Council Policies K-4 & K-5 regarding archaeological and paleontological resources and Mitigation Measures as adopted in the EIR addendum Mitigation Monitoring and Reporting Program (MMRP).

2. Building Codes

Construction shall comply with applicable provisions of the California Building Code and the various other mechanical, electrical and plumbing codes related thereto as adopted by the Municipal Code.

3. Grading

Grading and excavation of the project shall be conducted and undertaken in a manner both consistent with grading manual standards and ordinances of the City of Newport Beach, in accordance with a grading and excavation plan approved by the City of Newport Beach Building Division, and in accordance with Mitigation Measures as adopted in the EIR addendum Mitigation Monitoring and Reporting Program (MMRP).

4. Telephone, Gas and Electrical Service

All "on-site" gas lines, electrical lines and telephone lines shall be placed underground. Unless prohibited by the utility company, transformer or terminal equipment shall be visually screened from view from streets and adjacent properties.

5. Sewage Service

Any new and upgraded on and off-site sewer lines shall be designed in accordance with the Utilities Department Director's approval.

6. Storm Water Management

This project shall adhere to the Water Quality Management Plan (WQMP) approved in conjunction with the issuance of building permits. Drainage and water quality assurance measures will be implemented as per the City Public Works and Municipal Separate Storm Sewer System (MS4) requirements. Development of the property will be undertaken in accordance with the flood protection policies of the City.

7. Water Service

Water service to the site will be provided by the City of Newport Beach and is subject to applicable regulations, permits and fees as prescribed by the City. The project shall provide the infrastructure for Fire Protection Water Service and Domestic water.

IV. Definitions

All words and phrases used in this Development Plan shall have the same meaning and definition as used in the Municipal Code unless defined differently in this section.

Advisory Sign: Any sign that contains directional, directory, or safety information, and does not contain advertisements.

Architectural Features: Architectural features include, but are not limited to, any extension of the architectural style of the building in terms of materials, design and color that may exceed the building height. Examples include: Roof overhangs, brackets, cornices, eaves, belt courses, ornamental moldings, pilasters, and similar features.

Audible Signs: Any sign that uses equipment to communicate a message with sound or music.

Building Elevation: The exterior wall surface formed by one (1) side of the building.

Building Height: The height of a building as measured from the exterior finished grade to the roof of the highest occupied space. If the building is on a sloping surface, the height measurement is taken from the main building entrance.

Convalescent Facility: An age-restricted area or facility (with or without medical professional staffing) designed and intended for persons ages 60 years and older with memory care needs. A Convalescent Facility may be licensed by the State of California as a Residential Care Facility for the Elderly, may include the provision of congregate care, and may offer services and assistance with activities of daily living, such as bathing, dressing, eating, toileting, ambulating, assistance with medications, housekeeping, scheduling of medical and dental appointments, accessing community resources and transferring to outside facilities.

Finish Grade: The elevation point of the main building entry point at ground floor in relation to mean sea level.

Floor Area, Gross: The gross floor area is the total enclosed area of all floors of a building measured to the outside face of the structural members in exterior walls, including halls, stairways, elevator shafts at each floor level, service and mechanical equipment rooms and basement or attic areas having a height of more than seven feet. Excluded from gross floor area are covered porches, space below building entry or basement, parking, walkways, loading docks, service tunnels, mechanical shafts, and mechanical spaces which are inaccessible to tenants.

Monument Sign: Any sign that is supported by its own structure and is not part of or attached to any building.

Parking Structure: Structures containing more than one story principally dedicated to parking. Parking structures may contain accessory, ancillary, and resident Support Uses.

Podium Level: A superposed terrace conforming to a building's plan, a continuous pedestal; a line of vertical segregation linking separate areas.

Rooftop Appurtenance: A rooftop structure, equipment or element servicing or appurtenant to a building, including, but not limited to, mechanical equipment, mechanical equipment screens,

stairwell and elevator shaft housing, antennae, window washing equipment, and wireless communication facilities.

Senior Housing: An age-restricted residential development designed and intended for persons ages 60 years and older. Such development may include the provision of congregate care services for independent, assisted-living, or memory care residents. Senior housing units are comprised of separate or independent living facilities for one or more persons, with area or equipment for sleeping, sanitation, and food preparation. Additionally, a Senior Housing development may be licensed by the State of California as a Residential Care Facility for the Elderly.

Sign: Any media, including their structure and component parts which are used or intended to be used out-of-doors to communicate the information to the public.

Support Uses: Uses within Senior Housing developments and parking structures designed, oriented, and intended to primarily serve building occupants. This includes uses such as dry cleaners, coffee vendors, and sundry shops.

Temporary Sign: Any sign, banner, pennant, valance, or advertising display constructed of cloth, canvas, plywood, light fabric, cardboard, wallboard or other light materials, with or without frames, intended to be displayed for a limited period of time.

Wind Sign: A series or similar banners or objects of plastic or other light material more than two inches in diameter which are fastened together at intervals by wire, rope, cord, spring or any other means, designed to move and attract attention upon being subjected to pressure by wind or breeze.

V. Site Development Review

The purpose of the Site Development Review (SD) process is to ensure that any new development proposal within the Development Plan, Amendment No. 8) is consistent with the goals and policies of the General Plan and the provisions of the PC-Text. Prior to the issuance of building permits for development, a SD application shall be required in accordance with Section 20.52.080 (Site Development Reviews) of the Newport Beach Municipal Code. The submitted site plans and elevations shall be part of this application.

Attachment B

Ordinance No. 2019-14 (DA2018-005)

ORDINANCE NO. 2019-14

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF NEWPORT BEACH, CALIFORNIA, APPROVING DEVELPOMENT AGREEMENT NO. DA2018-005 FOR THE VIVANTE SENIOR HOUSING PROJECT LOCATED AT 850 AND 856 SAN CLEMENTE DRIVE (PA2018-185)

WHEREAS, an application was filed by Nexus Development Corporation representing Vivante Newport Center, LLC ("Applicant"), with respect to property located at 850 and 856 San Clemente Drive, and legally described as Parcel 2 of Newport Beach Lot Line Adjustment No. 95-3 together with Parcel 2 of Resubdivision No. 501, Assessor's Parcel Nos. 442-261-05 and 442-261-17 ("Property");

WHEREAS, the Applicant proposes the demolition of the existing Orange County Museum of Art ("OCMA") (23,632 square feet) and associated administrative office building (13,935 square feet) to accommodate the development of a 183,983 square foot, six-story combination senior housing (90-unit residential dwelling units) and memory care facility (27 beds) ("Project"). The approximately 2.9 acre site is located on San Clemente Drive opposite the intersection with Santa Maria Road;

WHEREAS, in order to implement the Project, the Applicant, requests the following approvals from the City of Newport Beach ("City"):

- **General Plan Amendment** – To amend Anomaly No. 49 to change the land use category from PI (Private Institutions) to MU-H3 (Mixed-Use Horizontal). The proposed amendment also includes 90 additional dwelling units and would reduce the nonresidential floor area from 45,208 square feet to 16,000 square feet in Statistical Area L1. Table LU1 is amended to reflect a total of 540 dwelling units authorized within the MU-H3 land use designation,

- **Planned Community Development Plan Amendment** – To modify the San Joaquin Plaza Planned Community Development Plan (PC-19) to include development and design standards to allow for 90 senior dwelling units and 27 memory care beds. The Applicant also requests an increase in the height limit from 65 feet to 69 feet with 10 feet for appurtenances,

- **Development Agreement** – To provide public benefits should the Project be approved pursuant to Section 15.45.020 (Development Agreement Required) of the Newport Beach Municipal Code ("NBMC") because the requested General Plan Amendment includes 50 or more dwelling units and adds dwelling units within Statistical Area L1,

- **Conditional Use Permit** – To allow the operation of the proposed senior housing and memory care facility, alcohol service for dining hall and lounge

areas in the form of a Type 47 (On Sale General) and Type 57 (Special On Sale General) Alcoholic Beverage Control ("ABC") licenses, and ensure land use compatibility,

- **Major Site Development Review** – To allow the construction of 90 senior dwelling units and a 27-bed memory care facility and to ensure the Project is developed in accordance with the applicable planned community and zoning code development standards and regulations pursuant to Section 20.52.080 (Site Development Reviews) of the NBMC,

- **Lot Merger** – To merge the two (2) existing parcels into one development site,

- **Addendum to Environmental Impact Report (SCH#2016021023)** – To address reasonably foreseeable environmental impacts resulting from the legislative and project specific discretionary approvals, the City has determined that an addendum to a previously certified Environmental Impact Report ("EIR") is warranted pursuant to the California Environmental Quality Act ("CEQA");

WHEREAS, the Property is designated PI (Private Institutions) by the City of Newport Beach General Plan ("General Plan") Land Use Element and is located within the PC-19 (San Joaquin Plaza Planned Community) Zoning District;

WHEREAS, the Property is not located within the coastal zone; therefore, a coastal development permit is not required;

WHEREAS, a Planning Commission study session was held on April 18, 2019, in the Council Chambers located at 100 Civic Center Drive, Newport Beach, California, to introduce the Project to the Planning Commission. No action was taken at the study session;

WHEREAS, on July 18, 2019, the Airport Land Use Commission ("ALUC") found the City of Newport Beach Vivante Senior Housing project to be consistent with the Airport Environs Land Use Plan for John Wayne Airport;

WHEREAS, the Planning Commission held a public hearing on July 18, 2019 in the Council Chambers at 100 Civic Center Drive, Newport Beach, California. A notice of time, place and purpose of the hearing was given in accordance with California Government Code Section 54950 *et seq.* (the "Ralph M. Brown Act") and Chapters 15.45, 20.56 and 20.62 of the NBMC. Evidence, both written and oral, was presented to, and considered by, the Planning Commission at this hearing;

WHEREAS, on July 18, 2019, the Planning Commission adopted Resolution No. PC2019-021 by a unanimous vote of 5 ayes and 0 nays, recommending approval of the Project, and the land use entitlements referenced above, to the City Council;

WHEREAS, the City Council held a public hearing on August 13, 2019, in the Council Chambers 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 Chapters 15.45, 20.56 and 20.62 of the NBMC. Evidence, both written and oral, was presented to, and considered by, the City Council at this public hearing;

WHEREAS, a development agreement is requested by the Applicant as the proposed General Plan Amendment includes 50 or more dwelling units and adds dwelling units within Statistical Area L1;

WHEREAS, the Project is consistent with the goals and policies of the General Plan. The City Council concurs with the conclusion of the consistency analysis of the Project with these goals and policies provided in the Vivante Senior Housing Project EIR Addendum (SCH No. 2016021023);

WHEREAS, the Development Agreement includes all the required elements pursuant to Section 15.45.040 (Contents) of the NBMC, including a 10-year term and a Development Plan, which is all of the land use entitlements, approvals and permits approved by the City for the Project that establish permitted uses of the property, the density or intensity of use, the maximum height and size of proposed buildings;

WHEREAS, in accordance with Section 15.45.060 (Findings) of the NBMC, the Development Agreement requires development of the Property to be consistent with a Development Plan and Development Regulations that are generally the rules, plans, and policies that govern the development of the subject property in force at the time of execution of the agreement. Consistent with Section 15.45.060 of the NBMC, Section 4.3 (Reservations of Authority) of the development agreement provides for the City's ability to undertake subsequent actions and apply them to the development of the Property to the extent they do not prevent development of the Property for the uses and to the density or intensity of development set forth in the agreement;

WHEREAS, Section 3 of the Development Agreement includes the provision of public benefits including a fee that is deemed necessary, appropriate and proper by the City Council to further legitimate City interests including the provision of public services to the Development and broader community. The public benefits identified by Section 3 are not inconsistent with the provisions of state law relating to development agreements, nor inconsistent with the ordinances, policies, plans or resolutions of the City of Newport Beach; and

WHEREAS, the development agreement includes all the mandatory elements for consideration and public benefits that are appropriate to support conveying the vested development rights consistent with the General Plan, Chapter 15.45 of the NBMC, and Government Code Sections 65864 *et. seq.*

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

Section 1: The City Council has considered the recommendation of the Planning Commission and has determined that modifications to the Project made by the City Council, if any, are not major changes that require referral back to the Planning Commission for consideration and recommendation.

Section 2: The City Council of the City of Newport Beach hereby approves Development Agreement No. DA2018-005, as set forth in Exhibit "A," which is attached hereto and incorporated herein by reference.

Section 3: The recitals provided in this ordinance are true and correct and are incorporated into the operative part of this ordinance.

Section 4: 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 5: The Museum House Project Final EIR (SCH No. 2016021023) was prepared in compliance with the California Environmental Quality Act ("CEQA") as set forth in California Code of Regulations, Title 14, Division 6, Chapter 3 ("CEQA Guidelines") and City Council Policy K-3. By Resolution No. 2016-126, the City Council, having final approval authority over the project, adopted and certified as complete and adequate the Museum House Project Final Environmental Impact Report (SCH No. 2016021023) and adopted "Mitigation Monitoring and Reporting Program." Resolution No. 2016-126 is hereby incorporated by reference.

Section 6: The Vivante Senior housing Environmental Impact Report Addendum (EIR Addendum) (SCH No. 2016021023) was prepared for the Project in compliance with the CEQA Guidelines and City Council Policy K-3. By Resolution No. 2019-74, the City Council having final approval authority over the Project, adopted and certified as complete and adequate the Vivante Senior Housing Project Final Environmental Impact Report Addendum (SCH No. 2016021023) and adopted "Mitigation Monitoring and Reporting Program." Resolution No. 2019-74 is hereby incorporated by reference.

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Section 7: The Mayor shall sign and the City Clerk shall attest to the passage of this ordinance. The City Clerk shall cause the ordinance, or a summary thereof, to be published pursuant to City Charter Section 414.

This ordinance was introduced at a regular meeting of the City Council of the City of Newport Beach held on the 13th day of August 2019, and adopted on the 10th day of September, 2019, by the following vote, to-wit:

AYES, COUNCILMEMBERS _____

_____

NOES, COUNCILMEMBERS _____

_____

ABSENT COUNCILMEMBERS _____

_____

_____
DIANE B. DIXON, MAYOR

ATTEST:

_____
LEILANI I. BROWN, CITY CLERK

APPROVED AS TO FORM:
CITY ATTORNEY'S OFFICE

_____
AARON C. HARP, CITY ATTORNEY

Attachment(s): Exhibit A - Development Agreement

EXHIBIT "A"

DEVELOPMENT AGREEMENT

RECORDING REQUESTED BY
AND WHEN RECORDED RETURN TO:

City of Newport Beach
100 Civic Center Drive
Newport Beach, CA 92660
Attn: City Clerk

(Space Above This Line Is for Recorder's Use Only)

This Agreement is recorded at the request and for the benefit of the City of Newport Beach and is exempt from the payment of a recording fee pursuant to Government Code §§ 6103 and 27383.

DEVELOPMENT AGREEMENT

between

CITY OF NEWPORT BEACH

and

VIVANTE NEWPORT CENTER, LLC

concerning

VIVANTE SENIOR LIVING
850 AND 856 SAN CLEMENTE DRIVE

DEVELOPMENT AGREEMENT

(Pursuant to Newport Beach Municipal Code Chapter 15.45 and California Government Code Sections 65864-65869.5)

This DEVELOPMENT AGREEMENT ("Agreement" or "Development Agreement") is dated for reference purposes as of the __ day of _____, 2019 ("Agreement Date"), and is being entered into by and between the CITY OF NEWPORT BEACH ("City") a California municipal corporation and charter city, organized and existing under and by virtue of its Charter and the Constitution, and the laws of the State of California, and VIVANTE NEWPORT CENTER, LLC, a Delaware limited liability company ("Developer"). City and Developer are sometimes collectively referred to in this Agreement as the "Parties" and individually as a "Party."

RECITALS

A. Developer is fee simple owner of that certain real property located in the City of Newport Beach, County of Orange, State of California commonly referred to as 850 and 856 San Clemente Drive, Newport Beach, California (APN #442-261-05 and #442-261-17) ("Property) and therefore is authorized to enter into this Agreement pursuant to Government Code Section 65865 and Newport Beach Municipal Code Chapter 15.45. The Property is more particularly described in the legal description attached hereto as Exhibit A and is depicted on the site map attached hereto as Exhibit B.

B. To encourage investment in, and commitment to, comprehensive planning and public facilities financing, strengthen the public planning process and encourage private implementation of the local general plan, provide certainty in the approval of projects to avoid waste of time and resources, and reduce the economic costs of development by providing assurance to property owners that they may proceed with projects consistent with existing land use policies, rules, and regulations, the California Legislature adopted California Government Code Sections 65864-65869.5 ("Development Agreement Statute") authorizing cities and counties to enter into development agreements with persons or entities having a legal or equitable interest in real property located within their jurisdiction.

C. On March 13, 2007, the City Council adopted Ordinance No. 2007-6, entitled "Ordinance Amending Chapter 15.45 of City of Newport Beach Municipal Code Regarding Development Agreements" ("Development Agreement Ordinance"). This Agreement is consistent with the Development Agreement Ordinance.

D. As detailed in Section 4 of this Agreement and the Development Plans (as defined herein), and in consideration of the significant benefits outlined in this Agreement, Developer has agreed to pay a total Public Benefit Fee (as defined herein) in the sum of Three Million One Hundred Fifty Thousand Dollars and 00/100 ($3,150,000.00). Developer shall pay the Public Benefit Fee to the City at the time of the City's issuance of the first building permit for the Project (as defined herein).

E. This Agreement is consistent with the City of Newport Beach General Plan, including, without limitation, the Property's proposed "MU-H3 (Mixed-Use Horizontal)" General Plan designation that is being adopted and approved by the City Council concurrently

with its approval of this Agreement to establish appropriate standards to regulate land use and development of the Property consistent with the General Plan.

G. In recognition of the significant public benefits that this Agreement provides, the City Council has found that this Agreement: (i) is consistent with the City of Newport Beach General Plan as of the date of this Agreement; (ii) is in the best interests of the health, safety, and general welfare of City, its residents, and the public; (iii) is entered into pursuant to, and constitutes a present exercise of, the City's police power; (iv) is consistent and has been approved consistent with the Project's Addendum to the Environmental Impact Report and final Environmental Impact Report (SCH# 2016021023) ("EIR") that was certified by the City Council on November 29, 2016, for the Museum House project, all of which analyze the environmental effects of the proposed development of the Project on the Property, and all of the findings, conditions of approval and mitigation measures related thereto; and (v) is consistent and has been approved consistent with provisions of California Government Code Section 65867 and City of Newport Beach Municipal Code Chapter 15.45.

H. On July 18, 2019, City's Planning Commission held a public hearing on this Agreement, made findings and determinations with respect to this Agreement, and recommended to the City Council that the City Council approve this Agreement.

I. On August 13, 2019, the City Council also held a public hearing on this Agreement and considered the Planning Commission's recommendations and the testimony and information submitted by City staff, Developer, and members of the public. On September 10, 2019 consistent with applicable provisions of the Development Agreement Statute and Development Agreement Ordinance, the City Council adopted Ordinance No. 2019-___ ("Adopting Ordinance"), finding this Agreement consistent with the City of Newport Beach General Plan and approving and adopting this Agreement.

AGREEMENT

NOW, THEREFORE, City and Developer agree as follows:

1. Definitions.

In addition to any terms defined elsewhere in this Agreement, the following terms when used in this Agreement shall have the meanings set forth below:

"Action" shall have the meaning ascribed in Section 8.10 of this Agreement.

"Adopting Ordinance" shall mean City Council Ordinance No. 2019-___ approving and adopting this Agreement.

"Agreement" shall mean this Development Agreement, as the same may be amended from time to time.

"Agreement Date" shall mean the date first written above, which date is the date the City Council adopted the Adopting Ordinance.

"CEQA" shall mean the California Environmental Quality Act (California Public Resources Code sections 21000-21177) and the implementing regulations promulgated thereunder by the Secretary for Resources (California Code of Regulations, Title 14, Division 6, Chapter 3, Section 15000 *et seq.*), as the same may be amended from time to time.

"City" shall mean the City of Newport Beach, a California municipal corporation and charter city, and any successor or assignee of the rights and obligations of the City of Newport Beach hereunder.

"City Council" shall mean the governing body of City.

"City's Affiliated Parties" shall have the meaning ascribed in Section 10.1 of this Agreement.

"Claim" shall have the meaning ascribed in Section 10.1 of this Agreement.

"CPI Index" shall mean the Consumer Price Index published from time to time by the United States Department of Labor for all urban consumers (all items) for the smallest geographic area that includes the City or, if such index is discontinued, such other similar index as may be publicly available that is selected by City in its reasonable discretion.

"Cure Period" shall have the meaning ascribed in Section 8.1 of this Agreement.

"Default" shall have the meaning ascribed to that term in Section 8.1 of this Agreement.

"Develop" or "Development" shall mean to improve or the improvement of the Property for the purpose of completing the structures, improvements, and facilities comprising the Project, including but not limited to: grading; the construction of infrastructure and public facilities related to the Project, whether located within or outside the Property; the construction of all of the private improvements and facilities comprising the Project; the preservation or restoration, as required of natural and man-made or altered open space areas; and the installation of landscaping. The terms "Develop" and "Development," as used herein, do not include the maintenance, repair, reconstruction, replacement, or redevelopment of any structure, improvement, or facility after the initial construction and completion thereof.

"Developer" shall mean Vivante Newport Center, LLC, a Delaware limited liability company, and any successor or assignee to all or any portion of its right, title, and/or interest in and to ownership of all or a portion of the Property and/or the Project.

"Development Agreement Ordinance" shall mean Chapter 15.45 of the City of Newport Beach Municipal Code.

"Development Agreement Statute" shall mean California Government Code Sections 65864-65869.5, inclusive.

"Development Exactions" shall mean any requirement of City in connection with or pursuant to any ordinance, resolution, rule, or official policy for the dedication of land, the construction or installation of any public improvement or facility, or the payment of any fee or

charge in order to lessen, offset, mitigate, or compensate for the impacts of Development of the Project on the environment or other public interests.

"Development Plan" shall mean all of the land use entitlements, approvals and permits approved by the City for the Project on or before the Agreement Date, as the same may be amended from time to time consistent with this Agreement. Such land use entitlements, approvals and permits include, without limitation, the following: (1) the Development rights as provided under this Agreement; (2) General Plan Amendment No. GP2018-003 to amend Anomaly No. 49 of Table LU2 and to change the land use category from PI (Private Institutions) to MU-H3 (Mixed-Use Horizontal); (3) Planned Community Development Plan Amendment No. PC2018-001 to modify the San Joaquin Plaza Planned Community Development Plan (PC-19) to include development and design standards to allow for 90 senior dwelling units and 27 memory care beds and an increase in the height limit from 65 feet to 69 feet with an additional 10 feet for rooftop appurtenances; (4) Development Agreement No. DA 2018-005 to provide public benefits should the Project be approved; (5) Conditional Use Permit No. UP2018-19 to allow the operation of the proposed senior housing and memory care facility, alcohol service for dining hall and lounge areas in the form of a Type 47 (On Sale General) and Type 57 (Special On Sale General), and ensure land use compatibility; (6) Major Site Development Review No. SD2018-003 to allow the construction of 90 senior dwelling units and a 27 bed memory care facility; (7) Lot Merger No. LM2018-004 to merge the two existing parcels into one development site; (8) Addendum to Environmental Impact Report No. ER2016-002 (SCH#2016021023); (9) the EIR (State Clearinghouse No. 2016071062); and (10) all conditions of approval and all mitigation measure approved for the Project on or before the Agreement Date.

"Development Regulations" shall mean the following regulations as they are in effect as of the Effective Date and to the extent they govern or regulate the development of the Property, but excluding any amendment or modification to the Development Regulations adopted, approved, or imposed after the Effective Date that affects the Development of the Property, unless such amendment or modification is expressly authorized by this Agreement or is agreed to by Developer in writing: the General Plan; the Development Plan; and, to the extent not expressly superseded by the Development Plan or this Agreement (see Section 4.3 in particular), all other land use and subdivision regulations governing the permitted uses, density and intensity of use, design, and improvement, procedures for obtaining required City permits and approvals for development, and similar matters that may apply to the Development of the Project on the Property during the Term of this Agreement that are set forth in Title 15 of the Municipal Code (buildings and construction), Title 19 of the Municipal Code (subdivisions and inclusionary housing), and Title 20 of the Municipal Code (planning, zoning and density bonus), but specifically excluding all other sections of the Municipal Code, including without limitation Title 5 of the Municipal Code (business licenses and regulations). Notwithstanding the foregoing, the term "Development Regulations," as used herein, does not include any City ordinance, resolution, code, rule, regulation or official policy governing any of the following: (i) the conduct of businesses, professions, and occupations; (ii) taxes and assessments; (iii) the control and abatement of nuisances; (iv) the granting of encroachment permits and the conveyance of rights and interests which provide for the use of or the entry upon public property; or (v) the exercise of the power of eminent domain.

"Effective Date" shall mean the latest of all of the following occurring: (i) the date that is thirty (30) calendar days after the Agreement Date; (ii) if a referendum concerning the Adopting

Ordinance, the Development Plan, or any of the Development Regulations approved on or before the Agreement Date is timely qualified for the ballot and a referendum election is held concerning the Adopting Ordinance or any of such Development Regulations, the date on which the referendum is certified resulting in upholding and approving the Adopting Ordinance and the Development Regulations; or (iii) if a lawsuit is timely filed challenging the validity or legality of the Adopting Ordinance, this Agreement, the Development Plan, and/or any of the Development Regulations approved on or before the Agreement Date, the date on which said challenge is finally resolved in favor of the validity or legality of the Adopting Ordinance, this Agreement, the Development Plan, and/or the applicable Development Regulations, whether such finality is achieved by a final non-appealable judgment, voluntary or involuntary dismissal (and the passage of any time required to appeal an involuntary dismissal), or binding written settlement agreement. Promptly after the Effective Date occurs, the Parties agree to cooperate in causing an appropriate instrument to be executed and recorded against the Property memorializing the Effective Date.

"Environmental Laws" means all federal, state, regional, county, municipal, and local laws, statutes, ordinances, rules, and regulations which are in effect as of the Agreement Date, and all federal, state, regional, county, municipal, and local laws, statutes, rules, ordinances, rules, and regulations which may hereafter be enacted and which apply to the Property or any part thereof, pertaining to the use, generation, storage, disposal, release, treatment, or removal of any Hazardous Substances, including without limitation the following: the Comprehensive Environmental Response Compensation and Liability Act of 1980, 42 U.S.C. Sections 9601, et seq., as amended ("CERCLA"); the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, 42 U.S.C. Sections 6901, et seq., as amended ("RCRA"); the Emergency Planning and Community Right to Know Act of 1986, 42 U.S.C. Sections 11001 et seq., as amended; the Hazardous Materials Transportation Act, 49 U.S.C. Section 1801, et seq., as amended; the Clean Air Act, 42 U.S.C. Sections 7401 et seq., as amended; the Clean Water Act, 33 U.S.C. Section 1251, et seq., as amended; the Toxic Substances Control Act, 15 U.S.C. Sections 2601 et seq., as amended; the Federal Insecticide, Fungicide and Rodenticide Act, 7 U.S.C. Sections 136 et seq., as amended; the Federal Safe Drinking Water Act, 42 U.S.C. Sections 300f et seq., as amended; the Federal Radon and Indoor Air Quality Research Act, 42 U.S.C. Sections 7401 et seq., as amended; the Occupational Safety and Health Act, 29 U.S.C. Sections 651 et seq., as amended; and California Health and Safety Code Section 25100, et seq.

"General Plan" shall mean City's 2006 General Plan adopted by the City Council on July 25, 2006, by Resolution No. 2006-76, and any amendments to the 2006 General Plan that became effective before the Effective Date. The term "General Plan" shall exclude any amendments that became effective after the Effective Date unless such amendment is expressly authorized by this Agreement, or is specifically agreed to by Developer. The Land Use Plan of the Land Use Element of the General Plan was approved by City voters in a general election on November 7, 2006.

"Hazardous Substances" means any toxic substance or waste, pollutant, hazardous substance or waste, contaminant, special waste, industrial substance or waste, petroleum or petroleum-derived substance or waste, or any toxic or hazardous constituent or additive to or breakdown component from any such substance or waste, including without limitation any

substance, waste, or material regulated under or defined as "hazardous" or "toxic" under any Environmental Law.

"Mortgage" shall mean a mortgage, deed of trust, sale and leaseback arrangement, or any other form of conveyance in which the Property, or a part or interest in the Property, is pledged as security and contracted for in good faith and for fair value.

"Mortgagee" shall mean the holder of a beneficial interest under a Mortgage or any successor or assignee of the Mortgagee.

"Notice of Default" shall have the meaning ascribed in Section 8.1 of this Agreement.

"Party" or "Parties" shall mean either City or Developer or both, as determined by the context.

"Project" shall mean all on-site and off-site improvements, as provided in this Agreement and the Development Regulations, as the same may be modified or amended from time to time consistent with this Agreement and applicable law.

"Property" is located at 850 and 856 San Clemente Drive in the City, as described in Exhibit A and depicted on Exhibit B.

"Public Benefit Fee" shall have the meaning ascribed in Section 3.1 of this Agreement.

"Subsequent Development Approvals" shall mean all discretionary development and building approvals that Developer is required to obtain to Develop the Project on and with respect to the Property after the Agreement Date consistent with the Development Regulations and this Agreement.

"Term" shall have the meaning ascribed in Section 2.4 of this Agreement.

"Termination Date" shall have the meaning ascribed in Section 2.4 of this Agreement.

"Transfer" shall have the meaning ascribed in Section 11 of this Agreement.

2. General Provisions.

2.1 Plan Consistency, Zoning Implementation.

This Agreement is consistent with the General Plan and the San Joaquin Plaza Planned Community District ("PC-19") as amended by the approvals in the Development Plan adopted concurrently herewith (including but not limited to Planned Community Development Plan Amendment No. PC2018-001).

2.2 Binding Effect of Agreement.

The Property is hereby made subject to this Agreement. Development of the Property is hereby authorized and shall be carried out in accordance with the terms of this Agreement.

2.3 Developer Representations and Warranties Regarding Ownership of the Property and Related Matters Pertaining to this Agreement.

Developer and each person executing this Agreement on behalf of Developer hereby represents and warrants to City as follows: (i) that Developer is the fee simple owner to the Property; (ii) if Developer or any co-owner comprising Developer is a legal entity that such entity is duly formed and existing and is authorized to do business in the State of California; (iii) if Developer or any co-owner comprising Developer is a natural person that such natural person has the legal right and capacity to execute this Agreement; (iv) that all actions required to be taken by all persons and entities comprising Developer to enter into this Agreement have been taken and that Developer has the legal authority to enter into this Agreement; (v) that Developer's entering into and performing its obligations set forth in this Agreement will not result in a violation of any obligation, contractual or otherwise, that Developer or any person or entity comprising Developer has to any third party; and (vi) that neither Developer nor any co-owner comprising Developer is currently the subject of any voluntary or involuntary bankruptcy or insolvency petition; and (vii) that Developer has no actual knowledge of any pending or threatened claims of any person or entity affecting the validity of any of the representations and warranties set forth in clauses (i)-(vi), inclusive.

2.4 Term.

The term of this Agreement ("Term") shall commence on the Effective Date and shall terminate on the "Termination Date."

Notwithstanding any other provision set forth in this Agreement to the contrary, if any Party reasonably determines that the Effective Date of this Agreement will not occur because, for example, (i) the Adopting Ordinance or any of the Development Regulations approved on or before the Agreement Date for the Project has/have been disapproved by City's voters at a referendum election or (ii) a final non-appealable judgment is entered in a judicial action challenging the validity or legality of the Adopting Ordinance, this Agreement, and/or any of the Development Regulations for the Project approved on or before the Agreement Date such that this Agreement and/or any of such Development Regulations is/are invalid and unenforceable in whole or in such a substantial part that the judgment substantially impairs such Party's rights or substantially increases its obligations or risks hereunder or thereunder, then such Party, in its sole and absolute discretion, shall have the right to terminate this Agreement upon delivery of a written notice of termination to the other Party, in which event neither Party shall have any further rights or obligations hereunder except that Developer's indemnity obligations set forth in Article 10 shall remain in full force and effect and shall be enforceable, and the Development Regulations applicable to the Project and the Property only (but not those general Development Regulations applicable to other properties in the City) shall be repealed by the City after delivery of said notice of termination except for the Development Regulations that have been disapproved by City's voters at a referendum election and, therefore, never took effect.

The Termination Date shall be the earliest of the following dates: (i) the tenth (10th) anniversary of the Effective Date; (ii) such earlier date that this Agreement may be terminated in accordance with Articles 5, 7, and/or Section 8.3 of this Agreement and/or Sections 65865.1 and/or 65868 of the Development Agreement Statute; or (iii) completion of the Project in accordance with the terms of this Agreement, including Developer's complete satisfaction,

performance, and payment, as applicable, of all Development Exactions, the issuance of all required final occupancy permits, and acceptance by City or applicable public agency(ies) or private entity(ies) of all required offers of dedication.

Notwithstanding any other provision set forth in this Agreement to the contrary, the provisions set forth in Article 10 and Section 14.11 (as well as any other Developer obligations set forth in this Agreement that are expressly written to survive the Termination Date) shall survive the Termination Date of this Agreement.

3. Public Benefits.

3.1 Public Benefit Fee.

As consideration for City's approval and performance of its obligations set forth in this Agreement, Developer shall pay to City a fee in the amount of three million one hundred twenty-fifty thousand dollars and 00/100 ($3,150,000.00), which shall be in addition to any other fee or charge to which the Property and the Project would otherwise be subject.

The Developer shall pay the Public Benefit Fee to the City at the time of City's issuance of the Project's first building permit. Should the Developer fail to pay the Public Benefit Fee at the time of the City's issuance of the Project's first building permit, the Developer shall be in default of the Agreement, as further described in Section 8 of this Agreement.

The City has not designated a specific project or purpose for the Public Benefit Fee. Developer acknowledges by its approval and execution of this Agreement that it is voluntarily agreeing to pay the Public Benefit Fee, that its obligation to pay the Public Benefit Fee is an essential term of this Agreement and is not severable from City's obligations and Developer's vested rights to be acquired hereunder, and that Developer expressly waives any constitutional, statutory, or common law right it might have in the absence of this Agreement to protest or challenge the payment of the Public Benefit Fee on any ground whatsoever, including without limitation pursuant to the Fifth and Fourteenth Amendments to the United States Constitution, California Constitution Article I Section 19, the Mitigation Fee Act (California Government Code Section 66000 *et seq.*), or otherwise. In addition to any other remedy set forth in this Agreement for Developer's default, if Developer shall fail to timely pay any portion of the Public Benefit Fee when due, City shall have the right to withhold issuance of any further building permits, occupancy permits, or other development or building permits for the Project.

3.1.1 Public Benefit Fee Allocation

The City Council retains sole and absolute discretion to determine how the Public Benefit Fee shall be allocated and no final decisions have been made as of the Agreement Date.

3.2 Reserved

3.3 Reserved

4. Development of Project.

4.1 Applicable Regulations; Developer's Vested Rights and City's Reservation of Discretion With Respect to Subsequent Development Approvals.

Other than as expressly set forth in this Agreement, during the Term of this Agreement, (i) Developer shall have the vested right to Develop the Project on and with respect to the Property in accordance with the terms of the Development Regulations and this Agreement and (ii) City shall not prohibit or prevent development of the Property on grounds inconsistent with the Development Regulations or this Agreement. Notwithstanding the foregoing, nothing herein is intended to limit or restrict the City's discretion with respect to (i) those review and approval requirements contained in the Development Regulations, (ii) the exercise of any discretionary authority City retains under the Development Regulations, (iii) the approval, conditional approval, or denial of any Subsequent Development Approvals that are required for Development of the Project as of the Effective Date, or (iv) any environmental approvals that may be required under CEQA or any other federal or state law or regulation in conjunction with any Subsequent Development Approvals that may be required for the Project, and in this regard, as to future actions in connection with the Subsequent Development Approvals, the City reserves its full discretion to the same extent that it would have such discretion in the absence of this Agreement. In addition, it is understood and agreed that nothing in this Agreement is intended to vest Developer's rights with respect to any laws, regulations, rules, or official policies of any other (*i.e.*, non-City) governmental agency or public utility company with jurisdiction over the Property or the Project; or any applicable federal or state laws, regulations, rules, or official policies that may be inconsistent with this Agreement and that override or supersede the provisions set forth in this Agreement, and regardless of whether such overriding or superseding laws, regulations, rules, or official policies are adopted or applied to the Property or the Project prior or subsequent to the Agreement Date.

Developer has expended and will continue to expend substantial amounts of time and money planning and preparing for Development of the Project. Developer represents, and City acknowledges, that Developer would not make these expenditures without this Agreement, and that Developer is and will be making these expenditures in reasonable reliance upon its vested rights to Develop the Project as set forth in this Agreement.

Developer may apply to City for permits or approvals necessary to modify or amend the Development specified in the Development Regulations, without amending this Agreement, provided that the request does not propose an increase in the maximum density, intensity, height, or size of proposed structures, or a change in use that generates more peak hour traffic or more daily traffic and, in addition, Developer may apply to City for approval of minor amendments to the existing tentative tract map, if any, or associated conditions of approval, consistent with City of Newport Beach Municipal Code Section 19.12.090. This Agreement does not constitute a promise or commitment by City to approve any such permit or approval, or to approve the same with or without any particular requirements or conditions, and City's discretion with respect to such matters shall be the same as it would be in the absence of this Agreement.

4.2 No Conflicting Enactments.

Except to the extent City reserves its discretion as expressly set forth in this Agreement, during the Term of this Agreement City shall not apply to the Project or the Property any ordinance, policy, rule, regulation, or other measure relating to Development of the Project that is enacted or becomes effective after the Effective Date to the extent it conflicts with this Agreement or Developer consents in writing. This Section 4.2 shall not restrict City's ability to enact an ordinance, policy, rule, regulation, or other measure applicable to the Project pursuant to California Government Code Section 65866 consistent with the procedures specified in Section 4.3 of this Agreement. In *Pardee Construction Co. v. City of Camarillo* (1984) 37 Cal.3d 465, the California Supreme Court held that a construction company was not exempt from a city's growth control ordinance even though the city and construction company had entered into a consent judgment (tantamount to a contract under California law) establishing the company's vested rights to develop its property consistent with the zoning. The California Supreme Court reached this result because the consent judgment failed to address the timing of development. The Parties intend to avoid the result of the *Pardee* case by acknowledging and providing in this Agreement that Developer shall have the vested right to Develop the Project on and with respect to the Property at the rate, timing, and sequencing that Developer deems appropriate within the exercise of Developer's sole subjective business judgment, provided that such Development occurs in accordance with this Agreement and the Development Regulations, notwithstanding adoption by City's electorate of an initiative to the contrary after the Effective Date. No City moratorium or other similar limitation relating to the rate, timing, or sequencing of the Development of all or any part of the Project and whether enacted by initiative or another method, affecting subdivision maps, building permits, occupancy certificates, or other entitlement to use, shall apply to the Project to the extent such moratorium or other similar limitation restricts Developer's vested rights in this Agreement or otherwise conflicts with the express provisions of this Agreement.

4.3 Reservations of Authority.

Notwithstanding any other provision set forth in this Agreement to the contrary, the laws, rules, regulations, and official policies set forth in this Section 4.3 shall apply to and govern the Development of the Project on and with respect to the Property.

4.3.1 Procedural Regulations. Unless otherwise specified in this Agreement, procedural regulations relating to hearing bodies, petitions, applications, notices, findings, records, hearings, reports, recommendations, appeals, and any other matter of procedure shall apply to the Property, provided that such procedural regulations are adopted and applied City-wide or to all other properties similarly situated in City.

4.3.2 Processing and Permit Fees. City shall have the right to charge, and Developer shall be required to pay, all applicable processing and permit fees to cover the reasonable cost to City of processing and reviewing applications and plans for any required Subsequent Development Approvals, building permits, excavation and grading permits, encroachment permits, and the like, for performing necessary studies and reports in connection therewith, inspecting the work constructed or installed by or on behalf of Developer, and monitoring compliance with any requirements applicable to Development of the Project, all at the rates in effect at the time fees are due.

4.3.2.1 Vested Development Impact Fees. All City development impact fees shall be fixed at the rates in place on the Agreement Date as shown on attached Exhibit C. Fees and charges levied by any other (*i.e.*, non-City) governmental agency or public utility company with jurisdiction over the Property or the Project shall not be fixed in place by the Development Agreement.

4.3.3 Consistent Future City Regulations. City ordinances, resolutions, regulations, and official policies governing Development which do not conflict with the Development Regulations, or with respect to such regulations that do conflict, where Developer has consented in writing to the regulations, shall apply to the Property.

4.3.4 Development Exactions Applicable to Property. During the Term of this Agreement, Developer shall be required to satisfy and pay all Development Exactions at the time performance or payment is due to the same extent and in the same amount(s) that would apply to Developer and the Project in the absence of this Agreement; provided except where the extent the timing, value, scope and/or extent of a particular Development Exaction for the Project has been established and fixed by City in this Agreement, the Project's conditions of approval, or the Development Regulations. City shall not alter, increase, or modify said Development Exaction in a manner that is inconsistent with this Agreement, the Project's conditions of approval, or the Development Regulations without Developer's prior written consent or as may be otherwise required pursuant to overriding federal or state laws or regulations (Section 4.3.5 below). In addition, nothing in this Agreement is intended or shall be deemed to vest Developer against the obligation to pay any of the following (which are not included within the definition of "Development Exactions") in the full amount that would apply in the absence of this Agreement: (i) City's normal fees for processing, environmental assessment and review, tentative tract and parcel map review, plan checking, site review and approval, administrative review, building permit, grading permit, inspection, and similar fees imposed to recover City's costs associated with processing, reviewing, and inspecting project applications, plans, and specifications, including CEQA review; (ii) fees and charges levied by any other public agency, utility, district, or joint powers authority, regardless of whether City collects those fees and charges; or (iii) community facility district special taxes or special district assessments or similar assessments, business license fees, bonds or other security required for public improvements, transient occupancy taxes, sales taxes, property taxes, sewer lateral connection fees, water service connection fees, new water meter fees, and the Property Development Tax payable under Section 3.12 of City's Municipal Code.

4.3.5 Overriding Federal and State Laws and Regulations. Federal and state laws and regulations that override Developer's vested rights set forth in this Agreement shall apply to the Property, together with any City ordinances, resolutions, regulations, and official policies that are necessary to enable City to comply with the provisions of any such overriding federal or state laws and regulations, provided that (i) Developer does not waive its right to challenge or contest the validity of any such purportedly overriding federal, state, or City law or regulation; and (ii) upon the discovery of any such overriding federal, state, or City law or regulation that prevents or precludes compliance with any provision of this Agreement, City or Developer shall provide to the other Party a written notice identifying the federal, state, or City law or regulation, together with a copy of the law or regulation and a brief written statement of the conflict(s) between that law or regulation and the provisions of this Agreement. Promptly thereafter, City and Developer shall meet and confer in good faith in a reasonable attempt to

determine whether a modification or suspension of this Agreement, in whole or in part, is necessary to comply with such overriding federal, state, or City law or regulation. In such negotiations, City and Developer agree to preserve the terms of this Agreement and the rights of Developer as derived from this Agreement to the maximum feasible extent while resolving the conflict. City agrees to cooperate with Developer at no cost to City or Developer in resolving the conflict in a manner which minimizes any financial impact of the conflict upon Developer. City also agrees to process in a prompt manner Developer's proposed changes to the Project and any of the Development Regulations as may be necessary to comply with such overriding federal, state, or City law or regulation; provided, however, that the approval of such changes by City shall be subject to the discretion of City, consistent with this Agreement.

4.3.6 Public Health and Safety. Any City ordinance, resolution, rule, regulation, program, or official policy that is necessary to protect persons on the Property or in the immediate vicinity from conditions dangerous to their health or safety, as reasonably determined by City, shall apply to the Property, even though the application of the ordinance, resolution, rule regulation, program, or official policy would result in the impairment of Developer's vested rights under this Agreement.

4.3.7 Uniform Building Standards. Existing and future building and building-related standards set forth in the uniform codes adopted and amended by City from time-to-time, including building, plumbing, mechanical, electrical, housing, swimming pool, and fire codes, and any modifications and amendments thereof shall all apply to the Project and the Property to the same extent that the same would apply in the absence of this Agreement.

4.3.8 Public Works Improvements. To the extent Developer constructs or installs any public improvements, works, or facilities, the City standards in effect for such public improvements, works, or facilities at the time of City's issuance of a permit, license, or other authorization for construction or installation of same shall apply.

4.3.9 No Guarantee or Reservation of Utility Capacity. Notwithstanding any other provision set forth in this Agreement to the contrary, nothing in this Agreement is intended or shall be interpreted to require City to guarantee or reserve to or for the benefit of Developer or the Property any utility capacity, service, or facilities that may be needed to serve the Project, whether domestic or reclaimed water service, sanitary sewer transmission or wastewater treatment capacity, downstream drainage capacity, or otherwise, and City shall have the right to limit or restrict Development of the Project if and to the extent that City reasonably determines that inadequate utility capacity exists to adequately serve the Project at the time Development is scheduled to commence. Notwithstanding the foregoing, City covenants to provide utility services to the Project on a non-discriminatory basis (*i.e.*, on the same terms and conditions that City undertakes to provide such services to other similarly situated new developments in the City of Newport Beach as and when service connections are provided and service commences).

5. Amendment or Cancellation of Agreement

This Agreement may be amended or canceled in whole or in part only by mutual written and executed consent of the Parties in compliance with California Government Code Section 65868 and Newport Beach Municipal Code Section 15.45.070 or by unilateral termination by City in the event of an uncured default of Developer.

6. Enforcement.

Unless amended or canceled pursuant to California Government Code Section 65868, Newport Beach Municipal Code Section 15.45.070, or modified or suspended pursuant to Newport Beach Municipal Code Chapter 15.45 or California Government Code Section 65869.5, and except as otherwise provided in subdivision (b) of Section 65865.3, this Agreement shall be enforceable by any Party despite any change in any applicable general or specific plan, zoning, subdivision, or building regulation or other applicable ordinance or regulation adopted by City (including by City's electorate) that purports to apply to any or all of the Property.

7. Annual Review of Developer's Compliance With Agreement.

7.1 General.

City shall review this Agreement once during every twelve (12) month period following the Effective Date for compliance with the terms of this Agreement as provided in Government Code section 65865.1. Developer (including any successor to the owner executing this Agreement on or before the date of the Adopting Ordinance) shall pay City a reasonable fee in an amount City may reasonably establish from time-to-time to cover the actual and necessary costs for the annual review. City's failure to timely provide or conduct an annual review shall not constitute a Default hereunder by City.

7.2 Developer Obligation to Demonstrate Good Faith Compliance.

During each annual review by City, Developer is required to demonstrate good faith compliance with the terms of the Agreement. Developer agrees to furnish such evidence of good faith compliance as City, in the reasonable exercise of its discretion, may require, thirty (30) calendar days prior to each anniversary of the Effective Date during the Term.

7.3 Procedure.

The Zoning Administrator shall conduct a duly noticed hearing and shall determine, on the basis of substantial evidence, whether or not Developer has, for the period under review, complied with the terms of this Agreement. If the Zoning Administrator finds that Developer has so complied, the annual review shall be concluded. If the Zoning Administrator finds, on the basis of substantial evidence, that Developer has not so complied, written notice shall be sent to Developer by first class mail of the Zoning Administrator's finding of non-compliance, and Developer shall be given at least ten (10) calendar days to cure any noncompliance that relates to the payment of money and thirty (30) calendar days to cure any other type of noncompliance. If a cure not relating to the payment of money cannot be completed within thirty (30) calendar days for reasons which are beyond the control of Developer, Developer must commence the cure within such thirty (30) calendar days and diligently pursue such cure to completion. If Developer fails to cure such noncompliance within the time(s) set forth above, such failure shall be considered to be a Default and City shall be entitled to exercise the remedies set forth in Article 8 below.

7.4 Annual Review a Non-Exclusive Means for Determining and Requiring Cure of Developer's Default.

The annual review procedures set forth in this Article 7 shall not be the exclusive means for City to identify a Default by Developer or limit City's rights or remedies for any such Default.

8. Events of Default.

8.1 General Provisions.

In the event of any material default, breach, or violation of the terms of this Agreement ("Default"), the Party alleging a Default shall deliver a written notice (each, a "Notice of Default") to the defaulting Party. The Notice of Default shall specify the nature of the alleged Default and a reasonable manner and sufficient period of time (twenty (20) calendar days if the Default relates to the failure to timely make a monetary payment due hereunder and not less than thirty (30) calendar days in the event of non-monetary Defaults) in which the Default must be cured ("Cure Period"). During the Cure Period, the Party charged shall not be considered in Default for the purposes of termination of this Agreement or institution of legal proceedings. If the alleged Default is cured within the Cure Period, then the Default thereafter shall be deemed not to exist. If a non-monetary Default cannot be cured during the Cure Period with the exercise of commercially reasonable diligence, the defaulting Party must promptly commence to cure as quickly as possible, and in no event later than thirty (30) calendar days after it receives the Notice of Default, and thereafter diligently pursue said cure to completion. Notwithstanding the foregoing, the City is not required to give Developer notice of default and may immediately pursue remedies for a Developer Default that result in an immediate threat to public health, safety or welfare.

8.2 Default by Developer.

If Developer is alleged to have committed Default and it disputes the claimed Default, it may make a written request for an appeal hearing before the City Council within ten (10) calendar days of receiving the Notice of Default, and a public hearing shall be scheduled at the next available City Council meeting to consider Developer's appeal of the Notice of Default. Failure to appeal a Notice of Default to the City Council within the ten (10) calendar day period shall waive any right to a hearing on the claimed Default. If Developer's appeal of the Notice of Default is timely and in good faith but after a public hearing of Developer's appeal the City Council concludes that Developer is in Default as alleged in the Notice of Default, the accrual date for commencement of the thirty (30) calendar day Cure Period provided in Section 8.1 shall be extended until the City Council's denial of Developer's appeal is communicated to Developer in writing.

8.3 City's Option to Terminate Agreement.

In the event of an alleged Developer Default, City may not terminate this Agreement without first delivering a written Notice of Default and providing Developer with the opportunity to cure the Default within the Cure Period, as provided in Section 8.1, and complying with Section 8.2 if Developer timely appeals any Notice of Default. A termination of this Agreement by City shall be valid only if good cause exists and is supported by evidence presented to the

City Council at or in connection with a duly noticed public hearing to establish the existence of a Default. The validity of any termination may be judicially challenged by Developer. Any such judicial challenge must be brought within ninety (90) calendar days of service on Developer, by first class mail, postage prepaid, of written notice of termination by City or a written notice of City's determination of an appeal of the Notice of Default as provided in Section 8.2.

8.4 Default by City.

If Developer alleges a City Default and alleges that the City has not cured the Default within the Cure Period, Developer may pursue any legal or equitable remedy available to it, including, without limitation, an action for a writ of mandamus, injunctive relief, or specific performance of City's obligations set forth in this Agreement. Upon a City Default, any resulting delays in Developer's performance hereunder shall neither be a Developer Default nor constitute grounds for termination or cancellation of this Agreement by City and shall, at Developer's option (and provided Developer delivers written notice to City within thirty (30) calendar days of the commencement of the alleged City Default), extend the Term for a period equal to the length of the delay.

8.5 Waiver.

Failure or delay by any Party in delivering a Notice of Default shall not waive that Party's right to deliver a future Notice of Default of the same or any other Default.

8.6 Specific Performance Remedy.

Due to the size, nature, and scope of the Project, it will not be practical or possible to restore the Property to its pre-existing condition once implementation of this Agreement has begun. After such implementation, both Developer and City may be foreclosed from other choices they may have had to plan for the development of the Property, to utilize the Property or provide for other benefits and alternatives. Developer and City have invested significant time and resources and performed extensive planning and processing of the Project in agreeing to the terms of this Agreement and will be investing even more significant time and resources in implementing the Project in reliance upon the terms of this Agreement. It is not possible to determine the sum of money which would adequately compensate Developer or City for such efforts. For the above reasons, except as set forth in Section 8.7, City and Developer agree that damages would not be an adequate remedy if either City or Developer fails to carry out its obligations under this Agreement. Therefore, except as set forth in Section 8.7, specific performance of this Agreement is necessary to compensate Developer if City fails to carry out its obligations under this Agreement or to compensate City if Developer falls to carry out its obligations under this Agreement.

8.7 Monetary Damages.

The Parties agree that monetary damages shall not be an available remedy for any Party for a Default hereunder by the other Party; provided, however, that (i) nothing in this Section 8.7 is intended or shall be interpreted to limit or restrict City's right to recover the Public Benefit Fees due from Developer as set forth herein; and (ii) nothing in this Section 8.7 is intended or shall be interpreted to limit or restrict Developer's indemnity obligations set forth in Article 10 or the right of the prevailing Party in any Action to recover its litigation expenses, as set forth in

Section 8.10. In no event shall damages be awarded against the City upon an event of default or upon termination of this Agreement. Developer expressly agrees that the City, any City agencies and their respective elected and appointed councils, boards, commissions, officers, agents, employees, volunteers and representatives (collectively, for purposes of this Section 8.7, "City") shall not be liable for any monetary damage for a Default by the City or any claims against City arising out of this Agreement. Developer hereby expressly waives any such monetary damages against the City. The sole and exclusive judicial remedy for Developer in the event of a Default by the City shall be an action in mandamus, specific performance, or other injunctive or declaratory relief.

8.8 Additional City Remedy for Developer's Default.

In the event of any Default by Developer, in addition to any other remedies which may be available to City, whether legal or equitable, City shall be entitled to receive and retain any Development Exactions applicable to the Project or the Property, including any fees, grants, dedications, or improvements to public property which it may have received prior to Developer's Default without recourse from Developer or its successors or assigns.

8.9 No Personal Liability of City Officials, Employees, or Agents.

No City official, employee, or agent shall have any personal liability hereunder for a Default by City of any of its obligations set forth in this Agreement.

8.10 No Recovery of Legal Expenses by Prevailing Party in Any Action.

In any judicial proceeding, arbitration, or mediation (collectively, an "Action") between the Parties that seeks to enforce the provisions of this Agreement or arises out of this Agreement, the prevailing Party shall not recover any of its costs and expenses, regardless of whether they would be recoverable under California Code of Civil Procedure section 1033.5 or California Civil Code section 1717 in the absence of this Agreement. These costs and expenses include, but are not limited to, court costs, expert witness fees, attorneys' fees, City staff costs (including overhead), and costs of investigation and preparation before initiation of the Action.

9. Force Majeure.

No Party shall be deemed to be in Default where failure or delay in performance of any of its obligations under this Agreement is caused, through no fault of the Party whose performance is prevented or delayed, by floods, earthquakes, other acts of God, fires, wars, riots or similar hostilities, strikes or other labor difficulties, state or federal regulations, or court actions. Except as specified above, nonperformance shall not be excused because of the act or omission of a third person. In no event shall the occurrence of an event of force majeure operate to extend the Term of this Agreement. In addition, in no event shall the time for performance of a monetary obligation, including without limitation Developer's obligation to pay Public Benefit Fees, be extended pursuant to this Section.

10. Indemnity Obligations of Developer.

10.1 Indemnity Arising From Acts or Omissions of Developer.

Except to the extent caused by the intentional misconduct or gross negligent acts, errors or omissions of City or one (1) or more of City's officials, employees, agents, attorneys, and contractors (collectively, the "City's Affiliated Parties"), Developer shall indemnify, defend, and hold harmless City and City's Affiliated Parties from and against all suits, claims, liabilities, losses, damages, penalties, obligations, and expenses (including but not limited to reasonable attorneys' fees and costs) (collectively, a "Claim") that may arise, directly or indirectly, from the acts, omissions, or operations of Developer or Developer's agents, contractors, subcontractors, agents, or employees in the course of Development of the Project or any other activities of Developer relating to the Property or Project, or pursuant to this Agreement. City shall be entitled to retain separate counsel to represent City against the Claim and the City's reasonable defense costs for its separate counsel shall be included in Developer's indemnity obligation, provided that such counsel shall reasonably cooperate with Developer in an effort to minimize the total litigation expenses incurred by Developer. In the event either City or Developer recovers any attorney's fees, expert witness fees, costs, interest, or other amounts from the party or parties asserting the Claim, Developer shall be entitled to retain the same (provided it has fully performed its indemnity obligations hereunder). The indemnity provisions in this Section 10.1 shall commence on the Agreement Date, regardless of whether the Effective Date occurs, and shall survive the Termination Date.

10.2 Third Party Litigation.

In addition to its indemnity obligations set forth in Section 10.1, Developer shall indemnify, defend, and hold harmless City and City's Affiliated Parties from and against any Claim against City or City's Affiliated Parties seeking to attack, set aside, void, or annul the approval of this Agreement, the Adopting Ordinance, any of the Development Plan approvals for the Project (including without limitation any actions taken pursuant to CEQA with respect thereto), any Subsequent Development Approval, or the approval of any permit granted pursuant to this Agreement. Said indemnity obligation shall include payment of reasonable attorney's fees, expert witness fees, City staff costs (including overhead), and court costs. City shall promptly notify Developer of any such Claim and City shall cooperate with Developer in the defense of such Claim. Developer shall not be responsible to indemnify, defend, and hold City harmless from such Claim until Developer is so notified and if City fails to cooperate in the defense of a Claim Developer shall not be responsible to defend, indemnify, and hold harmless City during the period that City so fails to cooperate or for any losses attributable thereto. City shall be entitled to retain separate counsel to represent City against the Claim and the City's reasonable defense costs for its separate counsel shall be included in Developer's indemnity obligation, provided that such counsel shall reasonably cooperate with Developer in an effort to minimize the total litigation expenses incurred by Developer. In the event either City or Developer recovers any attorney's fees, expert witness fees, costs, interest, or other amounts from the party or parties asserting the Claim, Developer shall be entitled to retain the same (provided it has fully performed its indemnity obligations hereunder). No settlement of any Claim against City or City's Affiliated Parties shall be executed without the written consent of both the City and Developer. The indemnity provisions in this Section 10.2 shall commence on the Agreement Date, regardless of whether the Effective Date occurs, and shall survive the Termination Date.

10.3 Environmental Indemnity.

In addition to its indemnity obligations set forth in Section 10.1, from and after the Effective Date Developer shall indemnify, defend, and hold harmless City and City's Affiliated Parties from and against any and all Claims for personal injury or death, property damage, economic loss, statutory penalties or fines, and damages of any kind or nature whatsoever, including without limitation reasonable attorney's fees, expert witness fees, and costs, based upon or arising from any of the following: (i) the actual or alleged presence of any Hazardous Substance on or under any of the Property in violation of any applicable Environmental Law; (ii) the actual or alleged migration of any Hazardous Substance from the Property through the soils or groundwater to a location or locations off of the Property; and (iii) the storage, handling, transport, or disposal of any Hazardous Substance on, to, or from the Property and any other area disturbed, graded, or developed by Developer in connection with Developer's Development of the Project. The indemnity provisions in this Section 10.3 shall commence on the Effective Date occurs, and shall survive the Termination Date.

11. Assignment.

Developer shall have the right to sell, transfer, or assign (hereinafter, collectively, a "Transfer") Developer's interest in or fee title to the Property, in whole or in part, to a "Permitted Transferee" (which successor, as of the effective date of the Transfer, shall become the "Developer" under this Agreement) at any time from the Agreement Date until the Termination Date; provided, however, that no such Transfer shall violate the provisions of the Subdivision Map Act (Government Code Section 66410 *et seq.*) or City's local subdivision ordinance and any such transfer shall include the assignment and assumption of Developer's rights, duties, and obligations set forth in or arising under this Agreement as to the Property or the portion thereof so Transferred and shall be made in strict compliance with the following conditions precedent: (i) no transfer or assignment of any of Developer's rights or interest under this Agreement shall be made unless made together with the Transfer of all or a part of Developer's interest in the Property; and (ii) prior to the effective date of any proposed Transfer, Developer (as transferor) shall notify City, in writing, of such proposed Transfer and deliver to City a written assignment and assumption, executed in recordable form by the transferring and successor Developer and in a form subject to the reasonable approval of the City Attorney of City (or designee), pursuant to which the transferring Developer assigns to the successor Developer and the successor Developer assumes from the transferring Developer all of the rights and obligations of the transferring Developer with respect to the Property and this Agreement, or interest in the Property, or portion thereof to be so Transferred, including in the case of a partial Transfer the obligation to perform such obligations that must be performed outside of the Property so Transferred that are a condition precedent to the successor Developer's right to develop the portion of the Property so Transferred. Any Permitted Transferee shall have all of the same rights, benefits, duties, obligations, and liabilities of Developer under this Agreement with respect to the portion of, or interest in, the Property sold, transferred, and assigned to such Permitted Transferee; provided, however, that in the event of a Transfer of less than all of the Property, or interest in the Property, no such Permitted Transferee shall have the right to enter into an amendment of this Agreement that jeopardizes or impairs the rights or increases the obligations of the Developer with respect to the balance of the Property, without Developer's written consent.

Notwithstanding any Transfer, the transferring Developer shall continue to be jointly and severally liable to City, together with the successor Developer, to perform all of the transferred

obligations set forth in or arising under this Agreement unless there is full satisfaction of all of the following conditions, in which event the transferring Developer shall be automatically released from any and all obligations with respect to the portion of the Property so Transferred: (i) the transferring Developer no longer has a legal or equitable interest in the portion of the Property so Transferred other than as a beneficiary under a deed of trust; (ii) the transferring Developer is not then in Default under this Agreement and no condition exists that with the passage of time or the giving of notice, or both, would constitute a Default hereunder; (iii) the transferring Developer has provided City with the notice and the fully executed written and recordable assignment and assumption agreement required as set forth in the first paragraph of this Section 11; and (iv) the successor Developer either (A) provides City with substitute security equivalent to any security previously provided by the transferring Developer to City to secure performance of the successor Developer's obligations hereunder with respect to the Property, or interest in the Property, or the portion of the Property so Transferred, as determined in the City's sole discretion, or (B) if the transferred obligation in question is not a secured obligation, the successor Developer either provides security reasonably satisfactory to City or otherwise demonstrates to City's reasonable satisfaction, as determined in the City's sole discretion, that the successor Developer has the financial resources or commitments available to perform the transferred obligation at the time and in the manner required under this Agreement and the Development Regulations for the Project. Any determination by the City in regards to the second paragraph of Section 11, subpart (iv) (A), (B), shall be documented in writing.

12. Mortgagee Rights.

12.1 Encumbrances on Property.

The Parties agree that this Agreement shall not prevent or limit Developer in any manner from encumbering the Property, any part of the Property, or any improvements on the Property with any Mortgage securing financing with respect to the construction, development, use, or operation of the Project.

12.2 Mortgagee Protection.

This Agreement shall be superior and senior to the lien of any Mortgage. Nevertheless, no breach of this Agreement shall defeat, render invalid, diminish, or impair the lien of any Mortgage made in good faith and for value. Any acquisition or acceptance of title or any right or interest in the Property or part of the Property by a Mortgagee (whether due to foreclosure, trustee's sale, deed in lieu of foreclosure, lease termination, or otherwise) shall be subject to all of the terms and conditions of this Agreement. Any Mortgagee who takes title to the Property or any part of the Property shall be entitled to the benefits arising under this Agreement.

12.3 Mortgagee Not Obligated.

Notwithstanding the provisions of this Section 12.3, a Mortgagee will not have any obligation or duty under the terms of this Agreement to perform the obligations of Developer or other affirmative covenants of Developer, or to guarantee this performance except that: (i) the Mortgagee shall have no right to develop the Project under the Development Regulations without fully complying with the terms of this Agreement; and (ii) to the extent that any covenant to be

performed by Developer is a condition to the performance of a covenant by City, that performance shall continue to be a condition precedent to City's performance.

12.4 Notice of Default to Mortgagee; Right of Mortgagee to Cure.

Each Mortgagee shall, upon written request to City, be entitled to receive written notice from City of: (i) the results of the periodic review of compliance specified in Article 7 of this Agreement, and (ii) any default by Developer of its obligations set forth in this Agreement.

Each Mortgagee shall have a further right, but not an obligation, to cure the Default within thirty (30) calendar days after receiving a Notice of Default with respect to a monetary Default and within sixty (60) calendar days after receiving a Notice of Default with respect to a non-monetary Default. If the Mortgagee can only remedy or cure a non-monetary Default by obtaining possession of the Property, then the Mortgagee shall have the right to seek to obtain possession with diligence and continuity through a receiver or otherwise, and to remedy or cure the non-monetary Default within sixty (60) calendar days after obtaining possession and, except in case of emergency or to protect the public health or safety, City may not exercise any of its judicial remedies set forth in this Agreement to terminate or substantially alter the rights of the Mortgagee until expiration of the sixty (60) calendar day period. In the case of a non-monetary Default that cannot with diligence be remedied or cured within sixty (60) calendar days, the Mortgagee shall have additional time as is reasonably necessary to remedy or cure the Default, provided the Mortgagee promptly commences to cure the non-monetary Default within sixty (60) calendar days and diligently prosecutes the cure to completion.

13. Bankruptcy. The obligations of this Agreement shall not be dischargeable in bankruptcy.

14. Miscellaneous Terms.

14.1 Reserved

14.2 Notices.

Any notice or demand that shall be required or permitted by law or any provision of this Agreement shall be in writing. If the notice or demand will be served upon a Party, it either shall be personally delivered to the Party; deposited in the United States mail, certified, return receipt requested, and postage prepaid; or delivered by a reliable courier service that provides a receipt showing date and time of delivery with courier charges prepaid. The notice or demand shall be addressed as follows:

TO CITY:	City of Newport Beach 100 Civic Center Drive Newport Beach, California 92660 Attn: City Manager
With a copy to:	City Attorney City of Newport Beach 100 Civic Center Drive Newport Beach, California 92660

TO DEVELOPER:	Robert Eres Vivante Newport Center, LLC 1 MacArthur Place, Suite 300 Santa Ana, CA 92707
With a copy to:	Sean Matsler, Esq. Cox, Castle & Nicholson LLP 3121 Michelson Drive, Ste. 200 Irvine, CA 92612

Any Party may change the address stated in this Section 14.2 by delivering notice to the other Parties in the manner provided in this Section 14.2, and thereafter notices to such Party or Parties shall be addressed and submitted to the new address. Notices delivered in accordance with this Agreement shall be deemed to be delivered upon the earlier of: (i) the date received, or (ii) three business days after deposit in the mail as provided above.

14.3 Project as Private Undertaking.

The Development of the Project is a private undertaking. Neither the Developer nor the City is acting as the agent of the other in any respect, and each is an independent contracting entity with respect to the terms, covenants, and conditions set forth in this Agreement. This Agreement forms no partnership, joint venture, or other association of any kind. The only relationship between the Parties is that of a government entity regulating the Development of private property by the owner of the property.

14.4 Cooperation.

Each Party shall cooperate with and provide reasonable assistance to the other Party to the extent consistent with and necessary to implement this Agreement. Upon the request of a Party at any time, the other Party shall promptly execute, with acknowledgement or affidavit if reasonably required, and file or record the required instruments and writings and take any actions as may be reasonably necessary to implement this Agreement or to evidence or consummate the transactions contemplated by this Agreement.

14.5 Estoppel Certificates.

At any time, any Party may deliver written notice to the other Party requesting that that Party certify in writing that, to the best of its knowledge: (i) this Agreement is in full force and effect and is binding on the Party; (ii) this Agreement has not been amended or modified either orally or in writing or, if this Agreement has been amended, the Party providing the certification shall identify the amendments or modifications; and (iii) the requesting Party is not in Default in the performance of its obligations under this Agreement and no event or situation has occurred that with the passage of time or the giving of Notice or both would constitute a Default or, if such is not the case, then the other Party shall describe the nature and amount of the actual or prospective Default.

The Party requested to furnish an estoppel certificate shall execute and return the certificate within thirty (30) calendar days following receipt.

14.6 Rules of Construction.

The singular includes the plural; the masculine and neuter include the feminine; "shall" is mandatory; and "may" is permissive.

14.7 Time Is of the Essence.

Time is of the essence regarding each provision of this Agreement as to which time is an element.

14.8 Waiver.

The failure by a Party to insist upon the strict performance of any of the provisions of this Agreement by the other Party, and failure by a Party to exercise its rights upon a Default by the other Party, shall not constitute a waiver of that Party's right to demand strict compliance by the other Party in the future.

14.9 Counterparts.

This Agreement may be executed in two (2) or more counterparts, each of which shall be identical and may be introduced in evidence or used for any other purpose without any other counterpart, but all of which shall together constitute one (1) and the same agreement.

14.10 Entire Agreement.

This Agreement constitutes the entire agreement between the Parties and supersedes all prior agreements and understandings, both written and oral, between the Parties with respect to the subject matter addressed in this Agreement.

14.11 Severability.

The Parties intend that each and every obligation of the Parties is interdependent and interrelated with the other, and if any provision of this Agreement or the application of the provision to any Party or circumstances shall be held invalid or unenforceable to any extent, it is the intention of the Parties that the remainder of this Agreement or the application of the provision to persons or circumstances shall be rendered invalid or unenforceable. The Parties intend that no Party shall receive any of the benefits of the Agreement without the full performance by such Party of all of its obligations provided for under this Agreement. Without limiting the generality of the foregoing, the Parties intend that Developer shall not receive any of the benefits of this Agreement if any of Developer's obligations are rendered void or unenforceable as the result of any third party litigation, and City shall be free to exercise its legislative discretion to amend or repeal the Development Regulations applicable to the Property and Developer shall cooperate as required, despite this Agreement, should third party litigation result in the nonperformance of Developer's obligations under this Agreement. The provisions of this Section 14.11 shall apply regardless of whether the Effective Date occurs and after the Termination Date.

14.12 Construction.

This Agreement has been drafted after extensive negotiation and revision. Both City and Developer are sophisticated parties who were represented by independent counsel throughout the negotiations or City and Developer had the opportunity to be so represented and voluntarily chose to not be so represented. City and Developer each agree and acknowledge that the terms of this Agreement are fair and reasonable, taking into account their respective purposes, terms, and conditions. This Agreement shall therefore be construed as a whole consistent with its fair meaning, and no principle or presumption of contract construction or interpretation shall be used to construe the whole or any part of this Agreement in favor of or against any Party.

14.13 Successors and Assigns; Constructive Notice and Acceptance.

The burdens of this Agreement shall be binding upon, and the benefits of this Agreement shall inure to, all successors in interest to the Parties to this Agreement. Except for those provisions relating to indemnity in Section 10, all other provisions of this Agreement shall, from and after the Effective Date hereof, be enforceable as equitable servitudes and constitute covenants running with the land. Subject to occurrence of the Effective Date, each covenant to do or refrain from doing some act hereunder with regard to Development of the Property: (i) is for the benefit of and is a burden upon every portion of the Property; (ii) runs with the Property and each portion thereof; and (iii) is binding upon each Party and each successor in interest during its ownership of the Property or any portion thereof. Every person or entity who now or later owns or acquires any right, title, or interest in any part of the Project or the Property is and shall be conclusively deemed to have consented and agreed to every provision of this Agreement. This Section 14.13 applies regardless of whether the instrument by which such person or entity acquires the interest refers to or acknowledges this Agreement and regardless of whether such person or entity has expressly entered into an assignment and assumption agreement as provided for in Section 11.

14.14 No Third Party Beneficiaries.

The only Parties to this Agreement are City and Developer. This Agreement does not involve any third party beneficiaries, and it is not intended and shall not be construed to benefit or be enforceable by any other person or entity.

14.15 Applicable Law and Venue.

This Agreement shall be construed and enforced consistent with the laws of the State of California, without regard to conflicts of law principles. Any action at law or in equity arising under this Agreement or brought by any Party for the purpose of enforcing, construing, or determining the validity of any provision of this Agreement shall be filed and tried in the Superior Court of the County of Orange, State of California, or the United States District Court for the Central District of California. The Parties waive all provisions of law providing for the removal or change of venue to any other court.

14.16 Section Headings.

All section headings and subheadings are inserted for convenience only and shall not affect construction or interpretation of this Agreement.

14.17 Incorporation of Recitals and Exhibits.

All of the Recitals are incorporated into this Agreement by this reference.

14.18 Recordation.

The City Clerk of City shall record this Agreement and any amendment, modification, or cancellation of this Agreement in the Office of the County Recorder of the County of Orange within the period required by California Government Code section 65868.5 and City of Newport Beach Municipal Code section 15.45.090. The date of recordation of this Agreement shall not modify or amend the Effective Date or the Termination Date.

[SIGNATURE PAGE FOLLOWS]

SIGNATURE PAGE TO DEVELOPMENT AGREEMENT

"DEVELOPER"

VIVANTE NEWPORT CENTER, LLC, a Delaware limited liability company

By: _____
Name: _____
Title: _____

"CITY"

CITY OF NEWPORT BEACH, a municipal corporation and charter city

_____
Diane B. Dixon, Mayor

ATTEST:

_____
Leilani I. Brown, City Clerk

APPROVED AS TO FORM:

_____
Aaron C. Harp, City Attorney

_____
Sean Matsler, Attorney for Developer

ACKNOWLEDGEMENTS

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA
COUNTY OF _____

On _____, _____, before me, _____
(here insert name and title of the officer)

personally appeared _____
_____,

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

_____ (Seal)
Signature

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA
COUNTY OF _____

On _____, _____, before me, _____
(here insert name and title of the officer)

personally appeared _____
_____,

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

_____ (Seal)
Signature

EXHIBIT A

LEGAL DESCRIPTION OF PROPERTY

PARCEL A:

PARCEL 2, IN THE CITY OF NEWPORT BEACH, COUNTY OF ORANGE, STATE OF CALIFORNIA, AS
SHOWN ON A MAP FILED IN BOOK 81, PAGES 8 AND 9 OF PARCEL MAPS, IN THE OFFICE OF
THE COUNTY RECORDER OF ORANGE COUNTY, CALIFORNIA.

EXCEPTING THEREFROM ALL OIL, OIL RIGHTS, GAS, MINERALS, MINERAL RIGHTS, NATURAL
GAS RIGHTS, AND OTHER HYDROCARBON SUBSTANCES IN AND UNDER SAID LAND, AND THE
RIGHT TO GRANT AND TRANSFER THE SAME, TOGETHER WITH ALL NECESSARY AND
CONVENIENT RIGHTS TO EXPLORE FOR, DEVELOP, PRODUCE AND EXTRACT AND TAKE THE
SAME, SUBJECT TO THE EXPRESS LIMITATION THAT ANY AND ALL OPERATIONS FOR THE
EXPLORATION, DEVELOPMENT, PRODUCTION, EXTRACTION AND TAKING OF ANY OF SAID
SUBSTANCES SHALL BE CARRIED ON AT LEVELS BELOW THE DEPTH OF FIVE HUNDRED (500)
FEET FROM THE SURFACE OF SAID LAND BY MEANS OF WELLS, DERRICK AND/OR OTHER
EQUIPMENT FROM SURFACE LOCATIONS ON ADJOINING OR NEIGHBORING LAND, AND
SUBJECT FURTHER TO THE EXPRESS LIMITATION THAT THE FOREGOING RESERVATION SHALL
IN NO WAY BE INTERPRETED TO INCLUDE ANY RIGHT OF ENTRY IN AND UPON THE SURFACE
OF SAID LAND, AS RESERVED BY THE IRVINE COMPANY, A CORPORATION ORGANIZED UNDER
THE LAWS OF THE STATE OF WEST VIRGINIA IN A DEED RECORDED FEBRUARY 28, 1977 AS
INSTRUMENT NO. 35908 IN BOOK 12085, PAGE 1561 OF OFFICIAL RECORDS.

APN: 442-261-05

PARCEL B:

PARCEL 2 AS SHOWN ON EXHIBIT 'B' OF NEWPORT BEACH LOT LINE ADJUSTMENT NO. 95-3

RECORDED OCTOBER 31, 1995 AS INSTRUMENT NO. 19950483821 OF OFFICIAL RECORDS OF ORANGE COUNTY, CALIFORNIA, IN THE CITY OF NEWPORT BEACH, COUNTY OF ORANGE,
STATE OF CALIFORNIA.

EXCEPTING THEREFROM ALL OIL, OIL RIGHTS, MINERALS, MINERAL RIGHTS, NATURAL GAS
RIGHTS AND OTHER HYDROCARBONS BY WHATSOEVER NAME KNOWN, GEOTHERMAL STEAM,
AND ALL PRODUCTS DERIVED FROM ANY OF THE FOREGOING, THAT MAY BE WITHIN OR
UNDER THE LAND, TOGETHER WITH THE PERPETUAL RIGHT OF DRILLING, MINING,
EXPLORING AND OPERATING THEREFOR, AND STORING IN AND REMOVING THE SAME FROM
SAID LAND OR ANY OTHER LAND, INCLUDING THE RIGHT TO WHIPSTOCK OR DIRECTIONALLY
DRILL AND MINE FROM LANDS OTHER THAN THE LAND, OIL OR GAS WELLS, TUNNELS AND
SHAFTS INTO, THROUGH OR ACROSS THE SUBSURFACE OF THE LAND, AND TO BOTTOM SUCH
WHIPSTOCKED OR DIRECTIONALLY DRILLED WELLS, TUNNELS AND SHAFTS UNDER AND
BENEATH OR BEYOND THE EXTERIOR LIMITS THEREOF, AND TO REDRILL, RETUNNEL, EQUIP,
MAINTAIN, REPAIR, DEEPEN AND OPERATE ANY SUCH WELLS OR MINES, WITHOUT,
HOWEVER, THE RIGHT TO DRILL, MINE, STORE, EXPLORE AND OPERATE THROUGH THE
SURFACE OR THE UPPER 500 FEET OF THE SUBSURFACE OF THE LAND, AS RESERVED BY THE
IRVINE COMPANY, A MICHIGAN CORPORATION IN A DEED RECORDED NOVEMBER 22, 1995 AS
INSTRUMENT NO. 19950519960 OF OFFICIAL RECORDS.

ALSO EXCEPTING THEREFROM ANY AND ALL WATER, WATER RIGHTS OR INTERESTS THEREIN
APPURTENANT OR RELATING TO THE LAND OR OWNED OR USED BY THE IRVINE COMPANY IN
CONNECTION WITH OR WITH RESPECT TO THE LAND (NO MATTER HOW ACQUIRED BY THE
IRVINE COMPANY), WHETHER SUCH WATER RIGHTS SHALL BE RIPARIAN, OVERLYING,
APPROPRIATIVE, LITTORAL, PERCOLATING, PRESCRIPTIVE, ADJUDICATED, STATUTORY OR
CONTRACTUAL, TOGETHER WITH THE RIGHT AND POWER TO EXPLORE, DRILL, REDRILL,

REMOVE AND STORE THE SAME FROM OR IN THE LAND OR TO DIVERT OR OTHERWISE
UTILIZE SUCH WATER, RIGHTS OR INTERESTS ON ANY OTHER PROPERTY OWNED OR LEASED
BY THE IRVINE COMPANY; BUT WITHOUT, HOWEVER, ANY RIGHT TO ENTER UPON THE
SURFACE OF THE LAND IN THE EXERCISE OF SUCH RIGHTS, AS RESERVED BY THE IRVINE
COMPANY, A MICHIGAN CORPORATION IN A DEED RECORDED NOVEMBER 22, 1995 AS
INSTRUMENT NO. 19950519960 OF OFFICIAL RECORDS.

APN: 442-261-17

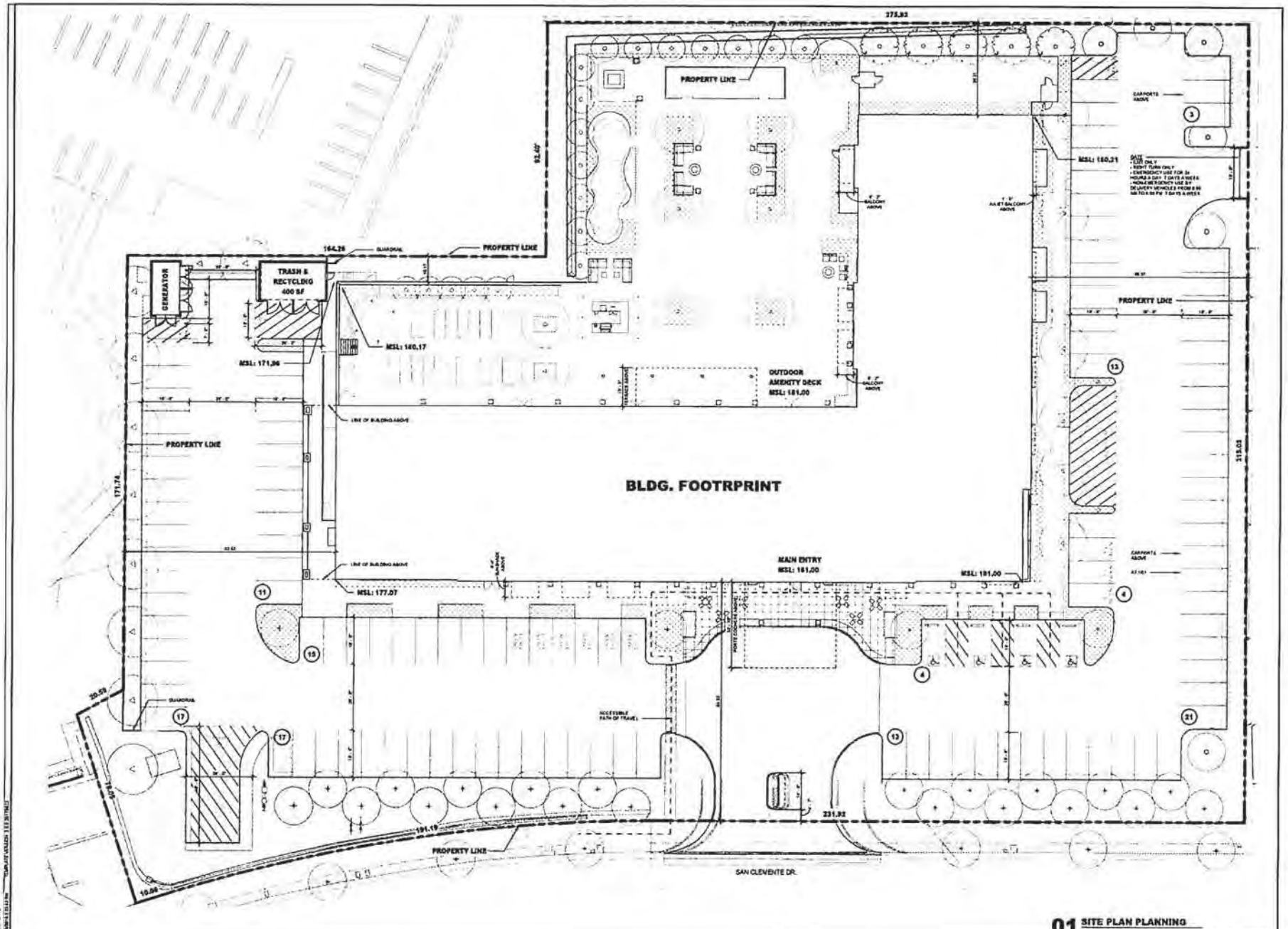
PARCEL B1:

AN APPURTENANT NON-EXCLUSIVE JOINT ACCESS EASEMENT FOR ACCESS, INGRESS AND
EGRESS OVER THAT PORTION OF PARCEL 1 AS SHOWN ON EXHIBIT "B" OF NEWPORT BEACH
LOT LINE ADJUSTMENT NO. 95-3 RECORDED OCTOBER 31, 1995 AS INSTRUMENT NO.
19950483821 OF OFFICIAL RECORDS, AS MORE FULLY DESCRIBED IN THE DECLARATION OF
EASEMENTS RECORDED OCTOBER 31, 1995 AS INSTRUMENT NO. 19950484848 OF OFFICIAL
RECORDS, DESCRIBED AS FOLLOWS:

BEGINNING AT THE MOST SOUTHERLY SOUTHEASTERLY CORNER OF SAID PARCEL 1; THENCE
NORTHERLY ALONG THE EASTERLY PARCEL LINE OF SAID PARCEL 1 NORTH 07° 03' 01" WEST
55.00 FEET; THENCE SOUTH 82° 56' 59" WEST 65.00 FEET; THENCE SOUTH 07° 03' 01" EAST
55.00 FEET TO A POINT ON THE MOST SOUTHERLY LINE OF SAID PARCEL 1, SAID POINT
BEING ALSO ON THE MOST NORTHERLY RIGHT OF WAY LINE OF SAN CLEMENTE DRIVE;
THENCE EASTERLY ALONG SAID SOUTHERLY LINE AND SAID RIGHT OF WAY LINE NORTH 82°
56' 59" EAST 65.00 FEET TO THE POINT OF BEGINNING.

EXHIBIT B

SITE MAP



01 SITE PLAN PLANNING
1/16" = 1'-0"

HKS

ARCHITECT
HKS ARCHITECTS, INC.
LANDSCAPE
PERRY BURR & ASSOCIATES
STRUCTURAL ENGINEER
MEP ENGINEER
OWNER
OWNER CONSULTANTS
CIVIL ENGINEER
UTILITY ENGINEER
ASSOCIATES, INC
GEOTECHNICAL ENGINEER

VIVANTE - SENIOR ASSISTED LIVING
NEWPORT BEACH, CA

REVISION
NO DESCRIPTION DATE

HKS PROJECT NUMBER
22222
DATE
06/28/19
ISSUE
ENTITLEMENT
RESUBMITTAL 3
SHEET TITLE
SITE PLAN

SHEET NO.
A2.0

EXHIBIT C

VESTED DEVELOPMENT IMPACT FEES

Impact Fee Estimate:

- **Fair Share Fees**

  $895 per dwelling unit (elderly residential) x 90 DU
  =$80,550
  Credit applied for existing nonresidential floor area

- **San Joaquin Transportation Corridor Fees-Zone B**

  $2,595/DU x 0.5 x 99DU = **$128,452.50 (in accordance with interpretation 87-1, fees for congregate care are charged at the multi-family rate times one half of the total number of dwelling units)**

  No credit applied for existing floor area since property is currently tax exempt

CITY OF

NEWPORT BEACH

City Council Staff Report

September 10, 2019
Agenda Item No. 4

TO:	HONORABLE MAYOR AND MEMBERS OF THE CITY COUNCIL
FROM:	Seimone Jurjis, Community Development Director - 949-644-3232, sjurjis@newportbeachca.gov
PREPARED BY:	Samir Ghosn, Deputy Community Development Director/Chief Building Official, sghosn@newportbeachca.gov
PHONE:	949-644-3277
TITLE:	Resolution No. 2019-77: A Request by the Newport Shores Community Association to Opt Out of the Designated High-Density Area

ABSTRACT:

On July 23, 2019, the City Council adopted an ordinance providing a process for a homeowners' association located within a designated high-density area to opt out of the Saturday construction-related noise regulations and temporary construction project signage requirements as defined in Newport Beach Municipal Code (NMBC) Sections 10.28.040(B) and 15.60.030. For City Council's consideration, the Newport Shores Community Association has submitted a formal request to opt out of the ordinance requirements.

RECOMMENDATION:

a) Find this action 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) 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, Chapter 3, because it has no potential for resulting in physical change to the environment, directly or indirectly;

b) Find the removal of the Newport Shores Community Association from the geographical designation of the high-density area will not negatively affect the surrounding property owners; and

c) Adopt Resolution No. 2019-77, *A Resolution of the City Council of the City of Newport Beach, California, Excluding the Geographical Boundaries of the Newport Shores Community Association from the Definition of the Designated High-Density Area Pursuant to Newport Beach Municipal Code Section 10.28.040(F).*

FUNDING REQUIREMENTS:

There is no direct fiscal impact related to the adoption of the ordinance.

DISCUSSION:

At the City Council meeting on July 23, 2019, the City Council adopted Ordinance No. 2019-11, which provides the process for homeowners' associations to opt out of the designated high-density area, which restricts Saturday noise related to construction and requires temporary project information sign. The ordinance became effective August 12, 2019.

The high-density area map that was adopted on June 11, 2019 (Ordinance 2019-9) includes the following communities: Balboa Island, Balboa Peninsula, Bay Island, Bayshores, Collins Island, Corona Del Mar Village, Harbor Island, Linda Isle, Lido Isle, West Newport and Newport Shores. The high-density area map is referenced in Attachment B.

The board of directors of the Newport Shores Community Association (NSCA), representing approximately 450 homes, submitted a letter (Exhibit A of Attachment A) requesting their desire to exempt their geographical boundaries from the definition of a designated high-density area (Exhibit B of Attachment A).

The City Council may grant the request to opt out of the designated high-density areas as long as it does not negatively affect the surrounding property owners. Staff does not believe the surrounding property owners would be negatively affected as NSCA has allowed Saturday construction since the time of their association formation. Staff has not received any public comments that Saturday construction was impacting the NSCA.

If the resolution is adopted, it will modify the adopted high-density area map without NSCA. Homeowners within the NSCA will no longer be restricted by the Saturday noise regulations related to construction activity and the project information sign requirements.

If adopted, the effective date of the resolution will be September 11, 2019.

ENVIRONMENTAL REVIEW:

Staff recommends the City Council find this action 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, Chapter 3, because it has no potential for resulting in physical change to the environment, directly or indirectly. The adoption of the amendment does not authorize new development or change the density or intensity of any potential future development.

NOTICING:

The agenda item has been noticed according to the Brown Act (72 hours in advance of the meeting at which the City Council considers the item).

ATTACHMENTS:

Attachment A – Resolution No. 2019-77
Attachment B – Adopted High-Density Area Map

ATTACHMENT A

RESOLUTION NO. 2019-77

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF NEWPORT BEACH, CALIFORNIA, EXCLUDING THE GEOGRAPHICAL BOUNDARIES OF THE NEWPORT SHORES COMMUNITY ASSOCIATION FROM THE DEFINITION OF DESIGNATED HIGH-DENSITY AREA PURSUANT TO NEWPORT BEACH MUNICIPAL CODE SECTION 10.28.040(F)

WHEREAS, Section 200 of the Charter of the City of Newport Beach ("City") 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, at the City Council meeting held on July 23, 2019, the City Council adopted Ordinance No. 2019-11, which provides the process for homeowners' associations to opt out of Saturday construction-related noise regulations and temporary construction project signage requirements;

WHEREAS, the board of directors of the Newport Shores Community Association submitted a letter to the City Clerk, for consideration by the City Council, declaring their desire to exempt their geographical boundaries from the definition of a designated high-density area, attached hereto as Exhibit A; and

WHEREAS, the City Council finds that exempting the geographical boundaries of the Newport Shores Community Association, attached hereto as Exhibit B, from the definition of a designated high-density area will not negatively affect surrounding property owners.

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

Section 1: The City Council does hereby remove the geographical boundaries of the Newport Shores Community Association, as depicted in Exhibit B, from the definition of a designated high-density area.

Section 2: The recitals provided in this resolution are true and correct and are incorporated into the operative part of this resolution.

Section 3: 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 4: 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.

Section 5: 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 10th day of September, 2019.

Dianne B. Dixon
Mayor

ATTEST:

Leilani I. Brown
City Clerk

APPROVED AS TO FORM:
CITY ATTORNEY'S OFFICE

Aaron C. Harp
City Attorney

Attachment(s): Exhibit A: Letter from Newport Shores Community Association
Exhibit B: Newport Shores Community Association Boundary Map

Exhibit A

RECEIVED
2019 AUG 28 PM 1:45
OFFICE OF
THE CITY CLERK

NEWPORT SHORES COMMUNITY ASSOCIATION

August 24, 2019

City of Newport Beach
Attention Mayor Diane Dixon
100 Civic Center Drive
Newport Beach, CA 92660

Re: Opposition to Ordinance 2019-9 – Restricting Saturday Residential Building Construction

Dear Mayor Dixon,

The Newport Shores Community Association (NSCA) is comprised of approximately 450 homes in the West Newport Beach area of the City of Newport Beach. Our Association is responsible for maintaining a one-acre clubhouse community area that is for the membership that includes a college size pool, tennis court, basketball court, volleyball court, tot lot and sand beach BBQ area. The NSCA Board of Directors consists of eleven elected members from the community.

On June 9, 2019, our Board sent a letter opposing Ordinance 2019-9 restricting Saturday Residential Construction. Our Board action prior to the June letter did not allow for outreach to our community as stated in the letter. On August 6, 2019, our Board met again and discussed our position regarding this ordinance. Ahead of that meeting, the entire membership was notified of our planned discussion and invited to attend the Board meeting to provide verbal input or send written notice to the Board of their position. Most members responded with a strong opinion to remove our community from this ordinance (opt-out) and only one member provided support for the ordinance. Several community members attended the August Board Meeting all of who supporting opting out of the ordinance. **The Board voted unanimously to send this letter declaring its desire to exempt its geographical boundaries from the definition of a designated high-density area** as required in Ordinance 2019-11 (Opt-Out Process)

Restricting Saturday work in our neighborhood is not necessary, as we do not have an overabundance of residential construction at any one time even in this peak economy. The lack of Saturday work will only delay construction projects and raise cost as reducing options for sub-contractor work. Because our association boundary is an entire block away from West Coast Highway and a residential community on smaller lots, any building construction will not negatively affect other surrounding property owners or businesses.

511 CANAL STREET
NEWPORT BEACH, CALIFORNIA 92663

Thank you and the other Council Members again for your service to the City. And, thank you for your consideration removing Newport Shores from this Ordinance. Should you have any questions, please do not hesitate to contact me at (714) 342-3289.

Best regards,

Rene Rimlinger, President
Newport Shores Community Association

Cc: City Council
Grace Leung, City Manager
Leilani Brown, City Clerk



Exhibit B

Newport Shores
Home Owner's Association

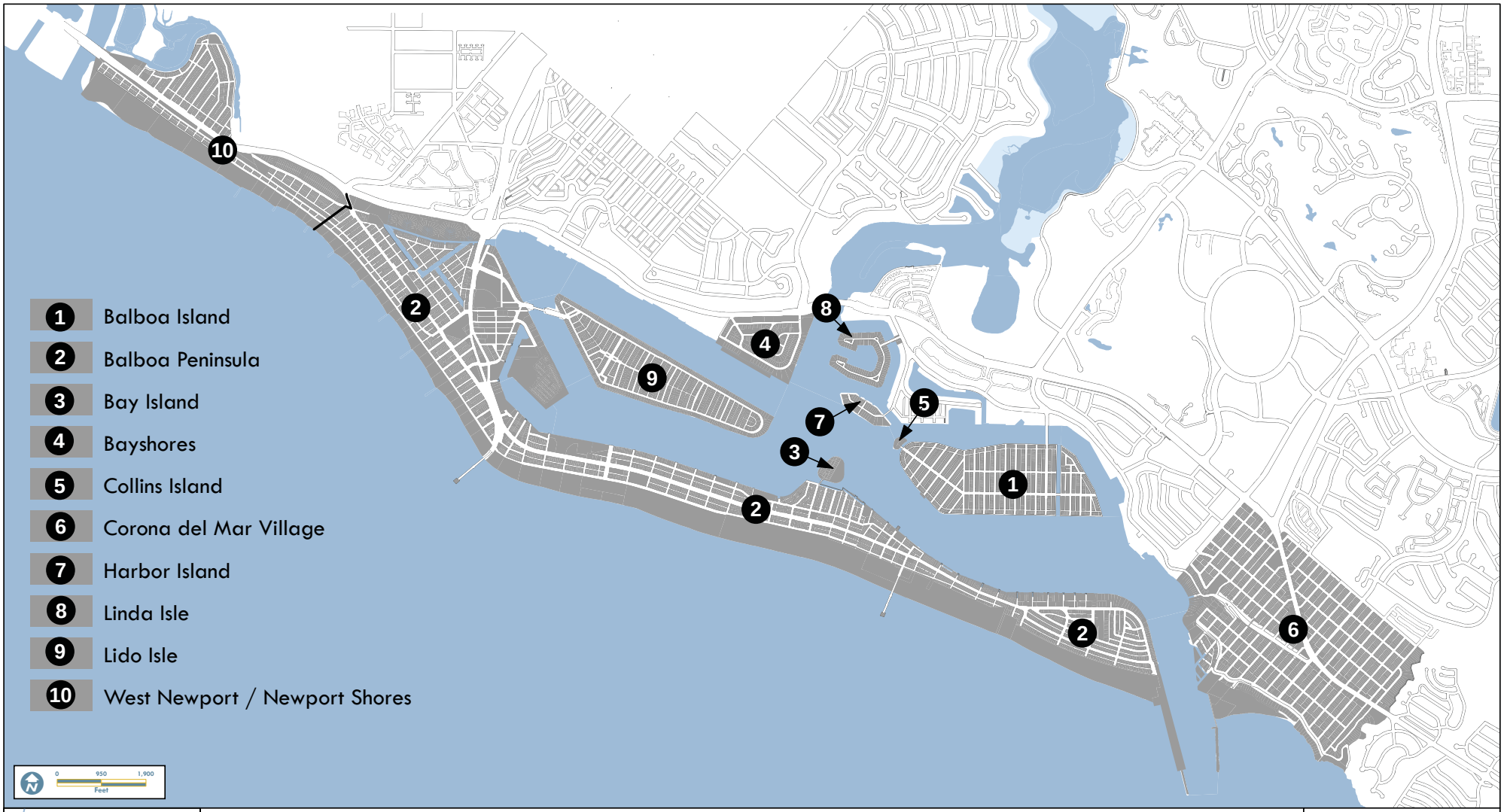
NBGIS NEWPORT BEACH

City of Newport Beach
GIS Division
August 27, 2019

Newport_Shores_Amendment_1.mxd

Attachment B

Adopted High-Density Area Map



High Density Areas

City of Newport Beach
GIS Division
May 13, 2019

Construction_Parking_Managment_Plan.mxd

CITY OF

NEWPORT BEACH

City Council Staff Report

September 10, 2019
Agenda Item No. 5

TO:	HONORABLE MAYOR AND MEMBERS OF THE CITY COUNCIL
FROM:	Seimone Jurjis, Community Development Director - 949-644-3232, sjurjis@newportbeachca.gov
PREPARED BY:	David S. Lee, Assistant Planner
PHONE:	949-644-3225, dlee@newportbeachca.gov
TITLE:	Resolution No. 2019-78: Initiation of Zoning Code and LCP Amendments Related to Hedge Heights in Front Yard Setbacks for Lido Isle (PA2019-132)

ABSTRACT:

The City Council will consider initiating amendments to Newport Beach Municipal Code (NBMC) Title 20 (Planning and Zoning) and NBMC Title 21 (Local Coastal Program Implementation Plan). The amendments relate to hedge heights in front setbacks for Lido Isle. The Lido Isle Community Association requests consideration of this item.

RECOMMENDATION:

a) Determine this action exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15262 (Feasibility and Planning Studies) of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3; and

b) Adopt Resolution No. 2019-78, *A Resolution of the City Council of the City of Newport Beach, California, Initiating Amendments to Title 20 Entitled "Planning and Zoning" and Title 21 Entitled "Local Coastal Program Implementation Plan" of the City of Newport Beach Municipal Code Related to Hedge Heights in Front Yard Setbacks within Lido Isle.*

FUNDING REQUIREMENTS:

There is no fiscal impact related to this item.

DISCUSSION:

Zoning Code Section 20.66.020 (Initiation of Amendment) provides that a code amendment may be initiated by the City Council, with or without a recommendation from the Planning Commission. City Council Policy K-1 (General Plan and Local Coastal Program) provides that a City-sponsored amendment to the certified Local Coastal Program (LCP) shall be initiated by the City Council.

This agenda item is not a public hearing. Should the City Council choose to initiate these proposed amendments, the specific text changes will be drafted and considered by both the Planning Commission and the City Council at future public hearings. Additionally, amendments to the certified LCP will require certification by the California Coastal Commission to be effective.

Amendments Proposed for Initiation:

There is an existing inconsistency in hedge height regulations between the City of Newport Beach and Lido Isle Community Association (LICA). City regulations contained within NBMC Title 20 and Title 21 establish a maximum height of 42 inches for hedges within a required front setback area. In 2001, LICA homeowners voted to amend the Association Covenants, Conditions, and Restrictions (CC&Rs) to change the hedge height limit abutting stradas (public walkways) from 30 inches to 60 inches. This change has created confusion for Lido Isle residents. The Board of Directors for LICA has formally requested that the City amend its regulations to raise front yard hedge height maximums on Lido Isle from 42 inches to 60 inches, consistent with their CC&Rs (Attachment B). After a review of Title 20 and Title 21, staff believes code sections listed below will need to be amended to accommodate the request.

- 20.30.040 and 21.30.040 Fences Hedges and Walls
- 20.80.010 Area Maps (to identify Lido Isle)

The NBMC sections identified above are anticipated to be the extent of the proposed amendments; however, as staff examines these sections within the context of their desired code changes and input is provided from residents and others, additional changes to related sections not listed may be necessary.

ENVIRONMENTAL REVIEW:

The initiation of zoning and LCP amendments are exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15262 (Feasibility and Planning Studies) of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, because it has no potential to have a significant effect on the environment. No final action on any amendments will occur at this meeting and the initiation of the amendment does not have any legally binding effect upon future consideration of the amendments themselves. The City will conduct an environmental review prior to the consideration of approval of the amendments.

NOTICING:

The Municipal Code does not require notice for the initiation of amendments. Notice of this item appeared on the agenda for this meeting, which was posted at City Hall and on the City website. Should the City Council initiate the amendment, public notice will be provided for subsequent public hearings before the Planning Commission and the City Council as required by the Municipal Code. Additionally, notice of the LCP amendments will be sent to all persons and agencies on the Notice of the Availability mailing list.

ATTACHMENTS:

Attachment A – Resolution No. 2019-78
Attachment B – Lido Isle Community Association Letter

ATTACHMENT A

RESOLUTION NO. 2019- 78

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF NEWPORT BEACH, CALIFORNIA, INITIATING AMENDMENTS TO TITLE 20 ENTITLED "PLANNING AND ZONING" AND TITLE 21 ENTITLED "LOCAL COASTAL PROGRAM IMPLEMENTATION PLAN" OF THE CITY OF NEWPORT BEACH MUNICIPAL CODE RELATED TO HEDGE HEIGHTS IN FRONT YARD SETBACKS WITHIN LIDO ISLE (PA2019-132)

WHEREAS, Newport Beach Municipal Code ("NBMC") Section 20.66.020 provides that the City Council of the City of Newport Beach ("City Council") may initiate an amendment to the Zoning Code with or without a recommendation from the Planning Commission;

WHEREAS, City Council Policy K-1 entitled "General Plan and Local Coastal Program" requires amendments to the City of Newport Beach certified Local Coastal Program codified in NBMC Title 21 to be initiated by the City Council; and

WHEREAS, the City Council desires to amend NBMC Title 20 and Title 21 to modify regulations related to hedge heights in front yard setbacks within Lido Isle at the request of the Lido Isle Community Association ("LICA").

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

Section 1: The City Council hereby initiates amendments to NBMC Title 20 "Planning and Zoning" and Title 21 "Local Coastal Program Implementation Plan" to modify regulations relating to hedge heights in front yard setbacks within Lido Isle.

Section 2: 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 3: The recitals provided in this resolution are true and correct and are incorporated into the substantive portion of this resolution.

Section 4: The City Council finds the adoption of this resolution is exempt from environmental review under the California Environmental Quality Act ("CEQA") pursuant to Section 15262 of the CEQA Guidelines, California Code of Regulations, Title 14, Division 6, Chapter 3, because Section 15262 exempts projects involving feasibility or planning studies for possible future actions which the agency, board, or commission has not approved or adopted.

Section 5: This resolution shall take effect immediately upon its adoption by the City Council, and the City Clerk shall certify the vote adopting this resolution.

ADOPTED this 10TH day of September, 2019.

Diane B. Dixon
Mayor

ATTEST:

Leilani I. Brown
City Clerk

APPROVED AS TO FORM:
CITY ATTORNEY'S OFFICE

Aaron C. Harp
City Attorney

Attachment B

Lido Isle Community Association Letter

lido isle
community
association

701 VIA LIDO SOUD, LIDO ISLE • NEWPORT BEACH, CA 92663
TELEPHONE: (949) 673-6170 • FAX: (949) 673-6827

February 6, 2019

Jaime Murillo, Diane Dixon and Seimone Jurjis,

This letter is sent in follow-up to the meeting the Lido Isle Board of Directors had with members from the City regarding the City's front yard hedge height limit on Lido Isle. At the May 2018 meeting, the City requested Lido Isle's Board to advise whether Lido Isle would be requesting the City to increase the City's front yard hedge height limit on Lido from forty two inches to sixty inches. The City provided Lido Isle's Board with a timeframe of July 1st, 2018 to inform the City of the Board's decision whether the Board would like to move forward with the request. The Board responded to the City by requesting an extension of time to respond, which the City granted through August 1st, 2018. Owing to other matters, the Board postponed further discussion on the issue, but as you know, the 42" versus 60" distinction has caused some issues lately between residents. In 2001, the homeowners voted to amend the Association's CC&Rs to change the hedge height limit on the stradas from thirty inches to sixty inches. The 60" standard has proven to be successful for the community for over 15 years, and given that most homeowners presently have shrubs well in excess of 42", a proposal to now change the CC&Rs to reduce the strada hedge height limit is unlikely to garner sufficient homeowner approval for passage. Therefore, the Board of Directors recently decided that it would be in the best interest of the Association and its membership to formally request the City of Newport Beach to raise the City's front yard hedge height limit on Lido from forty two inches to sixty inches, as a means of effectively controlling the front yard hedge height limits without confusion. We are asking the City to please advise the Board as to their position at this time pertaining to Lido Isle's request to change the City's front yard hedge height limit on Lido to sixty inches. The Board does appreciate the City's offer to move forward at no cost to the Lido Isle Community Association per the information provided at the May 2018 meeting.

Thank you for your time and your consideration in this very important matter. We look forward to your response.

-Justin Langenberg

LICA General Manager

jlangenberg@lidoisle.org

(949) 673-6170

CITY OF

NEWPORT BEACH

City Council Staff Report

September 10, 2019
Agenda Item No. 6

TO:	HONORABLE MAYOR AND MEMBERS OF THE CITY COUNCIL
FROM:	Leilani I. Brown, City Clerk - 949-644-3005, lbrown@newportbeachca.gov
PREPARED BY:	Leilani I. Brown, City Clerk
TITLE:	Resolution No. 2019-79: Update to City Council Policy F-27 – *Policy and Procedures for City Distribution of Tickets or Passes*

ABSTRACT:

City Council Policy F-27 (*Policy and Procedures for City Distribution of Tickets or Passes*) has been amended by the Fair Political Practices Commission ("FPPC"). Therefore, City Council Policy F-27 will need to be amended to be consistent with the FPPC's regulation relative to the distribution of tickets or passes.

RECOMMENDATION:

a) Determine this action is exempt from the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(2) and 15060(c)(3) of the CEQA Guidelines because this action will not result in a physical change to the environment, directly or indirectly; and

b) Adopt Resolution No. 2019-78, *A Resolution of the City Council of the City of Newport Beach, California, Amending City Council Policy F-27 "Policy and Procedures for City Distribution of Tickets or Passes" to Include Newly Adopted Fair Political Practices Commission Rules.*

FUNDING REQUIREMENTS:

There is no fiscal impact related to this item.

DISCUSSION:

The current version of City Council Policy F-27 (*Policy and Procedures for City Distribution of Tickets or Passes*) outlines the procedure for the disposition of tickets or passes to City officials in furtherance of a government purpose. However, on May 21, 2019, the FPPC revised the rules related to the distribution of tickets and passes provided to City officials. Most importantly, the FPPC revised Title 2, Division 6, Chapter 9.5, Section 18944.1(b)(4) of the California Code of Regulations, which will require the City to modify City Council Policy F-27, to prohibit "the disproportionate use of tickets or passes by a member of the governing body, chief administrative officer of the agency, political appointee, or department head." The staff report to the FPPC mentioned that this new provision was designed to prevent abuse.

The practical effect of this change is that tickets distributed through this Policy will no longer be allocated by priority and instead utilize a "first-come first-serve" basis to adhere to the revised FPPC provisions.

ENVIRONMENTAL REVIEW:

Staff recommends the City Council find this action 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, Chapter 3, because it has no potential for resulting in physical change to the environment, directly or indirectly.

NOTICING:

The agenda item has been noticed according to the Brown Act (72 hours in advance of the meeting at which the City Council considers the item).

ATTACHMENTS:

Attachment A – Current City Council Policy F-27
Attachment B – Proposed City Council Policy F-27 (redline)
Attachment C – Resolution No. 2019-79
Attachment D – California Code of Regulations Section 18942
Attachment E – California Code of Regulations Section 18944.1

POLICY AND PROCEDURES FOR CITY DISTRIBUTION OF TICKETS OR PASSES

Background

The Newport Beach City Council, Boards, Commissions and officials are subject to certain laws and regulations pertaining to gifts. The Fair Political Practices Commission ("FPPC") enforces the provisions of the Political Reform Act contained in Government Code Section 81000 et seq., as well as the regulations contained in Title 2, California Code of Regulations, Sections 18110 et seq.

Purpose

The City strives to provide impartial and high quality services to its residents, businesses and visitors. The receipt by City officials of gifts or other items of value can be perceived as attempts to influence City operations and the City wishes to avoid any appearance of impropriety or favoritism. Additionally, however, City official attendance at public events is necessary to achieve the goals of governance, both to promote the policies of the City and to maintain close contact with the citizens and interest groups within the City. This policy outlines a fair and impartial procedure for the disposition of tickets or passes by the City in furtherance of a governmental purpose. It implements the directives of FPPC regulations and establishes procedures as required by Section 18944.1, for the acceptance and/or distribution of tickets or passes by the City. This policy also ensures that tickets or passes distributed by the City are disclosed upon the required FPPC forms.

I. DEFINITIONS

A. Unless otherwise provided herein, words and terms used in this Policy shall have the same meaning as that contained in the Political Reform Act of 1974 and the FPPC Regulations, as the same may be from time-to-time amended.

B. "Beneficial use for official City business" means a use that will further a legitimate City purpose and assist the City in carrying out its mission, programs or goals. Beneficial uses include those governmental purposes set forth in Section II, Policy Pertaining to Tickets and Passes, below. Where not specifically listed, beneficial uses are to be determined on a case-by-case basis.

C. "City Manager" means the City Manager or his/her designee.

D. "City Official" means any City elected official, appointed official, or person designated in the City's Conflict of Interest Code.

E. "Gift" means anything of value, including meals, for which the recipient has not provided equal or greater value in return. A gift includes a rebate or discount in the price of anything unless the rebate or discount is made in the regular course of business to members of the public. A gift does not include de minimis gifts of food or incidental items, such as snacks, pens, etc., so long as the cumulative value of such gift does not exceed $50 in a calendar year from any one source. A gift does not include a ticket or pass subject to Section II, Policy Pertaining to Tickets or Passes, as set forth below.

F. "In the course of official City duties" means pursuant to a person's City job responsibilities, or because of a person's City position.

G. "Ticket or pass" is defined as the means for admission to a facility, event, show or performance for an entertainment, amusement, recreational or similar purpose, if the ticket or pass is either gratuitously provided to the City by an outside source; purchased by the City; acquired by the City as consideration for use of a City venue; or acquired and distributed by the City in any other manner.

II. POLICY PERTAINING TO TICKETS OR PASSES

A. Public Purpose.

1. Attendance at functions within the City and functions otherwise relevant to the performance of City business that assist the City in carrying out its mission, programs or goals are reasonably necessary for accomplishing the legitimate purposes of City government. The City actively supports various philanthropic, cultural, civic, and business development organizations and programs within the City and throughout Orange County. City Official attendance at such functions support legitimate public purposes pursued by the City. Therefore, attendance at all such functions are considered to accomplish the public purposes of city governance consistent with state law and specifically with section 18944.1 of Title 2 of the California Code of Regulations.

2. Examples of legitimate public purposes accomplished by the distribution of tickets or passes pursuant to this policy include, but are not limited to, the following:

- Promotion of local and regional businesses and economic development within the City, including conventions, conferences and annual meetings
- Promotion of City-controlled or sponsored events, activities or programs;
- Promotion of community programs and resources available to City residents, including nonprofit organizations and youth programs;
- Marketing promotions highlighting the achievements of local residents and businesses;
- Promotion of marketing of private facilities available for City resident use, including charitable and nonprofit facilities;
- Promotion of public facilities available for City resident use;
- Promotion of City growth and development, including economic development and job creation opportunities;
- Promotion of City landmarks and/or community events;
- Promotion of special events in accordance with any City contract;
- Exchange programs with foreign officials and dignitaries;
- Promotion of City recognition, visibility and/or profile on a local, state, national or worldwide scale;
- Promotion of open government by City official appearances, participation and/or availability at business or community events;
- Sponsorship agreements involving private events where the City specifically seeks to enhance the City's reputation both locally and regionally by serving as hosts providing the necessary opportunities to meet and greet visitors, dignitaries, and residents;
- All written contracts where the City, as a form of consideration, has required that a certain number of tickets or passes be made available for its use
- Employment retention programs;
- Special outreach or support programs for active military, veterans, teachers, emergency services, medical personnel and other civil service occupations;
- Charitable 501(c)(3) fundraisers for the purpose of networking with other community and civic leaders or; and
- Any purpose similar to above included in any City contract.

3. If a particular event for which tickets or passes are distributed by the City does not fall under one of the above express categories, it shall be considered to fulfill the public purposes of this policy if it achieves the general policy set out in Section 1 above as determined on a case-by-case basis.

B. Distribution of Tickets or Passes by the City.

1. Where a ticket or pass is received by the City from an outside source for distribution to City Officials, the distribution of the ticket or pass shall be made consistent with this policy.

2. Tickets or passes shall be distributed under this policy at the sole discretion of the City pursuant to this policy. Tickets or passes may not under any circumstances be earmarked for distribution by any outside source.

3. A ticket or pass may only be distributed by the City under this policy if it serves a public purpose as defined above. If the ticket or pass does not serve a public purpose it shall be returned to its source or shall be given to a non-profit organization that is active within the City. The City Manager shall make the necessary determinations under this policy.

4. The City shall use the following procedure for distributing tickets or passes consistent with this policy:

   a. Once received, the tickets or passes shall be offered to the Mayor and Members of the City Council for a brief window of opportunity as determined in relation to the timing of the event.
   b. After that brief window of opportunity has lapsed, any remaining tickets or passes shall be offered to the relevant board or commission membership that are involved in the program or event being promoted during a second brief window of opportunity.
   c. Once that second brief window of opportunity has lapsed, any remaining tickets or passes shall be offered to department heads during a third brief window of opportunity.
   d. Once that third brief window of opportunity has lapsed, any remaining tickets or passes shall be offered to all city employees on a first-come first-serve basis.

e. Any tickets or passes that remain shall be returned to the source of the tickets or passes or distributed to a 501(c)(3) non-profit, charitable organization that does business within the City.

C. Responsibilities of City Manager and City Clerk.

1. The City Manager shall manage the receipt, distribution and accounting for all tickets or passes subject to this Policy.

2. Upon distribution of a ticket or pass pursuant to this Policy, the City Manager shall either complete FPPC Form 802, Tickets Provided by Agency Report, or provide sufficient information to the City Clerk so that the Clerk may complete the form.

3. No later than thirty (30) calendar days from the distribution of the ticket or pass or approval of this policy, which-ever date last occurs, the City Clerk, shall post the FPPC Form 802 on the City website.

4. The City Clerk shall maintain a completed Form 802 for not less than four (4) years, or other period as specified in any applicable FPPC Regulation.

5. The City Clerk shall cause this Policy to be posted on the City website as soon as reasonably possible after its adoption and shall see to it that the most current version of this Policy is in a prominent fashion on the City website as soon as reasonably possible.

D. Other Provisions.

1. A City official may return any ticket or pass unused to the City Manager for redistribution pursuant to this Policy.

2. Only a City Council Member and the City Manager may request distribution of a ticket or pass to a particular person and such distribution must accomplish a public purpose set forth in Section II.A. All other recipients shall be determined by the City Manager pursuant to procedures established by this Policy.

E. Restrictions.

Tickets or passes distributed to a City Official pursuant to this Policy shall not be:

1. Transferred to any other person, except to members of the official's immediate family or no more than one guest solely for their attendance at the event; or

2. Sold or exchanged for any consideration.

F. Tickets or Passes Distributed Pursuant to this Policy Not Reportable on FPPC Form 700.

If a ticket or pass is distributed pursuant to this Policy, it shall not be considered a gift to the recipient and shall not be reportable as a gift on FPPC Form 700.

History

Adopted A-8 – 03-09-1970 (Comp Balboa Bay Club Cards)
Reaffirmed A-8 – 02-14-1972
Amended A-8 – 12-10-1973
Amended A-8 – 11-11-1974
Amended A-8 – 02-23-1981
Adopted F-27 – 06-23-2009 (unknown when A-8 no longer in use)
Amended F-27 – 05-12-2015

ATTACHMENT B

POLICY AND PROCEDURES FOR CITY DISTRIBUTION OF TICKETS OR PASSES

Background

The Newport Beach City Council, Boards, Commissions and officials are subject to certain laws and regulations pertaining to gifts. The Fair Political Practices Commission ("FPPC") enforces the provisions of the Political Reform Act contained in Government Code Section 81000 et seq., as well as the regulations contained in Title 2, California Code of Regulations, Sections 18110 et seq.

Purpose

The City strives to provide impartial and high quality services to its residents, businesses and visitors. The receipt by City officials of gifts or other items of value can be perceived as attempts to influence City operations and the City wishes to avoid any appearance of impropriety or favoritism. Additionally, however, City official attendance at public events is necessary to achieve the goals of governance, both to promote the policies of the City and to maintain close contact with the citizens and interest groups within the City. This Ppolicy outlines a fair and impartial procedure for the disposition of tickets or passes by the City in furtherance of a governmental purpose. It implements the directives of FPPC regulations and establishes procedures as required by Title 2, Division 6, Chapter 9.5, Section 18944.1 of the California Code of Regulations, for the acceptance and~~/or~~ distribution of tickets or passes by the City. This Ppolicy also ensures that tickets or passes distributed by the City are disclosed upon the required FPPC forms.

I. DEFINITIONS

A. Unless otherwise provided herein, words and terms used in this Policy shall have the same meaning as that contained in the Political Reform Act of 1974 and the FPPC Regulations, as the same may be from time-to-time amended.

B. "Beneficial use for official City business" means a use that will further a legitimate City purpose and assist the City in carrying out its mission, programs or goals. Beneficial uses include those governmental purposes set forth in Section II, Policy Pertaining to Tickets and Passes, below. Where not specifically listed, beneficial uses are to be determined on a case-by-case basis.

C. "City Manager" means the City Manager or his/her designee.

D. "City Official" means any City elected official, appointed official, or person designated in the City's Conflict of Interest Code.

E. "Gift" means anything of value, including meals, for which the recipient has not provided equal or greater value in return. A gift includes a rebate or discount in the price of anything unless the rebate or discount is made in the regular course of business to members of the public. A gift does not include de minimis gifts of food or incidental items, such as snacks, pens, etc., so long as the cumulative value of such gift does not exceed $50 in a calendar year from any one source. A gift does not include a ticket or pass subject to Section II, Policy Pertaining to Tickets or Passes, as set forth below.

F. "In the course of official City duties" means pursuant to a person's City job responsibilities, or because of a person's City position.

~~F.~~G. "Pass" means a ticket that provides repeated access, entry or admission to a facility or series of events and for which similar passes are sold to the public.

~~G.~~H. "Ticket~~ or pass~~" ~~is defined~~means anything that provides access, entry, or admission to a specific future event or function and for which similar tickets are sold to the public to view, listen to, or otherwise take advantage of the attraction or activity for which the ticket is sold and includes any benefits the ticket provides ~~as the means for admission to a facility, event, show or performance for an entertainment, amusement, recreational or similar purpose, if the ticket or pass is either gratuitously provided to the City by an outside source or; purchased by the City; acquired by the City as consideration for use of a City venue; or acquired and distributed by the City in any other manner~~.

II. POLICY PERTAINING TO TICKETS OR PASSES

A. Public Purpose.

1. Attendance at functions within the City and functions otherwise relevant to the performance of City business that assist the City in carrying out its mission, programs or goals are reasonably necessary for accomplishing the legitimate purposes of City government. The City actively supports various philanthropic, cultural, civic, and business development organizations and programs within the City and throughout Orange County. City Official attendance at such functions support legitimate

public purposes pursued by the City. Therefore, attendance at all such functions are considered to accomplish the public purposes of city governance consistent with state law and specifically Title 2, Division 6, Chapter 9.5, ~~with~~ Ssection 18944.1 ~~of Title 2~~ of the California Code of Regulations.

2. Examples of legitimate public purposes accomplished by the distribution of tickets or passes pursuant to this P~~p~~olicy include, but are not limited to, the following:

- Promotion of local and regional businesses and economic development within the City, including conventions, conferences and annual meetings;
- Promotion of City-controlled or sponsored events, activities or programs;
- Promotion of community programs and resources available to City residents, including nonprofit organizations and youth programs;
- Marketing promotions highlighting the achievements of local residents and businesses;
- Promotion of marketing of private facilities available for City resident use, including charitable and nonprofit facilities;
- Promotion of public facilities available for City resident use;
- Promotion of City growth and development, including economic development and job creation opportunities;
- Promotion of City landmarks and/or community events;
- Promotion of special events in accordance with any City contract;
- Exchange programs with foreign officials and dignitaries;
- Promotion of City recognition, visibility and/or profile on a local, state, national or worldwide scale;
- Promotion of open government by City official appearances, participation and/or availability at business or community events;
- Sponsorship agreements involving private events where the City specifically seeks to enhance the City's reputation both locally and regionally by serving as hosts providing the necessary opportunities to meet and greet visitors, dignitaries, and residents;
- All written contracts where the City, as a form of consideration, has required that a certain number of tickets or passes be made available for its use;
- Employment retention programs;

- Special outreach or support programs for active military, veterans, teachers, emergency services, medical personnel and other civil service occupations;
- Charitable 501(c)(3) fundraisers for the purpose of networking with other community and civic leaders or; and
- Any purpose similar to above included in any City contract.

3. If a particular event for which tickets or passes are distributed by the City does not fall under one of the above express categories, it shall be considered to fulfill the public purposes of this P~~p~~olicy if it achieves the general policy set out in Section 1 above as determined on a case-by-case basis.

B. Distribution of Tickets or Passes by the City.

1. Where a ticket or pass is received by the City from an outside source for distribution to City Officials, the distribution of the ticket or pass shall be made consistent with this P~~p~~olicy.

2. Tickets or passes shall be distributed under this P~~p~~olicy at the sole discretion of the City pursuant to this P~~p~~olicy. Tickets or passes distributed under this Policy~~may not under any circumstances be~~ shall not be earmarked for distribution to a City Official or person by any outside source.

3. A ticket or pass may only be distributed by the City under this P~~p~~olicy if it serves a public purpose as defined above. If the ticket or pass does not serve a public purpose it shall be returned to its source or shall be given to an active 501(c)(3) non-profit, charitable organization that does business~~is active~~ within the City. The City Manager shall make the necessary determinations under this P~~p~~olicy.

~~4. The City such tickets or passes consistent with this policy:~~

~~5.~~

4. Except as provided in Section II, D2, of this policy, ~~O~~once received, ~~the~~ tickets distributed pursuant to this policy shall be distributed by the City Manager on a first-come first-serve basis, in a manner that is consistent with this Policy and with the restrictions set forth herein.

~~6.~~5. Any tickets or passes that are not distributed pursuant to this Policy shall be returned to the source of the tickets or passes or distributed to a 501(c)(3) non-profit, charitable organization that does business within the City.~~Mayor and Members of the City Council for a brief window of opportunity as determined in relation to the timing of the event.~~

~~a. After that brief window of opportunity has lapsed, any remaining tickets or passes shall be offered to the relevant board or commission membership that are involved in the program or event being promoted during a second brief window of opportunity.~~

~~b. Once that second brief window of opportunity has lapsed, any remaining tickets or passes shall be offered to department heads during a third brief window of opportunity.~~

~~c. Once that third brief window of opportunity has lapsed, any remaining tickets or passes shall be offered to all city employees on a first-come first-serve basis.~~

C. Responsibilities of City Manager and City Clerk.

1. The City Manager shall manage the receipt, distribution and accounting for all tickets or passes subject to this Policy.

2. Upon distribution of a ticket or pass pursuant to this Policy, the City Manager shall either complete FPPC Form 802, Tickets Provided by Agency Report, or provide sufficient information to the City Clerk so that the Clerk may complete the form.

3. No later than thirty (30) calendar days from the distribution of the ticket or pass or approval of this ~~p~~Policy, which~~-~~ever date last occurs, the City Clerk, shall post the FPPC Form 802 on the City website.

4. The City Clerk shall maintain a completed Form 802 for not less than four (4) years, or other period as specified in any applicable FPPC Regulation.

5. The City Clerk shall cause this Policy to be posted on the City website as soon as reasonably possible after its adoption and shall see to it that the most current version of this Policy is in a prominent fashion on the City website as soon as reasonably possible.

D. Other Provisions.

1. A City Oofficial may return any ticket or pass unused to the City Manager for redistribution pursuant to this Policy.

2. Only a City Council Member and the City Manager may request distribution of a ticket or pass to a particular person and such distribution must accomplish a public purpose set forth in Section II(.A). All other recipients shall be determined by the City Manager pursuant to procedures established by this Policy.

E. Restrictions.

Tickets or passes distributed to a City Official pursuant to this Policy shall not be:

1. Transferred to any other person, except to members of the official's immediate family or no more than one guest solely for their attendance at the event; or

2. Sold or exchanged for any consideration;. or

3. Disproportionately used by a member of the City Council, political appointee, department head, or the City Manager.

F. Tickets or Passes Distributed Pursuant to this Policy Not Reportable on FPPC Form 700.

If a ticket or pass is distributed pursuant to this Policy, it shall not be considered a gift to the recipient and shall not be reportable as a gift on FPPC Form 700.

G. Tickets or Passes Not Distributed Pursuant to this Policy include, but are not limited to:

1. An admission identified in California Code of Regulations, Title 2, Division 6, Chapter 9.5, Section 18942(a)(13) relating to a City Official performing a ceremonial role;Ceremonial Events where a City Official has been invited to attend in a special honor.

2. A ticket or pass that qualifies as taxable income to the City Official; or

3. If the City Official reimburses the City for the ticket or pass within thirty (30) days of receipt of the ticket or pass.

~~1.~~

History

Adopted A-8 – 03-09-1970 (Comp Balboa Bay Club Cards)
Reaffirmed A-8 – 02-14-1972
Amended A-8 – 12-10-1973
Amended A-8 – 11-11-1974
Amended A-8 – 02-23-1981
Adopted F-27 – 06-23-2009 (unknown when A-8 no longer in use)
Amended F-27 – 05-12-2015
Amended F-27 – 09-10-2019

RESOLUTION NO. 2019-79

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF NEWPORT BEACH, CALIFORNIA, AMENDING CITY COUNCIL POLICY F-27 "POLICY AND PROCEDURES FOR CITY DISTRIBUTION OF TICKETS OR PASSES" TO INCLUDE NEWLY ADOPTED FAIR POLITICAL PRACTICES COMMISSION RULES

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

WHEREAS, Council Policy F-27 outlines a fair and impartial procedure for the disposition of tickets or passes by the City in furtherance of a governmental purpose, and implements the directives of the Fair Political Practices Commission ("FPPC") regulations;

WHEREAS, on May 21, 2019, the FPPC adopted revisions to the California Code of Regulations related to the distribution of tickets and passes provided to the City; and

WHEREAS, the City Council desires to amend City Council Policy F-27 to be consistent with the newly amended regulations adopted by the FPPC.

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

Section 1: The City Council hereby amends City Council Policy F-27 as provided in Exhibit 1, attached hereto and incorporated by reference.

Section 2: All prior versions of the City Council Policy F-27 that are in conflict with the revisions adopted by this resolution are hereby repealed.

Section 3: 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 4: The recitals provided in this resolution are true and correct and are incorporated into the substantive portion of this resolution.

Section 5: Except as expressly modified in this resolution, all other City Council Policies, sections, subsections, terms, clauses and phrases set forth in the Council Policy Manual shall remain unchanged and shall be in full force and effect.

Section 6: The City Council find the adoption of this resolution and the amendment of Council Policy F-27 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 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 10th day of September 2019.

Diane B. Dixon
Mayor

ATTEST:

Leilani I. Brown
City Clerk

APPROVED AS TO FORM:
CITY ATTORNEY'S OFFICE

Aaron C. Harp
City Attorney

Attachment: Exhibit 1 - Revised City Council Policy F-27

POLICY AND PROCEDURES FOR CITY DISTRIBUTION OF TICKETS OR PASSES

Background

The Newport Beach City Council, Boards, Commissions and officials are subject to certain laws and regulations pertaining to gifts. The Fair Political Practices Commission ("FPPC") enforces the provisions of the Political Reform Act contained in Government Code Section 81000 et seq., as well as the regulations contained in Title 2, California Code of Regulations, Sections 18110 et seq.

Purpose

The City strives to provide impartial and high quality services to its residents, businesses and visitors. The receipt by City officials of gifts or other items of value can be perceived as attempts to influence City operations and the City wishes to avoid any appearance of impropriety or favoritism. Additionally, however, City official attendance at public events is necessary to achieve the goals of governance, both to promote the policies of the City and to maintain close contact with the citizens and interest groups within the City. This Policy outlines a fair and impartial procedure for the disposition of tickets or passes by the City in furtherance of a governmental purpose. It implements the directives of FPPC regulations and establishes procedures as required by Title 2, Division 6, Chapter 9.5, Section 18944.1 of the California Code of Regulations, for the acceptance and distribution of tickets or passes by the City. This Policy also ensures that tickets or passes distributed by the City are disclosed upon the required FPPC forms.

I. DEFINITIONS

A. Unless otherwise provided herein, words and terms used in this Policy shall have the same meaning as that contained in the Political Reform Act of 1974 and the FPPC Regulations, as the same may be from time-to-time amended.

B. "Beneficial use for official City business" means a use that will further a legitimate City purpose and assist the City in carrying out its mission, programs or goals. Beneficial uses include those governmental purposes set forth in Section II, Policy Pertaining to Tickets and Passes, below. Where not specifically listed, beneficial uses are to be determined on a case-by-case basis.

C. "City Manager" means the City Manager or his/her designee.

D. "City Official" means any City elected official, appointed official, or person designated in the City's Conflict of Interest Code.

E. "Gift" means anything of value, including meals, for which the recipient has not provided equal or greater value in return. A gift includes a rebate or discount in the price of anything unless the rebate or discount is made in the regular course of business to members of the public. A gift does not include de minimis gifts of food or incidental items, such as snacks, pens, etc., so long as the cumulative value of such gift does not exceed $50 in a calendar year from any one source. A gift does not include a ticket or pass subject to Section II, Policy Pertaining to Tickets or Passes, as set forth below.

F. "In the course of official City duties" means pursuant to a person's City job responsibilities, or because of a person's City position.

G. "Pass" means a ticket that provides repeated access, entry or admission to a facility or series of events and for which similar passes are sold to the public.

H. "Ticket" means anything that provides access, entry, or admission to a specific future event or function and for which similar tickets are sold to the public to view, listen to, or otherwise take advantage of the attraction or activity for which the ticket is sold and includes any benefits the ticket provides.

II. POLICY PERTAINING TO TICKETS OR PASSES

A. Public Purpose.

1. Attendance at functions within the City and functions otherwise relevant to the performance of City business that assist the City in carrying out its mission, programs or goals are reasonably necessary for accomplishing the legitimate purposes of City government. The City actively supports various philanthropic, cultural, civic, and business development organizations and programs within the City and throughout Orange County. City Official attendance at such functions support legitimate public purposes pursued by the City. Therefore, attendance at all such functions are considered to accomplish the public purposes of city governance consistent with state law and specifically Title 2, Division 6, Chapter 9.5, Section 18944.1 of the California Code of Regulations.

2. Examples of legitimate public purposes accomplished by the distribution of tickets or passes pursuant to this Policy include, but are not limited to, the following:

- Promotion of local and regional businesses and economic development within the City, including conventions, conferences and annual meetings;
- Promotion of City-controlled or sponsored events, activities or programs;
- Promotion of community programs and resources available to City residents, including nonprofit organizations and youth programs;
- Marketing promotions highlighting the achievements of local residents and businesses;
- Promotion of marketing of private facilities available for City resident use, including charitable and nonprofit facilities;
- Promotion of public facilities available for City resident use;
- Promotion of City growth and development, including economic development and job creation opportunities;
- Promotion of City landmarks and/or community events;
- Promotion of special events in accordance with any City contract;
- Exchange programs with foreign officials and dignitaries;
- Promotion of City recognition, visibility and/or profile on a local, state, national or worldwide scale;
- Promotion of open government by City official appearances, participation and/or availability at business or community events;
- Sponsorship agreements involving private events where the City specifically seeks to enhance the City's reputation both locally and regionally by serving as hosts providing the necessary opportunities to meet and greet visitors, dignitaries, and residents;
- All written contracts where the City, as a form of consideration, has required that a certain number of tickets or passes be made available for its use;
- Employment retention programs;
- Special outreach or support programs for active military, veterans, teachers, emergency services, medical personnel and other civil service occupations;
- Charitable 501(c)(3) fundraisers for the purpose of networking with other community and civic leaders or; and
- Any purpose similar to above included in any City contract.

3. If a particular event for which tickets or passes are distributed by the City does not fall under one of the above express categories, it shall be considered to fulfill the public purposes of this Policy if it achieves the general policy set out in Section 1 above as determined on a case-by-case basis.

B. Distribution of Tickets or Passes by the City.

1. Where a ticket or pass is received by the City from an outside source for distribution to City Officials, the distribution of the ticket or pass shall be made consistent with this Policy.

2. Tickets or passes shall be distributed under this Policy at the sole discretion of the City pursuant to this Policy. Tickets or passes distributed under this Policy shall not be earmarked for distribution to a City Official or person by any outside source.

3. A ticket or pass may only be distributed by the City under this Policy if it serves a public purpose as defined above. If the ticket or pass does not serve a public purpose it shall be returned to its source or shall be given to an active 501(c)(3) non-profit, charitable organization that does business within the City. The City Manager shall make the necessary determinations under this Policy.

4. Except as provided in Section II, D2, of this Policy, once received, tickets distributed pursuant to this policy shall be distributed by the City Manager on a first-come first-serve basis, in a manner that is consistent with this Policy and with the restrictions set forth herein.

5. Any tickets or passes that are not distributed pursuant to this Policy shall be returned to the source of the tickets or passes or distributed to a 501(c)(3) non-profit, charitable organization that does business within the City.

C. Responsibilities of City Manager and City Clerk.

1. The City Manager shall manage the receipt, distribution and accounting for all tickets or passes subject to this Policy.

2. Upon distribution of a ticket or pass pursuant to this Policy, the City Manager shall either complete FPPC Form 802, Tickets Provided by Agency Report, or provide sufficient information to the City Clerk so that the Clerk may complete the form.

3. No later than thirty (30) calendar days from the distribution of the ticket or pass or approval of this Policy, whichever date last occurs, the City Clerk, shall post the FPPC Form 802 on the City website.

4. The City Clerk shall maintain a completed Form 802 for not less than four (4) years, or other period as specified in any applicable FPPC Regulation.

5. The City Clerk shall cause this Policy to be posted on the City website as soon as reasonably possible after its adoption and shall see to it that the most current version of this Policy is in a prominent fashion on the City website as soon as reasonably possible.

D. Other Provisions.

1. A City Official may return any ticket or pass unused to the City Manager for redistribution pursuant to this Policy.

2. Only a City Council Member and the City Manager may request distribution of a ticket or pass to a particular person and such distribution must accomplish a public purpose set forth in Section II(A). All other recipients shall be determined by the City Manager pursuant to procedures established by this Policy.

E. Restrictions.

Tickets or passes distributed to a City Official pursuant to this Policy shall not be:

1. Transferred to any other person, except to members of the official's immediate family or no more than one guest solely for their attendance at the event;

2. Sold or exchanged for any consideration; or

3. Disproportionately used by a member of the City Council, political appointee, department head, or the City Manager.

F. Tickets or Passes Distributed Pursuant to this Policy Not Reportable on FPPC Form 700.

If a ticket or pass is distributed pursuant to this Policy, it shall not be considered a gift to the recipient and shall not be reportable as a gift on FPPC Form 700.

G. Tickets or Passes Not Distributed Pursuant to this Policy include, but are not limited to:

1. An admission identified in California Code of Regulations, Title 2, Division 6, Chapter 9.5, Section 18942(a)(13) relating to a City Official performing a ceremonial role;

2. A ticket or pass that qualifies as taxable income to the City Official; or

3. If the City Official reimburses the City for the ticket or pass within thirty (30) days of receipt of the ticket or pass.

History

Adopted A-8 - 03-09-1970 (Comp Balboa Bay Club Cards)
Reaffirmed A-8 - 02-14-1972
Amended A-8 - 12-10-1973
Amended A-8 - 11-11-1974
Amended A-8 - 02-23-1981
Adopted F-27 - 06-23-2009 (unknown when A-8 no longer in use)
Amended F-27 - 05-12-2015
Amended F-27 - 09-10-2019

(Regulations of the Fair Political Practices Commission, Title 2, Division 6, California Code of Regulations.)

§ 18942. Exceptions to Gift and Exceptions to Gift Limits.

(a) For purposes of Sections 82028, 82030, and the gift regulations, except as otherwise indicated, the following payments that otherwise meet the definition of gift as provided in Section 82028, subdivision (a) are neither gifts nor income:

(1) Informational material as defined by Regulation 18942.1. (Section 82028(b)(1).)

(2) A payment that is not used and that, pursuant to Regulation 18941 is returned, donated, or for which reimbursement is paid. (Section 82028(b)(2).)

(3) A payment from: the official's spouse or former spouse; child or step-child; parent; grandparent; grandchild; brother; sister; current or former parent-in-law, brother-in-law, or sister-in-law; nephew; niece; aunt or uncle; including grand nephew, grand niece, grand aunt, or grand uncle, or first cousin including first cousin once removed or the spouse, or former spouse, of any such person other than a former in-law, unless the donor is acting as an agent or intermediary for any person not identified in this paragraph. (Section 82028(b)(3).)

(4) A campaign contribution required to be reported under Chapter 4 of the Act (commencing with Section 84100). (Section 82028(b)(4).)

(5) Any devise or inheritance. (Section 82028(b)(5).)

(6) A personalized plaque or trophy valued at less than $250. (Section 82028(b)(6).)

(7)(A) The cost of home hospitality, as defined in Regulation 18942.2, provided to an official by an individual in the individual's home when the individual is present, unless one of the following provisions applies:

(i) Any part of the cost of the hospitality provided by the host is paid directly or reimbursed by another person.

(ii) Any person deducts any part of the cost of such hospitality as a business expense on any government tax return.

(iii) There is an understanding between the individual extending the hospitality and another person that any amount of compensation the individual receives from that person includes a portion to be utilized to provide gifts of hospitality in the individual's home.

(B) In determining the applicability of subparagraph (A), the following apply:

(i) The cost of providing hospitality does not include any part of the value or rental cost of the home nor does it include any depreciation value on the home where the hospitality is extended.

(ii) An official may presume that the cost of home hospitality is paid by the host unless the host discloses to the official, or it is clear from the surrounding circumstances at the time the hospitality is provided, that a person, other than the host, paid the cost of the hospitality.

(8)(A) Benefits commonly exchanged between an official and an individual who is not a lobbyist who is registered to lobby the official's agency, on a holiday, birthday, or other occasions, including reciprocal exchanges as identified in subparagraph (B) below where benefits are commonly exchanged, to the extent that the value of the benefits exchanged is not substantially disproportionate and includes food, entertainment, and nominal benefits provided to guests at an event, by an honoree or another individual, other than a lobbyist, hosting the event.

(B) Reciprocal Exchanges made in a social relationship between an official and another individual, who is not a lobbyist who is registered to lobby the official's agency, with whom the official participates in repeated social events or activities such as lunches, dinners, rounds of

golf, attendance at entertainment or sporting events, where the parties typically rotate payments on a continuing basis so that, over time, each party pays for approximately his or her share of the costs of the continuing activities, so long as the total value of payments received by the official within the calendar year is not substantially disproportionate to the amount paid by the official. If the official receives a disproportionate amount relative to what the official paid, the official has received a gift for the excess amount. This reciprocal exchange payment provision does not apply to any single payment that is equal to or greater than the amount specified in Regulation 18940.2.

(9) Leave credits, including vacation, sick leave, or compensatory time off, donated to the official in accordance with a bona fide catastrophic or similar emergency leave program established by the official's employer and available to all employees in the same job classification or position except for donations of cash.

(10) Payments received under a government agency program or a program established by a bona fide charitable organization exempt from taxation under Section 501(c)(3) of the Internal Revenue Code designed to provide disaster relief or food, shelter, or similar assistance to qualified recipients if the payments are available to members of the public without regard to official status.

(11) Admission, where paid admission is required, food, and nominal items provided as part of the paid admission to those attending, to an official where the official makes a speech (as defined in Regulation 18950 (b)(2)) is not a “payment” as defined in Section 82044 so long as the admission is provided by the person who organizes the event. For purpose of this subdivision, nominal means an insignificant item typically purchased in large volume and

provided for free as a means of advertisement at events, such as a pen, pencil, mouse pad, rubber duck, stress ball, note pad, or similar item.

(12) Payments for campaign activities as specified in Regulation 18950.3.

(13) A ticket provided to an official and one guest of the official for his or her admission to a facility, event, show, or performance for an entertainment, amusement, recreational, or similar purpose at which the official performs a ceremonial role on behalf of his or her agency, as defined in Regulation 18942.3, so long as the official's agency complies with the posting provisions set forth in Regulation 18944.1, subdivision (f). Any official who attends the event as part of his or her job duties to assist the official who is performing the ceremonial role has not received a gift or income by attending the event.

(14) A prize or award received in a manner not related to the official's status in a bona fide contest, competition, or game of chance. A prize or award that is not reported as a gift shall be reported as income unless the prize or award is received as a winning from the California State Lottery.

(15) Benefits received as a guest attending a wedding or civil union so long as the benefits are substantially the same as the benefits received by the other guests attending the event.

(16) Bereavement offerings typically provided in memory of and concurrent with the passing of a spouse, parent, child, or sibling or other relative of the official.

(17) Acts of Neighborliness. A service performed, such as a loan of an item, an occasional needed ride, personal assistance in making a repair, bringing in the mail or feeding the cat while the official is away, and other similar acts of ordinary assistance consistent with

polite behavior in a civilized society that would not normally be part of an economic transaction between like participants under similar circumstances.

(18)(A) Bona Fide Date or Dating Relationship. Personal benefits commonly exchanged between people on a date or in a dating relationship, unless the individual providing the benefit to the official is listed under (D)(i-iii) below. If the benefit is from an individual listed under (D)(i-iii) the benefit is a gift that is not reportable or subject to limits but the aggregate value is subject to the Act's conflict of interest provisions if the value meets the amount specified in Regulation 18940.2.

(B) Acts of Human Compassion. Payments provided to an official, or an official's family member, by an individual to offset family medical or living expenses that the official can no longer meet without private assistance because of an accident, illness, employment loss, death in the family, or other unexpected calamity; or to defray expenses associated with humanitarian efforts such as the adoption of an orphaned child, so long as the source of the donation is an individual who has a prior social relationship with the official of the type where it would be common to provide such assistance (such as a relative, long-term friend, neighbor, co-worker or former co-worker, member of the same local religious or other similar organization, etc.), or the payment is made without regard to official status under other circumstances in which it would be common to receive community outreach, unless the individual providing the benefit to the official is listed under (D)(i-iii) below.

(C) A payment provided to an official by an individual with whom the official has a long term, close personal friendship unrelated to the official's position with the agency, unless the individual providing the benefit to the official is listed under (D)(i-iii) below.

(D) The limitations placed on the exceptions contained within this paragraph (18) apply to the following persons:

(i) A lobbyist, lobbying firm, lobbyist employer, or other person required to file reports under Chapter 6 (commencing with Section 86100) of the Act and who is registered to lobby the official's agency.

(ii) A person who has, or may reasonably foreseeably have, a contract, license, permit, or other entitlement for use pending before the official's agency, and for 12 months following the date a contract is signed or a final decision is rendered in the proceeding, if the official makes or participates in making a governmental decision, as defined in the Act's conflict of interest regulations (Regulation 18702 et seq.) regarding the contract, license, permit, or other entitlement for use.

(iii) A person, or an agent of a person, involved in a licensing or enforcement proceeding before a regulatory agency that employs the official and in which the official may reasonably foreseeably participate, or has participated, within 12 months of the time the gift is made.

(19) Any other payment not identified above, that would otherwise meet the definition of gift, where the payment is made by an individual who is not a lobbyist registered to lobby the official's agency, where it is clear that the gift was made because of an existing personal or business relationship unrelated to the official's position and there is no evidence whatsoever at the time the gift is made that the official makes or participates in the type of governmental decisions that may have a reasonably foreseeable material financial effect on the individual who would otherwise be the source of the gift.

(b) The following gifts are exempt from the limitations on gifts described in Section 89503:

(1) Payments for transportation, lodging, and subsistence that are exempt from limits on gifts by Section 89506.

(2) Wedding gifts.

Note: Authority cited: Section 83112, Government Code. Reference: Sections 82028, 86113, 86203, 87100, 87103, 87207, 87302 and 89503, Government Code.

HISTORY

1. New section filed 1-12-94; operative 1-12-94 pursuant to Government Code section 11346.2(d) (Register 94, No. 2).

2. Change without regulatory effect relocating section filed 11-17-94 pursuant to section 100, title 1, California Code of Regulations (Register 94, No. 46).

3. Amendment of subsections (b)-(b)(2) and amendment of Note filed 10-23-96; operative 10-23-96 pursuant to Government Code section 11343.4(d) (Register 96, No. 43).

4. New subsections (a)(9) and (a)(10), subsection renumbering and amendment of subsection (b)(2) filed 4-15-98; operative 4-15-98 pursuant to 2CCR section 18312(e) (Register 98, No. 16).

5. Amendment filed 5-25-2006; operative 6-24-2006. Submitted to OAL for filing pursuant to *Fair Political Practices Commission v. Office of Administrative Law*, 3 Civil C010924, California Court of Appeal, Third Appellate District, nonpublished decision, April 27, 1992 (FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking requirements and not subject to procedural or substantive review by OAL) (Register 2006, No. 21).

6. Amendment of section and Note filed 3-19-2010; operative 4-18-2010. Submitted to OAL for filing pursuant to *Fair Political Practices Commission v. Office of Administrative Law*, 3 Civil C010924, California Court of Appeal, Third Appellate District, nonpublished decision, April 27, 1992 (FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking

requirements and not subject to procedural or substantive review by OAL) (Register 2010, No. 12).

7. Amendment of subsection (a)(6) and new subsection (a)(13) filed 9-27-2010; operative 10-27-2010. Submitted to OAL for filing pursuant to *Fair Political Practices Commission v. Office of Administrative Law*, 3 Civil C010924, California Court of Appeal, Third Appellate District, nonpublished decision, April 27, 1992 (FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking requirements) (Register 2010, No. 40).

8. Amendment filed 1-23-2012. Pursuant to California Code of Regulations, title 2, section 18313(e), FPPC has designated an effective date of 1-1-2012. Submitted to OAL for filing pursuant to *Fair Political Practices Commission v. Office of Administrative Law*, 3 Civil C010924, California Court of Appeal, Third Appellate District, nonpublished decision, April 27, 1992 (FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking requirements and not subject to procedural or substantive review by OAL) (Register 2012, No. 4).

9. New subsection (a)(11) and subsection renumbering filed 12-23-2013; operative 1-1-2014 pursuant to section 18312(e)(1)(A), title 2, California Code of Regulations. Submitted to OAL for filing pursuant to *Fair Political Practices Commission v. Office of Administrative Law*, 3 Civil C010924, California Court of Appeal, Third Appellate District, nonpublished decision, April 27, 1992 (FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking requirements and not subject to procedural or substantive review by OAL) (Register 2013, No. 52).

10. Change without regulatory effect amending subsection (a)(18)(D) filed 11-24-2014; operative 11-24-2014 pursuant to section 18312(e)(1)(A), title 2, California Code of Regulations.

Submitted to OAL for filing and printing pursuant to *Fair Political Practices Commission v. Office of Administrative Law*, 3 Civil C010924, California Court of Appeal, Third Appellate District, nonpublished decision, April 27, 1992 (FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking requirements and not subject to procedural or substantive review by OAL) (Register 2014, No. 48).

11. Amendment of subsection (a)(13) filed 9-15-2016; operative 10-15-2016. Submitted to OAL for filing pursuant to *Fair Political Practices Commission v. Office of Administrative Law*, 3 Civil C010924, California Court of Appeal, Third Appellate District, nonpublished decision, April 27, 1992 (FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking requirements and not subject to procedural or substantive review by OAL) (Register 2016, No. 38).

Adopt 2 Cal. Code Regs., Section 18944.1 to read:

§ 18944.1. Gifts: Agency Provided Tickets or Passes.

(a) Gift Exemption. A ticket or pass provided to an official by his or her agency and distributed and used in accordance with a policy adopted by the agency is not a gift under the Political Reform Act if all of the following criteria are met:

(1) The distribution of the ticket or pass by the agency is made in accordance with a policy adopted by the agency that incorporates all of the provisions of subdivision (b) and is maintained as a public record as required in subdivision (c).

(2) The distribution of the ticket or pass is reported pursuant to subdivision (d).

(3) The ticket or pass is not earmarked by an outside source for use by a specific agency official. (4) The agency determines, in its sole discretion, who uses the ticket or pass.

(b) Agency Ticket/Pass Distribution Policy. Any distribution of a ticket or pass under this regulation to, or at the behest of, an agency official must be made pursuant to a written agency ticket distribution policy, duly adopted by the legislative or governing body of the agency or, if none, the agency head that contains, at a minimum, all of the following:

(1) A provision setting forth the public purposes of the agency for which tickets or passes may be distributed.

(2) A provision requiring that the distribution of any ticket or pass to, or at the behest of, an agency official accomplishes a stated public purpose of the agency.

(3) A provision prohibiting the transfer of any ticket received by an agency official pursuant to the distribution policy except to members of the official's immediate family or no more than one guest solely for their attendance at the event.

(4) A provision prohibiting the disproportionate use of tickets or passes by a member of the governing body, political appointee, department head, or chief administrative officer of the agency.

(c) Public Record. The policy must be maintained as a public record and is subject to inspection and copying under Section 81008. The agency must post the policy on its website within 30 days of adoption or amendment and send to the Commission by e-mail the agency's website link that displays the policy so that the Commission may post the link.

(d) Reporting. Within 45 days of distribution of a ticket or pass, the distribution must be reported on a form provided by the Commission.

(1) Except as provided in subdivision (d)(2), the information must include the following:

(A) The name of the official receiving the ticket or pass;

(B) A description of the event;

(C) The date of the event;

(D) The fair value of the ticket or pass as that term is defined in Regulation 18946, subdivision (d)(1);

(E) The number of tickets or passes provided to each person;

(F) If the ticket or pass is behested, the name of the official who behested the ticket;

(G) If the ticket was transferred to a person meeting the requirements of paragraph (b)(3), the relationship of the transferee;

(H) A description of the public purpose under which the distribution was made; and

(I) A written inspection report of findings and recommendations by the official receiving the ticket or pass if received for the oversight or inspection of facilities.

(2) If the ticket or pass is distributed to a department or other unit of the agency, and not used by a member of the governing body, political appointee, department head, or chief administrative officer of the agency, the agency may report the name of the department or other unit of the agency receiving the ticket or pass and the number of tickets or passes provided to the department or unit in lieu of reporting the name of the individual employee as otherwise required in subdivision(d)(1).

(3) The forms must be maintained as public records and are subject to inspection and copying under Section 81008(a). The agency must post the form, or a summary of the information on the form, on its website and send to the Commission by e-mail the agency's website link that displays the form so that the Commission may post the website link.

(e) Public Purpose. For purposes of subdivision (b)(2), the agency determines whether the distribution of tickets or passes serves a legitimate public purpose of the agency, consistent with state law. However, a ticket or pass distributed to an official for his or her personal use, other than a member of the governing body, political appointee, department head, or chief administrative officer of the agency, to support general employee morale, retention, or to reward public service is deemed to serve a public purpose. For purposes of this paragraph, “personal use” is limited to the official, and his or her family, or no more than one guest.

(f) Application. This regulation applies solely to a ticket or pass, as those terms are defined in Regulation 18946, to an event or function provided by an agency to an official of the agency, or at the behest of an official of that agency. The provisions of this regulation apply only to the benefits the official receives from the ticket or pass that are provided to all members of the public with the same class of ticket or pass. This regulation does not apply to the following:

(1) An admission provided to a school, college, or university district official, coach, athletic director, or employee to attend an amateur event performed by students, which are neither gifts nor income.

(2) An admission identified in Regulation 18942(a)(13) relating to an official performing a ceremonial role.

(g) Ticket or Pass Received as Income. A ticket or pass is not subject to the provisions of this regulation, and not a gift for purposes of the Act, if it is taxable income to the official.

(h) Reimbursement. A ticket or pass is not subject to the provisions of this regulation, and not a gift for purposes of the Act, if the official reimburses the agency for the ticket within 30 days of receipt.

Note: Authority cited: Section 83112, Government Code. Reference: Section 82028, Government Code.

CITY OF

NEWPORT BEACH

City Council Staff Report

September 10, 2019
Agenda Item No. 7

TO:	HONORABLE MAYOR AND MEMBERS OF THE CITY COUNCIL
FROM:	David A. Webb, Public Works Director - 949-644-3311, dawebb@newportbeachca.gov
PREPARED BY:	Micah Martin, Deputy Director of Public Works – Municipal Operations Division mmartin@newportbeachca.gov
PHONE:	949-644-3059
TITLE:	Approval and Award of On-Call Maintenance/Repair Services Agreements with Joslin Mobile, Inc. and Computer Deductions, Inc. for Vehicle Customization and Upfitting Services

ABSTRACT:

The Public Works Department and the Police Department utilize special equipment installers for the upfitting and customization of emergency lighting, communication technology, and tactical equipment as needed for Fire, Lifeguard, Police and Public Service vehicles.

Upon completion of the selection process for Request for Qualifications (RFQ) 19-06 for vehicle customization and upfitting services, staff recommends awarding on-call agreements with two contractors, Joslin Mobile, Inc. and Computer Deductions, Inc., for three-year terms and a total amount not to exceed amount of $450,000 for each contract.

RECOMMENDATION:

a) Determine this action is exempt from the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(2) and 15060(c)(3) of the CEQA Guidelines because this action will not result in a physical change to the environment, directly or indirectly; and

b) Approve On-Call Maintenance/Repair Services Agreements with Joslin Mobile, Inc. and Computer Deductions, Inc. for vehicle customization and upfitting services, each for a three-year term and a total amount not to exceed $450,000 per agreement, and authorize the Mayor and City Clerk to execute the agreements.

FUNDING REQUIREMENTS:

The current adopted budget includes sufficient funding for this purchase. It will be expensed to the Rolling Equipment account in the Public Works Department, 7529032-911016 and the Equipment N.O.C. account in the Police Department, 75304-911024.

DISCUSSION:

Each year the City budget includes the replacement of 35-50 vehicles and vessels including fire apparatus and large equipment. The majority of those units require the installation of special equipment, such as:

- Emergency lights which must comply with **CCR title 13 § 818.** Type of Warning Lamps Used on Emergency Vehicles and Special Hazard Vehicles,

- Communication technology, mobile computers, proximity sensors, video gear, auxiliary power supplies.

- Custom fasteners, brackets, and storage compartments to accommodate tactical gear, and special equipment.

In addition to the outfitting of new units, other existing units are frequently reassigned or require modifications and or replacement of equipment. Of our current City fleet, over 160 public safety units are in current operation and require ongoing maintenance and repair. These units consist of the following:

- 125 Police Units
- 7 Ambulances
- 8 Active Fire Apparatus
- 8 Reserve Apparatus
- 6 Battalion Chief Command Vehicles
- 3 Ladder Trucks
- 3 Lifeguard Command Vehicles
- 3 Lifeguard Safety Rescue Boats
- 3 Harbor Operations Boats

These upfitting, repair & modifications, and customization services may require the complete removal of exterior body panels, fenders, hoods, bumpers, and exterior lights. In addition, vehicle interiors including dashboards, center consoles, seats, body/roof panels and carpeting are removed to accommodate the routing of communication equipment, wire harnesses and the mounting of tactical equipment.

Due to the City's current replacement schedule as outlined in our F-9 Policy, much of this equipment needs replacement, upgrades, or modifications before the vehicle is due for replacement and taken out of service. Additionally, due to these expected service terms, annual software updates and program configurations are required on a regular basis.

To complete this work, the Public Works Department (Equipment Maintenance Section) and the Police Department utilize professional contract installers with the technical expertise, certification, and knowledge of various vehicles platforms and other related complexities. Contractors either come on-site and complete necessary installation services, or in some cases necessary work is performed at the contractor's facilities. The ability to utilize such services allows the Public Works equipment maintenance mechanics and Police Department fleet specialists to:

- Focus on the daily maintenance and repair of the large fleet of City owned vehicles and equipment;

- Eliminate the need to transport equipment to and from various locations;

- Provide technology updates, modifications, or repairs to emergency response vehicles while they remain in service; and

- Oversee installations, approve set up and lay out, picture and document design and schematics. Also, facilitate visits with the end user and installer to deliver a seamless integration of operator ergonomics and technologyTo identify qualified contractors to perform this work, staff prepared and issued Request for Qualifications (RFQ) 19-06 for Vehicle Customization and Upfitting Services.

Staff provided a list of City vehicles that included emergency response vehicles and public service vehicles. A scope of services was provided that included examples of the most prevalent vehicle upfitting and customization requests. Proposers were asked to elaborate upon their experience and qualifications in performing this type of vehicle work, as well as their methodology in performing this work at the location of the City's choosing. Whereas the Public Works Department prefers work to be performed on-site at the City's Corporate Yard, the Police Department prefers this work to be performed off-site at the contractor's facilities due to space limitations at the Police Department Headquarters.

The RFQ yielded six (6) responses, which were evaluated by a panel consisting of staff from the City's Public Works and Police Departments. The results of this review process can be found in the following table:

PROPOSER	TECHNICAL SCORE (*MAX 100*)	COST SCORE *(MAX 100*) (HOURLY RATE)	TOTAL SCORE (*MAX 200*)	OVERALL RANK
Joslin Mobile, Inc.	95.00	100.00 ($75.00)	195.00	1
Computer Deductions, Inc.	91.67	100.00 ($75.00)	191.67	2
IDSMP Emergency	82.33	100.00 ($75.00)	182.33	3
Hi-Standard	88.00	88.24 ($85.00)	176.24	4
Lehr	75.00	100.00 ($75.00)	175.00	5
Nationwide Fleet Installations	80.00	78.95 ($95.00)	158.95	6

The basis used for pricing comparison was the stated hourly rate from each proposer. While Computer Deductions, Inc., Joslin Mobile, Inc., ISDMP Emergency and Lehr all proposed an hourly rate of $75, ISDMP Emergency also called for travel charges of $0.59 per mile and $30 per hour and Lehr called for travel charges of $20 per hour. Computer Deductions, Inc. and Joslin Mobile, Inc. did not propose any travel charges. While these travel charges will not affect work performed at the contractor's facilities (Police Department vehicles), they make a difference for work to be performed at the City's facilities (Public Works vehicles).

Following this evaluation process, staff recommends contract awards to the two highest-rated proposers: Computer Deductions, Inc., and Joslin Mobile, Inc. These proposers earned the two highest Technical Score ratings from the panel and both offer the best hourly rate for work performed. Both companies also perform all of the installation types indicated in the RFQ, whereas some of the other proposers only focused on certain specialty areas of vehicle upfitting. The overall volume of work required by both departments dictates the retention of two contractors, each able to perform work on-site or off-site, as may be needed by the City on a project-by-project basis.

ENVIRONMENTAL REVIEW:

Staff recommends the City Council find this action 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, Chapter 3, because it has no potential for resulting in physical change to the environment, directly or indirectly.

NOTICING:

The agenda item has been noticed according to the Brown Act (72 hours in advance of the meeting at which the City Council considers the item).

ATTACHMENTS:

Attachment A – Maintenance/Repair Services Agreement with Joslin Mobile, Inc.
Attachment B – Maintenance/Repair Services Agreement with Computer Deductions, Inc.

ATTACHMENT A

ON-CALL MAINTENANCE/REPAIR SERVICES AGREEMENT WITH JOSLIN MOBILE, INC. FOR VEHICLE CUSTOMIZATION & UPFITTING SERVICES

THIS ON-CALL MAINTENANCE/REPAIR SERVICES AGREEMENT ("Agreement") is made and entered into as of this 10th day of September, 2019 ("Effective Date"), by and between the CITY OF NEWPORT BEACH, a California municipal corporation and charter city ("City"), and JOSLIN MOBILE, INC., a California corporation ("Contractor"), whose address is 11090 Holmes Ave., Jurupa Valley, CA 91752, and is made with reference to the following:

RECITALS

A. City is a municipal corporation duly organized and validly existing under the laws of the State of California with the power to carry on its business as it is now being conducted under the statutes of the State of California and the Charter of City.

B. City desires to engage Contractor to perform on-call maintenance and/or repair services for City ("Project").

C. Contractor possesses the skill, experience, ability, background, certification and knowledge to provide the maintenance and/or repair services described in this Agreement.

D. Contractor has examined the location of all proposed work, carefully reviewed and evaluated the specifications set forth by City for the Project, is familiar with all conditions relevant to the performance of services, and has committed to perform all work required for the compensation specified in this Agreement.

NOW, THEREFORE, it is mutually agreed by and between the undersigned parties as follows:

1. TERM

The term of this Agreement shall commence on the Effective Date, and shall terminate on September 9, 2022, unless terminated earlier as set forth herein.

2. SERVICES TO BE PERFORMED

2.1 Contractor shall perform the on-call services described in the Scope of Services attached hereto as Exhibit A and incorporated herein by reference ("Services" or "Work"). Upon written request from the Project Administrator as defined herein, Contractor shall provide a letter proposal for Services requested by the City (hereinafter referred to as the "Letter Proposal"). The Letter Proposal shall include the following:

2.1.1 A detailed description of the Services to be provided;

2.1.2 The position of each person to be assigned to perform the Services, and the name of the individuals to be assigned, if available;

2.1.3 The estimated number of hours and cost to complete the Services; and

2.1.4 The time needed to finish the specific project.

2.2 No Services shall be provided until the Project Administrator has provided written acceptance of the Letter Proposal. Once authorized to proceed, Contractor shall diligently perform the duties in the approved Letter Proposal.

3. TIME OF PERFORMANCE

3.1 Time is of the essence in the performance of Services under this Agreement and Contractor shall perform the Services in accordance with the schedule included in Exhibit A and the Letter Proposal. In the absence of a specific schedule, the Services shall be performed to completion in a diligent and timely manner. The failure by Contractor to strictly adhere to the schedule set forth in Exhibit A and the Letter Proposal, if any, or perform the Services in a diligent and timely manner may result in termination of this Agreement by City.

3.2 Notwithstanding the foregoing, Contractor shall not be responsible for delays due to causes beyond Contractor's reasonable control. However, in the case of any such delay in the Services to be provided for the Project, each party hereby agrees to provide notice within two (2) calendar days of the occurrence causing the delay to the other party so that all delays can be addressed.

3.3 Contractor shall submit all requests for extensions of time for performance in writing to the Project Administrator as defined herein, not later than two (2) calendar days after the start of the condition that purportedly causes a delay. The Project Administrator shall review all such requests and may grant reasonable time extensions for unforeseeable delays that are beyond Contractor's control.

3.4 For all time periods not specifically set forth herein, Contractor shall respond in the most expedient and appropriate manner under the circumstances, by fax, hand-delivery or mail.

4. COMPENSATION TO CONTRACTOR

4.1 City shall pay Contractor for the Services on a time and expense not-to-exceed basis in accordance with the provisions of this Section and the Letter Proposal and the Schedule of Billing Rates attached hereto as Exhibit B and incorporated herein by reference. Except as otherwise provided herein, no rate changes shall be made during the term of this Agreement without the prior written approval of City. Contractor's compensation for all Services performed in accordance with this Agreement, including all reimbursable items, shall not exceed **Four Hundred Fifty Thousand Dollars and 00/100 ($450,000.00)**, without prior written amendment to the Agreement.

4.2 Contractor shall submit monthly invoices to City describing the Work performed the preceding month. Contractor's bills shall include the name and/or classification of employee who performed the Work, a brief description of the Services performed and/or the specific task in the Scope of Services to which it relates, the date

the Services were performed, the number of hours spent on all Work billed on an hourly basis, and a description of any reimbursable expenditures. City shall pay Contractor no later than thirty (30) calendar days after approval of the monthly invoice by City staff.

4.3 City shall reimburse Contractor only for those costs or expenses specifically identified in Exhibit B to this Agreement and the Letter Proposal, or specifically approved in writing in advance by City.

4.4 Contractor shall not receive any compensation for Extra Work performed without the prior written authorization of City. As used herein, "Extra Work" means any Work that is determined by City to be necessary for the proper completion of the Project, but which is not included within the Scope of Services and which the parties did not reasonably anticipate would be necessary at the execution of this Agreement. Compensation for any authorized Extra Work shall be paid in accordance with Exhibit B and the Letter Proposal.

5. PROJECT MANAGER

5.1 Contractor shall designate a Project Manager, who shall coordinate all phases of the Project. This Project Manager shall be available to City at all reasonable times during the Agreement term. Contractor has designated Russell Joslin to be its Project Manager. Contractor shall not remove or reassign the Project Manager or any personnel listed in Exhibit A or assign any new or replacement personnel to the Project without the prior written consent of City. City's approval shall not be unreasonably withheld with respect to the removal or assignment of non-key personnel.

5.2 Contractor, at the sole discretion of City, shall remove from the Project any of its personnel assigned to the performance of Services upon written request of City. Contractor warrants that it will continuously furnish the necessary personnel to complete the Project on a timely basis as contemplated by this Agreement.

6. ADMINISTRATION

This Agreement will be administered by the Public Works Department. City's Fleet/Facilities Manager or designee shall be the Project Administrator and shall have the authority to act for City under this Agreement. The Project Administrator shall represent City in all matters pertaining to the Services to be rendered pursuant to this Agreement.

7. CITY'S RESPONSIBILITIES

To assist Contractor in the execution of its responsibilities under this Agreement, City agrees to provide access to and upon request of Contractor, one copy of all existing relevant information on file at City. City will provide all such materials in a timely manner so as not to cause delays in Contractor's Work schedule.

8. TYPE AND INSTALLATION OF MATERIALS/STANDARD OF CARE

8.1 Contractor shall use only the standard materials described in Exhibit A in performing Services under this Agreement. Any deviation from the materials described

in Exhibit A shall not be installed or utilized unless approved in advance and in writing by the Project Administrator.

8.2 All of the Services shall be performed by Contractor or under Contractor's supervision. Contractor represents that it possesses the personnel required to perform the Services required by this Agreement, and that it will perform all Services in a manner commensurate with community professional standards and with the ordinary degree of skill and care that would be used by other reasonably competent practitioners of the same discipline under similar circumstances. All Services shall be performed by qualified and experienced personnel who are not employed by City. By delivery of completed Work, Contractor certifies that the Work conforms to the requirements of this Agreement, all applicable federal, state and local laws and legally recognized professional standards.

8.3 Contractor represents and warrants to City that it has, shall obtain and shall keep in full force and effect during the term hereof, at its sole cost and expense, all licenses, permits, qualifications, insurance and approvals of whatsoever nature that is legally required of Contractor to practice its profession. Contractor shall maintain a City of Newport Beach business license during the term of this Agreement.

8.4 Contractor shall not be responsible for delay, nor shall Contractor be responsible for damages or be in default or deemed to be in default by reason of strikes, lockouts, accidents, acts of God, or the failure of City to furnish timely information or to approve or disapprove Contractor's Work promptly, or delay or faulty performance by City, contractors, or governmental agencies.

9. RESPONSIBILITY FOR DAMAGES OR INJURY

9.1 City and all officers, employees and representatives thereof and all persons and entities owning or otherwise in legal control of the property upon which Contractor performs the Project and/or Services shall not be responsible in any manner for any loss or damage to any of the materials or other things used or employed in performing the Project or for injury to or death of any person as a result of Contractor's performance of the Services required hereunder; or for damage to property from any cause arising from the performance of the Project and/or Services by Contractor, or its subcontractors, or its workers, or anyone employed by either of them.

9.2 Contractor shall be responsible for any liability imposed by law and for injuries to or death of any person or damage to property resulting from defects, obstructions or from any cause arising from Contractor's Work on the Project and/or Services, or the Work of any subcontractor or supplier selected by Contractor.

9.3 To the fullest extent permitted by law, Contractor shall indemnify, defend and hold harmless City, its City Council, boards and commissions, officers, agents, volunteers, employees, and any person or entity owning or otherwise in legal control of the property upon which Contractor performs the Project and/or Services contemplated by this Agreement (collectively, the "Indemnified Parties") from and against any and all claims (including, without limitation, claims for bodily injury, death or damage to property), demands, obligations, damages, actions, causes of action, suits, losses, judgments, fines, penalties, liabilities, costs and expenses (including, without limitation, attorneys'

fees, disbursements and court costs) of every kind and nature whatsoever (individually, a Claim; collectively, "Claims"), which may arise from or in any manner relate (directly or indirectly) to any breach of the terms and conditions of this Agreement, any Work performed or Services provided under this Agreement including, without limitation, defects in workmanship or materials or Contractor's presence or activities conducted on the Project (including the negligent and/or willful acts, errors and/or omissions of Contractor, its principals, officers, agents, employees, vendors, suppliers, consultants, subcontractors, anyone employed directly or indirectly by any of them or for whose acts they may be liable or any or all of them).

9.4 Notwithstanding the foregoing, nothing herein shall be construed to require Contractor to indemnify the Indemnified Parties from any Claim arising from the sole negligence or willful misconduct of the Indemnified Parties. Nothing in this indemnity shall be construed as authorizing any award of attorneys' fees in any action on or to enforce the terms of this Agreement. This indemnity shall apply to all claims and liability regardless of whether any insurance policies are applicable. The policy limits do not act as a limitation upon the amount of indemnification to be provided by Contractor.

9.5 Contractor shall perform all Work in a manner to minimize public inconvenience and possible hazard, to restore other work areas to their original condition and former usefulness as soon as possible, and to protect public and private property. Contractor shall be liable for any private or public property damaged during the performance of the Work by Contractor or its agents.

9.6 To the extent authorized by law, as much of the money due Contractor under and by virtue of the Agreement as shall be considered necessary by City may be retained by it until disposition has been made of such suits or claims for damages as aforesaid.

9.7 The rights and obligations set forth in this Section shall survive the termination of this Agreement.

10. INDEPENDENT CONTRACTOR

10.1 It is understood that City retains Contractor on an independent contractor basis and Contractor is not an agent or employee of City. The manner and means of conducting the Work are under the control of Contractor, except to the extent they are limited by statute, rule or regulation and the expressed terms of this Agreement. No civil service status or other right of employment shall accrue to Contractor or its employees. Nothing in this Agreement shall be deemed to constitute approval for Contractor or any of Contractor's employees or agents, to be the agents or employees of City. Contractor shall have the responsibility for and control over the means of performing the Work, provided that Contractor is in compliance with the terms of this Agreement. Anything in this Agreement that may appear to give City the right to direct Contractor as to the details of the performance of the Work or to exercise a measure of control over Contractor shall mean only that Contractor shall follow the desires of City with respect to the results of the Services.

10.2 Contractor agrees and acknowledges that no individual performing Services or Work pursuant to this Agreement shall: work full-time for more than six (6) months; work regular part-time service of at least an average of twenty (20) hours per week for one year or longer; work nine hundred sixty (960) hours in any fiscal year; or already be a CalPERS member.

11. COOPERATION

Contractor agrees to work closely and cooperate fully with City's designated Project Administrator and any other agencies that may have jurisdiction or interest in the Work to be performed. City agrees to cooperate with Contractor on the Project.

12. CITY POLICY

Contractor shall discuss and review all matters relating to policy and Project direction with City's Project Administrator in advance of all critical decision points in order to ensure the Project proceeds in a manner consistent with City goals and policies.

13. PROGRESS

Contractor is responsible for keeping the Project Administrator informed on a regular basis regarding the status and progress of the Project, activities performed and planned, and any meetings that have been scheduled or are desired.

14. INSURANCE

Without limiting Contractor's indemnification of City, and prior to commencement of Work, Contractor shall obtain, provide and maintain at its own expense during the term of this Agreement or for other periods as specified in this Agreement, policies of insurance of the type, amounts, terms and conditions described in the Insurance Requirements attached hereto as Exhibit D, and incorporated herein by reference.

15. PROHIBITION AGAINST ASSIGNMENTS AND TRANSFERS

Except as specifically authorized under this Agreement, the Services to be provided under this Agreement shall not be assigned, transferred contracted or subcontracted out without the prior written approval of City. Any of the following shall be construed as an assignment: The sale, assignment, transfer or other disposition of any of the issued and outstanding capital stock of Contractor, or of the interest of any general partner or joint venturer or syndicate member or cotenant if Contractor is a partnership or joint-venture or syndicate or cotenancy, which shall result in changing the control of Contractor. Control means fifty percent (50%) or more of the voting power or twenty-five percent (25%) or more of the assets of the corporation, partnership or joint-venture.

16. SUBCONTRACTING

The subcontractors authorized by City, if any, to perform Work on this Project are identified in Exhibit A and the Letter Proposal. Contractor shall be fully responsible to City for all acts and omissions of any subcontractor. Nothing in this Agreement shall create any contractual relationship between City and any subcontractor nor shall it create

any obligation on the part of City to pay or to see to the payment of any monies due to any such subcontractor other than as otherwise required by law. City is an intended beneficiary of any Work performed by the subcontractor for purposes of establishing a duty of care between the subcontractor and City. Except as specifically authorized herein, the Services to be provided under this Agreement shall not be otherwise assigned, transferred, contracted or subcontracted out without the prior written approval of City.

17. OWNERSHIP OF DOCUMENTS

Each and every report, draft, map, record, plan, document and other writing produced (hereinafter "Documents"), prepared or caused to be prepared by Contractor, its officers, employees, agents and subcontractors, in the course of implementing this Agreement, shall become the exclusive property of City, and City shall have the sole right to use such materials in its discretion without further compensation to Contractor or any other party. Contractor shall, at Contractor's expense, provide such Documents to City upon prior written request.

18. CONFIDENTIALITY

All Documents, including drafts, preliminary drawings or plans, notes and communications that result from the Services in this Agreement, shall be kept confidential unless City expressly authorizes in writing the release of information.

19. RECORDS

Contractor shall keep records and invoices in connection with the Services to be performed under this Agreement. Contractor shall maintain complete and accurate records with respect to the costs incurred under this Agreement and any Services, expenditures and disbursements charged to City, for a minimum period of three (3) years, or for any longer period required by law, from the date of final payment to Contractor under this Agreement. All such records and invoices shall be clearly identifiable. Contractor shall allow a representative of City to examine, audit and make transcripts or copies of such records and invoices during regular business hours. Contractor shall allow inspection of all Work, data, Documents, proceedings and activities related to the Agreement for a period of three (3) years from the date of final payment to Contractor under this Agreement.

20. WITHHOLDINGS

City may withhold payment to Contractor of any disputed sums until satisfaction of the dispute with respect to such payment. Such withholding shall not be deemed to constitute a failure to pay according to the terms of this Agreement. Contractor shall not discontinue Work as a result of such withholding. Contractor shall have an immediate right to appeal to the City Manager or his/her designee with respect to such disputed sums. Contractor shall be entitled to receive interest on any withheld sums at the rate of return that City earned on its investments during the time period, from the date of withholding of any amounts found to have been improperly withheld.

21. CITY'S RIGHT TO EMPLOY OTHER CONTRACTORS

City reserves the right to employ other contractors in connection with the Project.

22. CONFLICTS OF INTEREST

22.1 Contractor or its employees may be subject to the provisions of the California Political Reform Act of 1974 (the "Act") and/or Government Code §§ 1090 et seq., which (1) require such persons to disclose any financial interest that may foreseeably be materially affected by the Work performed under this Agreement, and (2) prohibit such persons from making, or participating in making, decisions that will foreseeably financially affect such interest.

22.2 If subject to the Act and/or Government Code §§ 1090 et seq., Contractor shall conform to all requirements therein. Failure to do so constitutes a material breach and is grounds for immediate termination of this Agreement by City. Contractor shall indemnify and hold harmless City for any and all claims for damages resulting from Contractor's violation of this Section.

23. NOTICES

23.1 All notices, demands, requests or approvals, including any change in mailing address, to be given under the terms of this Agreement shall be given in writing, and conclusively shall be deemed served when delivered personally, or on the third business day after the deposit thereof in the United States mail, postage prepaid, first-class mail, addressed as hereinafter provided.

23.2 All notices, demands, requests or approvals from Contractor to City shall be addressed to City at:

Attn: Fleet/Facilities Manager
Public Works Department
City of Newport Beach
100 Civic Center Drive
PO Box 1768
Newport Beach, CA 92658

23.3 All notices, demands, requests or approvals from City to Contractor shall be addressed to Contractor at:

Attn: Russell Joslin
JOSLIN MOBILE, INC.
11090 Holmes Ave.
Jurupa Valley, CA 91752

24. CLAIMS

Unless a shorter time is specified elsewhere in this Agreement, before making its final request for payment under this Agreement, Contractor shall submit to City, in writing, all claims for compensation under or arising out of this Agreement. Contractor's

acceptance of the final payment shall constitute a waiver of all claims for compensation under or arising out of this Agreement except those previously made in writing and identified by Contractor in writing as unsettled at the time of its final request for payment. Contractor and City expressly agree that in addition to any claims filing requirements set forth in the Agreement, Contractor shall be required to file any claim Contractor may have against City in strict conformance with the Government Claims Act (Government Code sections 900 *et seq.).*

25. TERMINATION

25.1 In the event that either party fails or refuses to perform any of the provisions of this Agreement at the time and in the manner required, that party shall be deemed in default in the performance of this Agreement. If such default is not cured within a period of two (2) calendar days, or if more than two (2) calendar days are reasonably required to cure the default and the defaulting party fails to give adequate assurance of due performance within two (2) calendar days after receipt of written notice of default, specifying the nature of such default and the steps necessary to cure such default, and thereafter diligently take steps to cure the default, the non-defaulting party may terminate the Agreement forthwith by giving to the defaulting party written notice thereof.

25.2 Notwithstanding the above provisions, City shall have the right, at its sole and absolute discretion and without cause, of terminating this Agreement at any time by giving no less than seven (7) calendar days' prior written notice to Contractor. In the event of termination under this Section, City shall pay Contractor for Services satisfactorily performed and costs incurred up to the effective date of termination for which Contractor has not been previously paid. On the effective date of termination, Contractor shall deliver to City all reports, Documents and other information developed or accumulated in the performance of this Agreement, whether in draft or final form.

26. LABOR

26.1 Contractor shall conform with all applicable provisions of state and federal law including, but not limited to, applicable provisions of the federal Fair Labor Standards Act ("FLSA") (29 USCA § 201, *et seq.).*

26.2 Whenever Contractor has knowledge that any actual or potential labor dispute is delaying or threatens to delay the timely performance of this Agreement, Contractor shall immediately give written notice to City, and provide all relevant information.

26.3 Contractor represents that all persons working under this Agreement are verified to be U.S. citizens or persons legally authorized to work in the United States.

26.4 To the fullest extent permitted by law, Contractor shall indemnify, defend, and hold harmless City, its City Council, boards and commissions, officers, agents, volunteers, and employees from loss or damage, including but not limited to attorneys' fees, and other costs of defense by reason of actual or alleged violations of any applicable federal, state and local labor laws or law, rules, and/or regulations. This obligation shall survive the expiration and/or termination of the Agreement.

27. STANDARD PROVISIONS

27.1 Recitals. City and Contractor acknowledge that the above Recitals are true and correct and are hereby incorporated by reference.

27.2 Compliance with all Laws. Contractor shall, at its own cost and expense, comply with all statutes, ordinances, regulations and requirements of all governmental entities, including federal, state, county or municipal, whether now in force or hereinafter enacted. In addition, all Work prepared by Contractor shall conform to applicable City, county, state and federal laws, rules, regulations and permit requirements and be subject to approval of the Project Administrator and City.

27.3 Waiver. A waiver by either party of any breach, of any term, covenant or condition contained herein shall not be deemed to be a waiver of any subsequent breach of the same or any other term, covenant or condition contained herein, whether of the same or a different character.

27.4 Integrated Contract. This Agreement represents the full and complete understanding of every kind or nature whatsoever between the parties hereto, and all preliminary negotiations and agreements of whatsoever kind or nature are merged herein. No verbal agreement or implied covenant shall be held to vary the provisions herein.

27.5 Conflicts or Inconsistencies. In the event there are any conflicts or inconsistencies between this Agreement and the Scope of Services or any other attachments attached hereto, the terms of this Agreement shall govern.

27.6 Interpretation. The terms of this Agreement shall be construed in accordance with the meaning of the language used and shall not be construed for or against either party by reason of the authorship of the Agreement or any other rule of construction which might otherwise apply.

27.7 Amendments. This Agreement may be modified or amended only by a written document executed by both Contractor and City and approved as to form by the City Attorney.

27.8 Severability. If any term or portion of this Agreement is held to be invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions of this Agreement shall continue in full force and effect.

27.9 Controlling Law and Venue. The laws of the State of California shall govern this Agreement and all matters relating to it and any action brought relating to this Agreement shall be adjudicated in a court of competent jurisdiction in the County of Orange, State of California.

27.10 Equal Opportunity Employment. Contractor represents that it is an equal opportunity employer and it shall not discriminate against any subcontractor, employee or applicant for employment because of race, religious creed, color, national origin, ancestry, physical handicap, medical condition, marital status, sex, sexual orientation, age or any other impermissible basis under law.

27.11 No Attorneys' Fees. In the event of any dispute or legal action arising under this Agreement, the prevailing party shall not be entitled to attorneys' fees.

27.12 Counterparts. This Agreement may be executed in two (2) or more counterparts, each of which shall be deemed an original and all of which together shall constitute one (1) and the same instrument.

[SIGNATURES ON NEXT PAGE]

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed on the dates written below.

APPROVED AS TO FORM:
CITY ATTORNEY'S OFFICE
Date: 8/28/2019

By: _____
For: Aaron C. Harp
City Attorney

08.28.19 dmx

ATTEST:
Date: _____

By: _____
Leilani I. Brown
City Clerk

CITY OF NEWPORT BEACH,
a California municipal corporation
Date: _____

By: _____
Diane B. Dixon
Mayor

CONTRACTOR: JOSLIN MOBILE, INC.,
a California corporation
Date: _____

By: _____
Russell Joslin
Chief Executive Officer/Secretary

[END OF SIGNATURES]

Attachments:
Exhibit A – Scope of Services
Exhibit B – Schedule of Billing Rates
Exhibit C – Warranty
Exhibit D – Insurance Requirements

EXHIBIT A
SCOPE OF SERVICES

EXHIBIT A

SCOPE OF SERVICES

Contractor shall, on an on-call basis, provide vehicle customization and upfitting services. While specific projects may vary and will be defined by letter proposal(s) to be accepted by the City, the services included in this engagement may include, but are not limited to:

- Provide equipment and labor related to general vehicle maintenance and repair, including, but not limited to: vactors, vacuum trucks, hydrovac trucks, boat vessels, utility cars and trucks, SUVs, fire trucks, engine pumpers, trailers, dump trucks, police vehicles and other emergency vehicles;
- Test and replace wiring;
- Install, maintain, repair, and/or replace uprights, beds, bed steps, mirrors, lights, mounts, monitors, railings, seats, antennas, radios, batteries, speakers, etc.;
- Install and/or remove exterior graphics and numbering;
- Install mounts and monitors;
- Diagnose and replace blowers;
- Troubleshoot and diagnose multiple issues to be repaired or replaced;
- Maintain all wiring, including timers, lights, horns, etc.;
- Remove and replace bilge pump hoses;
- Sand and buff gelcoat on boat vessels;
- Install, remove, replace and/or repair radios and other communication devices; and
- Install, remove, replace and/or repair vehicle mobile computer components.

Contractor will be required to perform services on City premises. The specific location of each vehicle or vessel requiring service shall be provided by the Project Administrator.

EXHIBIT B
SCHEDULE OF BILLING RATES

EXHIBIT B

SCHEDULE OF BILLING RATES

Contractor shall provide the vehicle customization and upfitting services described in Exhibit A in accordance with the following rate(s). While each project will vary in cost, the basis for each project shall be the Hourly Labor Rate defined below and total costs shall be outlined in a letter proposal(s) to the Project Administrator.

Description	Cost
Hourly Labor Rate	$75.00 Per Hour
Cost plus Mark-Up on Parts	5% Mark-Up

TOTAL NOT TO EXCEED: $450,000.00

EXHIBIT C
WARRANTY

EXHIBIT C

WARRANTY

Joslin Mobile, Inc. ("Contractor") will provide a lifetime warranty (i.e. for as long as Contractor is in business and working for the City of Newport Beach) on labor performed on all City vehicles and boat vessels on or off the premises at Newport Beach.

This includes a warranty on:

- City vehicles and boat vessels where any service performed were to come loose, break, malfunction or electrical short that Contractor modified or fabricated;
- Any hardware supplied by Contractor, including the hardware for sound deadening; and
- Radios supplied by Contractor shall include a factory one-year warranty period from the date of installation and no labor cost will be charged for replacement of these radios, as long as they are still under warranty at the time of replacement.

This warranty is exclusive to labor and does not cover parts or product failure on equipment provided by the City of Newport Beach.

EXHIBIT D

INSURANCE REQUIREMENTS – MAINTENANCE/REPAIR/JANITORIAL SERVICES

1. Provision of Insurance. Without limiting Contractor's indemnification of City, and prior to commencement of Work, Contractor shall obtain, provide and maintain at its own expense during the term of this Agreement, policies of insurance of the type and amounts described below and in a form satisfactory to City. Contractor agrees to provide insurance in accordance with requirements set forth here. If Contractor uses existing coverage to comply and that coverage does not meet these requirements, Contractor agrees to amend, supplement or endorse the existing coverage.

2. Acceptable Insurers. All insurance policies shall be issued by an insurance company currently authorized by the Insurance Commissioner to transact business of insurance in the State of California, with an assigned policyholders' Rating of A- (or higher) and Financial Size Category Class VII (or larger) in accordance with the latest edition of Best's Key Rating Guide, unless otherwise approved by the City's Risk Manager.

3. Coverage Requirements.

   A. Workers' Compensation Insurance. Contractor shall maintain Workers' Compensation Insurance, statutory limits, and Employer's Liability Insurance with limits of at least one million dollars ($1,000,000) each accident for bodily injury by accident and each employee for bodily injury by disease in accordance with the laws of the State of California, Section 3700 of the Labor Code.

      Contractor shall submit to City, along with the certificate of insurance, a Waiver of Subrogation endorsement in favor of City, its City Council, boards and commissions, officers, agents, volunteers, employees, and any person or entity owning or otherwise in legal control of the property upon which Contractor performs the Project and/or Services contemplated by this Agreement.

   B. General Liability Insurance. Contractor shall maintain commercial general liability insurance and, if necessary, umbrella liability insurance, with coverage at least as broad as provided by Insurance Services Office form CG 00 01, in an amount not less than one million dollars ($1,000,000) per occurrence, two million dollars ($2,000,000) general aggregate. The policy shall cover liability arising from premises, operations, products-completed operations, personal and advertising injury, and liability assumed under an insured contract (including the tort liability of another assumed in a business contract).

   C. Automobile Liability Insurance. Contractor shall maintain automobile insurance at least as broad as Insurance Services Office form CA 00 01 covering bodily injury and property damage for all activities of Contractor

arising out of or in connection with Work to be performed under this Agreement, including coverage for any owned, hired, non-owned or rented vehicles, in an amount not less than one million dollars ($1,000,000) combined single limit each accident.

4. Other Insurance Requirements. The policies are to contain, or be endorsed to contain, the following provisions:

   A. Waiver of Subrogation. All insurance coverage maintained or procured pursuant to this Agreement shall be endorsed to waive subrogation against City, its City Council, boards and commissions, officers, agents, volunteers, employees, and any person or entity owning or otherwise in legal control of the property upon which Contractor performs the Project and/or Services contemplated by this Agreement or shall specifically allow Contractor or others providing insurance evidence in compliance with these requirements to waive their right of recovery prior to a loss. Contractor hereby waives its own right of recovery against City, and shall require similar written express waivers from each of its subcontractors.

   B. Additional Insured Status. All liability policies including general liability, products and completed operations, excess liability, pollution liability, and automobile liability, if required, shall provide or be endorsed to provide that City, its City Council, boards and commissions, officers, agents, volunteers, employees, and any person or entity owning or otherwise in legal control of the property upon which Contractor performs the Project and/or Services contemplated by this Agreement shall be included as insureds under such policies.

   C. Primary and Non Contributory. All liability coverage shall apply on a primary basis and shall not require contribution from any insurance or self-insurance maintained by City.

   D. Notice of Cancellation. All policies shall provide City with thirty (30) calendar days notice of cancellation (except for nonpayment for which ten (10) calendar days notice is required) or nonrenewal of coverage for each required coverage.

5. Additional Agreements Between the Parties. The parties hereby agree to the following:

   A. Evidence of Insurance. Contractor shall provide certificates of insurance to City as evidence of the insurance coverage required herein, along with a waiver of subrogation endorsement for workers' compensation and other endorsements as specified herein for each coverage. Insurance certificates and endorsement must be approved by City's Risk Manager prior to commencement of performance. Current certification of insurance shall be kept on file with City at all times during the term of this Agreement. City

reserves the right to require complete, certified copies of all required insurance policies, at any time.

B. City's Right to Revise Requirements. City reserves the right at any time during the term of the Agreement to change the amounts and types of insurance required by giving Contractor sixty (60) calendar days advance written notice of such change. If such change results in substantial additional cost to Contractor, City and Contractor may renegotiate Contractor's compensation.

C. Right to Review Subcontracts. Contractor agrees that upon request, all agreements with subcontractors or others with whom Contractor enters into contracts with on behalf of City will be submitted to City for review. Failure of City to request copies of such agreements will not impose any liability on City, or its employees. Contractor shall require and verify that all subcontractors maintain insurance meeting all the requirements stated herein, and Contractor shall ensure that City is an additional insured on insurance required from subcontractors. For CGL coverage, subcontractors shall provide coverage with a format at least as broad as CG 20 38 04 13.

D. Enforcement of Agreement Provisions. Contractor acknowledges and agrees that any actual or alleged failure on the part of City to inform Contractor of non-compliance with any requirement imposes no additional obligations on City nor does it waive any rights hereunder.

E. Requirements not Limiting. Requirements of specific coverage features or limits contained in this Section are not intended as a limitation on coverage, limits or other requirements, or a waiver of any coverage normally provided by any insurance. Specific reference to a given coverage feature is for purposes of clarification only as it pertains to a given issue and is not intended by any party or insured to be all inclusive, or to the exclusion of other coverage, or a waiver of any type. If the Contractor maintains higher limits than the minimums shown above, the City requires and shall be entitled to coverage for higher limits maintained by the Contractor. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the City.

F. Self-insured Retentions. Any self-insured retentions must be declared to and approved by City. City reserves the right to require that self-insured retentions be eliminated, lowered, or replaced by a deductible. Self-insurance will not be considered to comply with these requirements unless approved by City.

G. City Remedies for Non-Compliance. If Contractor or any subcontractor fails to provide and maintain insurance as required herein, then City shall have the right but not the obligation, to purchase such insurance, to terminate this Agreement, or to suspend Contractor's right to proceed until proper

evidence of insurance is provided. Any amounts paid by City shall, at City's sole option, be deducted from amounts payable to Contractor or reimbursed by Contractor upon demand.

H. Timely Notice of Claims. Contractor shall give City prompt and timely notice of claims made or suits instituted that arise out of or result from Contractor's performance under this Agreement, and that involve or may involve coverage under any of the required liability policies. City assumes no obligation or liability by such notice, but has the right (but not the duty) to monitor the handling of any such claim or claims if they are likely to involve City.

I. Contractor's Insurance. Contractor shall also procure and maintain, at its own cost and expense, any additional kinds of insurance, which in its own judgment may be necessary for its proper protection and prosecution of the Work.

ATTACHMENT B

ON-CALL MAINTENANCE/REPAIR SERVICES AGREEMENT WITH COMPUTER DEDUCTIONS, INC. FOR VEHICLE CUSTOMIZATION & UPFITTING SERVICES

THIS ON-CALL MAINTENANCE/REPAIR SERVICES AGREEMENT ("Agreement") is made and entered into as of this 10th day of September, 2019 ("Effective Date"), by and between the CITY OF NEWPORT BEACH, a California municipal corporation and charter city ("City"), and COMPUTER DEDUCTIONS, INC., a California corporation ("Contractor"), whose address is 1400 East Wilshire Avenue, Santa Ana, CA 92705, and is made with reference to the following:

RECITALS

A. City is a municipal corporation duly organized and validly existing under the laws of the State of California with the power to carry on its business as it is now being conducted under the statutes of the State of California and the Charter of City.

B. City desires to engage Contractor to perform on-call maintenance and/or repair services for City ("Project").

C. Contractor possesses the skill, experience, ability, background, certification and knowledge to provide the maintenance and/or repair services described in this Agreement.

D. Contractor has examined the location of all proposed work, carefully reviewed and evaluated the specifications set forth by City for the Project, is familiar with all conditions relevant to the performance of services, and has committed to perform all work required for the compensation specified in this Agreement.

NOW, THEREFORE, it is mutually agreed by and between the undersigned parties as follows:

1. TERM

The term of this Agreement shall commence on the Effective Date, and shall terminate on September 9, 2022, unless terminated earlier as set forth herein.

2. SERVICES TO BE PERFORMED

2.1 Contractor shall perform the on-call services described in the Scope of Services attached hereto as Exhibit A and incorporated herein by reference ("Services" or "Work"). Upon written request from the Project Administrator as defined herein, Contractor shall provide a letter proposal for Services requested by the City (hereinafter referred to as the "Letter Proposal"). The Letter Proposal shall include the following:

2.1.1 A detailed description of the Services to be provided;

2.1.2 The position of each person to be assigned to perform the Services, and the name of the individuals to be assigned, if available;

2.1.3 The estimated number of hours and cost to complete the Services; and

2.1.4 The time needed to finish the specific project.

2.2 No Services shall be provided until the Project Administrator has provided written acceptance of the Letter Proposal. Once authorized to proceed, Contractor shall diligently perform the duties in the approved Letter Proposal.

3. TIME OF PERFORMANCE

3.1 Time is of the essence in the performance of Services under this Agreement and Contractor shall perform the Services in accordance with the schedule included in Exhibit A and the Letter Proposal. In the absence of a specific schedule, the Services shall be performed to completion in a diligent and timely manner. The failure by Contractor to strictly adhere to the schedule set forth in Exhibit A and the Letter Proposal, if any, or perform the Services in a diligent and timely manner may result in termination of this Agreement by City.

3.2 Notwithstanding the foregoing, Contractor shall not be responsible for delays due to causes beyond Contractor's reasonable control. However, in the case of any such delay in the Services to be provided for the Project, each party hereby agrees to provide notice within two (2) calendar days of the occurrence causing the delay to the other party so that all delays can be addressed.

3.3 Contractor shall submit all requests for extensions of time for performance in writing to the Project Administrator as defined herein, not later than two (2) calendar days after the start of the condition that purportedly causes a delay. The Project Administrator shall review all such requests and may grant reasonable time extensions for unforeseeable delays that are beyond Contractor's control.

3.4 For all time periods not specifically set forth herein, Contractor shall respond in the most expedient and appropriate manner under the circumstances, by fax, hand-delivery or mail.

4. COMPENSATION TO CONTRACTOR

4.1 City shall pay Contractor for the Services on a time and expense not-to-exceed basis in accordance with the provisions of this Section and the Letter Proposal and the Schedule of Billing Rates attached hereto as Exhibit B and incorporated herein by reference. Except as otherwise provided herein, no rate changes shall be made during the term of this Agreement without the prior written approval of City. Contractor's compensation for all Services performed in accordance with this Agreement, including all reimbursable items, shall not exceed **Four Hundred Fifty Thousand Dollars and 00/100 ($450,000.00)**, without prior written amendment to the Agreement.

4.2 Contractor shall submit monthly invoices to City describing the Work performed the preceding month. Contractor's bills shall include the name and/or classification of employee who performed the Work, a brief description of the Services performed and/or the specific task in the Scope of Services to which it relates, the date

the Services were performed, the number of hours spent on all Work billed on an hourly basis, and a description of any reimbursable expenditures. City shall pay Contractor no later than thirty (30) calendar days after approval of the monthly invoice by City staff.

4.3 City shall reimburse Contractor only for those costs or expenses specifically identified in Exhibit B to this Agreement and the Letter Proposal, or specifically approved in writing in advance by City.

4.4 Contractor shall not receive any compensation for Extra Work performed without the prior written authorization of City. As used herein, "Extra Work" means any Work that is determined by City to be necessary for the proper completion of the Project, but which is not included within the Scope of Services and which the parties did not reasonably anticipate would be necessary at the execution of this Agreement. Compensation for any authorized Extra Work shall be paid in accordance with Exhibit B and the Letter Proposal.

5. PROJECT MANAGER

5.1 Contractor shall designate a Project Manager, who shall coordinate all phases of the Project. This Project Manager shall be available to City at all reasonable times during the Agreement term. Contractor has designated Nori Minami to be its Project Manager. Contractor shall not remove or reassign the Project Manager or any personnel listed in Exhibit A or assign any new or replacement personnel to the Project without the prior written consent of City. City's approval shall not be unreasonably withheld with respect to the removal or assignment of non-key personnel.

5.2 Contractor, at the sole discretion of City, shall remove from the Project any of its personnel assigned to the performance of Services upon written request of City. Contractor warrants that it will continuously furnish the necessary personnel to complete the Project on a timely basis as contemplated by this Agreement.

6. ADMINISTRATION

This Agreement will be administered by the Police Department. City's Police Support Services Administrator or designee shall be the Project Administrator and shall have the authority to act for City under this Agreement. The Project Administrator shall represent City in all matters pertaining to the Services to be rendered pursuant to this Agreement.

7. CITY'S RESPONSIBILITIES

To assist Contractor in the execution of its responsibilities under this Agreement, City agrees to provide access to and upon request of Contractor, one copy of all existing relevant information on file at City. City will provide all such materials in a timely manner so as not to cause delays in Contractor's Work schedule.

8. TYPE AND INSTALLATION OF MATERIALS/STANDARD OF CARE

8.1 Contractor shall use only the standard materials described in Exhibit A in performing Services under this Agreement. Any deviation from the materials described

in Exhibit A shall not be installed or utilized unless approved in advance and in writing by the Project Administrator.

8.2 All of the Services shall be performed by Contractor or under Contractor's supervision. Contractor represents that it possesses the personnel required to perform the Services required by this Agreement, and that it will perform all Services in a manner commensurate with community professional standards and with the ordinary degree of skill and care that would be used by other reasonably competent practitioners of the same discipline under similar circumstances. All Services shall be performed by qualified and experienced personnel who are not employed by City. By delivery of completed Work, Contractor certifies that the Work conforms to the requirements of this Agreement, all applicable federal, state and local laws and legally recognized professional standards.

8.3 Contractor represents and warrants to City that it has, shall obtain and shall keep in full force and effect during the term hereof, at its sole cost and expense, all licenses, permits, qualifications, insurance and approvals of whatsoever nature that is legally required of Contractor to practice its profession. Contractor shall maintain a City of Newport Beach business license during the term of this Agreement.

8.4 Contractor shall not be responsible for delay, nor shall Contractor be responsible for damages or be in default or deemed to be in default by reason of strikes, lockouts, accidents, acts of God, or the failure of City to furnish timely information or to approve or disapprove Contractor's Work promptly, or delay or faulty performance by City, contractors, or governmental agencies.

9. RESPONSIBILITY FOR DAMAGES OR INJURY

9.1 City and all officers, employees and representatives thereof and all persons and entities owning or otherwise in legal control of the property upon which Contractor performs the Project and/or Services shall not be responsible in any manner for any loss or damage to any of the materials or other things used or employed in performing the Project or for injury to or death of any person as a result of Contractor's performance of the Services required hereunder; or for damage to property from any cause arising from the performance of the Project and/or Services by Contractor, or its subcontractors, or its workers, or anyone employed by either of them.

9.2 Contractor shall be responsible for any liability imposed by law and for injuries to or death of any person or damage to property resulting from defects, obstructions or from any cause arising from Contractor's Work on the Project and/or Services, or the Work of any subcontractor or supplier selected by Contractor.

9.3 To the fullest extent permitted by law, Contractor shall indemnify, defend and hold harmless City, its City Council, boards and commissions, officers, agents, volunteers, employees, and any person or entity owning or otherwise in legal control of the property upon which Contractor performs the Project and/or Services contemplated by this Agreement (collectively, the "Indemnified Parties") from and against any and all claims (including, without limitation, claims for bodily injury, death or damage to property), demands, obligations, damages, actions, causes of action, suits, losses, judgments, fines, penalties, liabilities, costs and expenses (including, without limitation, attorneys'

fees, disbursements and court costs) of every kind and nature whatsoever (individually, a Claim; collectively, "Claims"), which may arise from or in any manner relate (directly or indirectly) to any breach of the terms and conditions of this Agreement, any Work performed or Services provided under this Agreement including, without limitation, defects in workmanship or materials or Contractor's presence or activities conducted on the Project (including the negligent and/or willful acts, errors and/or omissions of Contractor, its principals, officers, agents, employees, vendors, suppliers, consultants, subcontractors, anyone employed directly or indirectly by any of them or for whose acts they may be liable or any or all of them).

9.4 Notwithstanding the foregoing, nothing herein shall be construed to require Contractor to indemnify the Indemnified Parties from any Claim arising from the sole negligence or willful misconduct of the Indemnified Parties. Nothing in this indemnity shall be construed as authorizing any award of attorneys' fees in any action on or to enforce the terms of this Agreement. This indemnity shall apply to all claims and liability regardless of whether any insurance policies are applicable. The policy limits do not act as a limitation upon the amount of indemnification to be provided by Contractor.

9.5 Contractor shall perform all Work in a manner to minimize public inconvenience and possible hazard, to restore other work areas to their original condition and former usefulness as soon as possible, and to protect public and private property. Contractor shall be liable for any private or public property damaged during the performance of the Work by Contractor or its agents.

9.6 To the extent authorized by law, as much of the money due Contractor under and by virtue of the Agreement as shall be considered necessary by City may be retained by it until disposition has been made of such suits or claims for damages as aforesaid.

9.7 The rights and obligations set forth in this Section shall survive the termination of this Agreement.

10. INDEPENDENT CONTRACTOR

10.1 It is understood that City retains Contractor on an independent contractor basis and Contractor is not an agent or employee of City. The manner and means of conducting the Work are under the control of Contractor, except to the extent they are limited by statute, rule or regulation and the expressed terms of this Agreement. No civil service status or other right of employment shall accrue to Contractor or its employees. Nothing in this Agreement shall be deemed to constitute approval for Contractor or any of Contractor's employees or agents, to be the agents or employees of City. Contractor shall have the responsibility for and control over the means of performing the Work, provided that Contractor is in compliance with the terms of this Agreement. Anything in this Agreement that may appear to give City the right to direct Contractor as to the details of the performance of the Work or to exercise a measure of control over Contractor shall mean only that Contractor shall follow the desires of City with respect to the results of the Services.

10.2 Contractor agrees and acknowledges that no individual performing Services or Work pursuant to this Agreement shall: work full-time for more than six (6) months; work regular part-time service of at least an average of twenty (20) hours per week for one year or longer; work nine hundred sixty (960) hours in any fiscal year; or already be a CalPERS member.

11. COOPERATION

Contractor agrees to work closely and cooperate fully with City's designated Project Administrator and any other agencies that may have jurisdiction or interest in the Work to be performed. City agrees to cooperate with Contractor on the Project.

12. CITY POLICY

Contractor shall discuss and review all matters relating to policy and Project direction with City's Project Administrator in advance of all critical decision points in order to ensure the Project proceeds in a manner consistent with City goals and policies.

13. PROGRESS

Contractor is responsible for keeping the Project Administrator informed on a regular basis regarding the status and progress of the Project, activities performed and planned, and any meetings that have been scheduled or are desired.

14. INSURANCE

Without limiting Contractor's indemnification of City, and prior to commencement of Work, Contractor shall obtain, provide and maintain at its own expense during the term of this Agreement or for other periods as specified in this Agreement, policies of insurance of the type, amounts, terms and conditions described in the Insurance Requirements attached hereto as Exhibit C, and incorporated herein by reference.

15. PROHIBITION AGAINST ASSIGNMENTS AND TRANSFERS

Except as specifically authorized under this Agreement, the Services to be provided under this Agreement shall not be assigned, transferred contracted or subcontracted out without the prior written approval of City. Any of the following shall be construed as an assignment: The sale, assignment, transfer or other disposition of any of the issued and outstanding capital stock of Contractor, or of the interest of any general partner or joint venturer or syndicate member or cotenant if Contractor is a partnership or joint-venture or syndicate or cotenancy, which shall result in changing the control of Contractor. Control means fifty percent (50%) or more of the voting power or twenty-five percent (25%) or more of the assets of the corporation, partnership or joint-venture.

16. SUBCONTRACTING

The subcontractors authorized by City, if any, to perform Work on this Project are identified in Exhibit A and the Letter Proposal. Contractor shall be fully responsible to City for all acts and omissions of any subcontractor. Nothing in this Agreement shall create any contractual relationship between City and any subcontractor nor shall it create

any obligation on the part of City to pay or to see to the payment of any monies due to any such subcontractor other than as otherwise required by law. City is an intended beneficiary of any Work performed by the subcontractor for purposes of establishing a duty of care between the subcontractor and City. Except as specifically authorized herein, the Services to be provided under this Agreement shall not be otherwise assigned, transferred, contracted or subcontracted out without the prior written approval of City.

17. OWNERSHIP OF DOCUMENTS

Each and every report, draft, map, record, plan, document and other writing produced (hereinafter "Documents"), prepared or caused to be prepared by Contractor, its officers, employees, agents and subcontractors, in the course of implementing this Agreement, shall become the exclusive property of City, and City shall have the sole right to use such materials in its discretion without further compensation to Contractor or any other party. Contractor shall, at Contractor's expense, provide such Documents to City upon prior written request.

18. CONFIDENTIALITY

All Documents, including drafts, preliminary drawings or plans, notes and communications that result from the Services in this Agreement, shall be kept confidential unless City expressly authorizes in writing the release of information.

19. RECORDS

Contractor shall keep records and invoices in connection with the Services to be performed under this Agreement. Contractor shall maintain complete and accurate records with respect to the costs incurred under this Agreement and any Services, expenditures and disbursements charged to City, for a minimum period of three (3) years, or for any longer period required by law, from the date of final payment to Contractor under this Agreement. All such records and invoices shall be clearly identifiable. Contractor shall allow a representative of City to examine, audit and make transcripts or copies of such records and invoices during regular business hours. Contractor shall allow inspection of all Work, data, Documents, proceedings and activities related to the Agreement for a period of three (3) years from the date of final payment to Contractor under this Agreement.

20. WITHHOLDINGS

City may withhold payment to Contractor of any disputed sums until satisfaction of the dispute with respect to such payment. Such withholding shall not be deemed to constitute a failure to pay according to the terms of this Agreement. Contractor shall not discontinue Work as a result of such withholding. Contractor shall have an immediate right to appeal to the City Manager or his/her designee with respect to such disputed sums. Contractor shall be entitled to receive interest on any withheld sums at the rate of return that City earned on its investments during the time period, from the date of withholding of any amounts found to have been improperly withheld.

21. CITY'S RIGHT TO EMPLOY OTHER CONTRACTORS

City reserves the right to employ other contractors in connection with the Project.

22. CONFLICTS OF INTEREST

22.1 Contractor or its employees may be subject to the provisions of the California Political Reform Act of 1974 (the "Act") and/or Government Code §§ 1090 et seq., which (1) require such persons to disclose any financial interest that may foreseeably be materially affected by the Work performed under this Agreement, and (2) prohibit such persons from making, or participating in making, decisions that will foreseeably financially affect such interest.

22.2 If subject to the Act and/or Government Code §§ 1090 et seq., Contractor shall conform to all requirements therein. Failure to do so constitutes a material breach and is grounds for immediate termination of this Agreement by City. Contractor shall indemnify and hold harmless City for any and all claims for damages resulting from Contractor's violation of this Section.

23. NOTICES

23.1 All notices, demands, requests or approvals, including any change in mailing address, to be given under the terms of this Agreement shall be given in writing, and conclusively shall be deemed served when delivered personally, or on the third business day after the deposit thereof in the United States mail, postage prepaid, first-class mail, addressed as hereinafter provided.

23.2 All notices, demands, requests or approvals from Contractor to City shall be addressed to City at:

Attn: Police Support Services Administrator
Police Department
City of Newport Beach
100 Civic Center Drive
PO Box 1768
Newport Beach, CA 92658

23.3 All notices, demands, requests or approvals from City to Contractor shall be addressed to Contractor at:

Attn: Nori Minami
COMPUTER DEDUCTIONS, INC.
1400 East Whilshire Avenue
Santa Ana, CA 92705

24. CLAIMS

Unless a shorter time is specified elsewhere in this Agreement, before making its final request for payment under this Agreement, Contractor shall submit to City, in writing, all claims for compensation under or arising out of this Agreement. Contractor's

acceptance of the final payment shall constitute a waiver of all claims for compensation under or arising out of this Agreement except those previously made in writing and identified by Contractor in writing as unsettled at the time of its final request for payment. Contractor and City expressly agree that in addition to any claims filing requirements set forth in the Agreement, Contractor shall be required to file any claim Contractor may have against City in strict conformance with the Government Claims Act (Government Code sections 900 *et seq.).*

25. TERMINATION

25.1 In the event that either party fails or refuses to perform any of the provisions of this Agreement at the time and in the manner required, that party shall be deemed in default in the performance of this Agreement. If such default is not cured within a period of two (2) calendar days, or if more than two (2) calendar days are reasonably required to cure the default and the defaulting party fails to give adequate assurance of due performance within two (2) calendar days after receipt of written notice of default, specifying the nature of such default and the steps necessary to cure such default, and thereafter diligently take steps to cure the default, the non-defaulting party may terminate the Agreement forthwith by giving to the defaulting party written notice thereof.

25.2 Notwithstanding the above provisions, City shall have the right, at its sole and absolute discretion and without cause, of terminating this Agreement at any time by giving no less than seven (7) calendar days' prior written notice to Contractor. In the event of termination under this Section, City shall pay Contractor for Services satisfactorily performed and costs incurred up to the effective date of termination for which Contractor has not been previously paid. On the effective date of termination, Contractor shall deliver to City all reports, Documents and other information developed or accumulated in the performance of this Agreement, whether in draft or final form.

26. LABOR

26.1 Contractor shall conform with all applicable provisions of state and federal law including, but not limited to, applicable provisions of the federal Fair Labor Standards Act ("FLSA") (29 USCA § 201, *et seq.).*

26.2 Whenever Contractor has knowledge that any actual or potential labor dispute is delaying or threatens to delay the timely performance of this Agreement, Contractor shall immediately give written notice to City, and provide all relevant information.

26.3 Contractor represents that all persons working under this Agreement are verified to be U.S. citizens or persons legally authorized to work in the United States.

26.4 To the fullest extent permitted by law, Contractor shall indemnify, defend, and hold harmless City, its City Council, boards and commissions, officers, agents, volunteers, and employees from loss or damage, including but not limited to attorneys' fees, and other costs of defense by reason of actual or alleged violations of any applicable federal, state and local labor laws or law, rules, and/or regulations. This obligation shall survive the expiration and/or termination of the Agreement.

27. STANDARD PROVISIONS

27.1 Recitals. City and Contractor acknowledge that the above Recitals are true and correct and are hereby incorporated by reference.

27.2 Compliance with all Laws. Contractor shall, at its own cost and expense, comply with all statutes, ordinances, regulations and requirements of all governmental entities, including federal, state, county or municipal, whether now in force or hereinafter enacted. In addition, all Work prepared by Contractor shall conform to applicable City, county, state and federal laws, rules, regulations and permit requirements and be subject to approval of the Project Administrator and City.

27.3 Waiver. A waiver by either party of any breach, of any term, covenant or condition contained herein shall not be deemed to be a waiver of any subsequent breach of the same or any other term, covenant or condition contained herein, whether of the same or a different character.

27.4 Integrated Contract. This Agreement represents the full and complete understanding of every kind or nature whatsoever between the parties hereto, and all preliminary negotiations and agreements of whatsoever kind or nature are merged herein. No verbal agreement or implied covenant shall be held to vary the provisions herein.

27.5 Conflicts or Inconsistencies. In the event there are any conflicts or inconsistencies between this Agreement and the Scope of Services or any other attachments attached hereto, the terms of this Agreement shall govern.

27.6 Interpretation. The terms of this Agreement shall be construed in accordance with the meaning of the language used and shall not be construed for or against either party by reason of the authorship of the Agreement or any other rule of construction which might otherwise apply.

27.7 Amendments. This Agreement may be modified or amended only by a written document executed by both Contractor and City and approved as to form by the City Attorney.

27.8 Severability. If any term or portion of this Agreement is held to be invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions of this Agreement shall continue in full force and effect.

27.9 Controlling Law and Venue. The laws of the State of California shall govern this Agreement and all matters relating to it and any action brought relating to this Agreement shall be adjudicated in a court of competent jurisdiction in the County of Orange, State of California.

27.10 Equal Opportunity Employment. Contractor represents that it is an equal opportunity employer and it shall not discriminate against any subcontractor, employee or applicant for employment because of race, religious creed, color, national origin, ancestry, physical handicap, medical condition, marital status, sex, sexual orientation, age or any other impermissible basis under law.

27.11 No Attorneys' Fees. In the event of any dispute or legal action arising under this Agreement, the prevailing party shall not be entitled to attorneys' fees.

27.12 Counterparts. This Agreement may be executed in two (2) or more counterparts, each of which shall be deemed an original and all of which together shall constitute one (1) and the same instrument.

[SIGNATURES ON NEXT PAGE]

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed on the dates written below.

APPROVED AS TO FORM:
CITY ATTORNEY'S OFFICE
Date: 8/28/2019

By: _____
For: Aaron C. Harp
City Attorney

08.27.19 ams

ATTEST:
Date: _____

By: _____
Leilani I. Brown
City Clerk

CITY OF NEWPORT BEACH,
a California municipal corporation
Date: _____

By: _____
Diane B. Dixon
Mayor

CONTRACTOR: COMPUTER DEDUCTIONS, INC., a California corporation
Date: _____

By: _____
John MacDonnell
Chief Executive Officer

Date: _____

By: _____
Allan MacDonnell
Secretary

[END OF SIGNATURES]

Attachments:
Exhibit A – Scope of Services
Exhibit B – Schedule of Billing Rates
Exhibit C – Warranty
Exhibit D – Insurance Requirements

EXHIBIT A
SCOPE OF SERVICES

EXHIBIT A

SCOPE OF SERVICES

Contractor shall, on an on-call basis, provide vehicle customization and upfitting services. While specific projects may vary and will be defined by letter proposal(s) to be accepted by the City, the services included in this engagement may include, but are not limited to:

- Provide equipment and labor related to general vehicle maintenance and repair, including, but not limited to: vactors, vacuum trucks, hydrovac trucks, boat vessels, utility cars and trucks, SUVs, fire trucks, engine pumpers, trailers, dump trucks, police vehicles and other emergency vehicles;
- Test and replace wiring;
- Install, maintain, repair, and/or replace uprights, beds, bed steps, mirrors, lights, mounts, monitors, railings, seats, antennas, radios, batteries, speakers, etc.;
- Install and/or remove exterior graphics and numbering;
- Install mounts and monitors;
- Diagnose and replace blowers;
- Troubleshoot and diagnose multiple issues to be repaired or replaced;
- Maintain all wiring, including timers, lights, horns, etc.;
- Remove and replace bilge pump hoses;
- Sand and buff gelcoat on boat vessels;
- Install, remove, replace and/or repair radios and other communication devices; and
- Install, remove, replace and/or repair vehicle mobile computer components.

Contractor will be required to perform services on City premises. The specific location of each vehicle or vessel or vessel requiring services shall be provided by the Project Administrator.

EXHIBIT B
SCHEDULE OF BILLING RATES

EXHIBIT B

BILLING RATES

Contractor shall provide the vehicle customization and upfitting services described in Exhibit A in accordance with the following rate. While each project will vary in cost, the basis for each project shall be the Hourly Labor Rate defined below and total costs shall be outlined in a letter proposal(s) to the Project Administrator.

Description	Cost
Hourly Labor Rate	$75.00 Per Hour

TOTAL NOT TO EXCEED: $450,000.00

EXHIBIT C
WARRANTY

EXHIBIT C

WARRANTY

Computer Deductions, Inc. ("Contractor") will provide a one year warranty on labor and installation performed on all City vehicles, on or off the premises at Newport Beach.

This warranty is exclusive to labor and does not cover parts or product failure on equipment provided by the City of Newport Beach.

Parts provided by the Contractor shall be subject to the manufacturers' warranties of each respective part.

EXHIBIT D

INSURANCE REQUIREMENTS – MAINTENANCE/REPAIR/JANITORIAL SERVICES

1. Provision of Insurance. Without limiting Contractor's indemnification of City, and prior to commencement of Work, Contractor shall obtain, provide and maintain at its own expense during the term of this Agreement, policies of insurance of the type and amounts described below and in a form satisfactory to City. Contractor agrees to provide insurance in accordance with requirements set forth here. If Contractor uses existing coverage to comply and that coverage does not meet these requirements, Contractor agrees to amend, supplement or endorse the existing coverage.

2. Acceptable Insurers. All insurance policies shall be issued by an insurance company currently authorized by the Insurance Commissioner to transact business of insurance in the State of California, with an assigned policyholders' Rating of A- (or higher) and Financial Size Category Class VII (or larger) in accordance with the latest edition of Best's Key Rating Guide, unless otherwise approved by the City's Risk Manager.

3. Coverage Requirements.

   A. Workers' Compensation Insurance. Contractor shall maintain Workers' Compensation Insurance, statutory limits, and Employer's Liability Insurance with limits of at least one million dollars ($1,000,000) each accident for bodily injury by accident and each employee for bodily injury by disease in accordance with the laws of the State of California, Section 3700 of the Labor Code.

      Contractor shall submit to City, along with the certificate of insurance, a Waiver of Subrogation endorsement in favor of City, its City Council, boards and commissions, officers, agents, volunteers, employees, and any person or entity owning or otherwise in legal control of the property upon which Contractor performs the Project and/or Services contemplated by this Agreement.

   B. General Liability Insurance. Contractor shall maintain commercial general liability insurance and, if necessary, umbrella liability insurance, with coverage at least as broad as provided by Insurance Services Office form CG 00 01, in an amount not less than one million dollars ($1,000,000) per occurrence, two million dollars ($2,000,000) general aggregate. The policy shall cover liability arising from premises, operations, products-completed operations, personal and advertising injury, and liability assumed under an insured contract (including the tort liability of another assumed in a business contract).

   C. Automobile Liability Insurance. Contractor shall maintain automobile insurance at least as broad as Insurance Services Office form CA 00 01

covering bodily injury and property damage for all activities of Contractor arising out of or in connection with Work to be performed under this Agreement, including coverage for any owned, hired, non-owned or rented vehicles, in an amount not less than one million dollars ($1,000,000) combined single limit each accident.

4. Other Insurance Requirements. The policies are to contain, or be endorsed to contain, the following provisions:

   A. Waiver of Subrogation. All insurance coverage maintained or procured pursuant to this Agreement shall be endorsed to waive subrogation against City, its City Council, boards and commissions, officers, agents, volunteers, employees, and any person or entity owning or otherwise in legal control of the property upon which Contractor performs the Project and/or Services contemplated by this Agreement or shall specifically allow Contractor or others providing insurance evidence in compliance with these requirements to waive their right of recovery prior to a loss. Contractor hereby waives its own right of recovery against City, and shall require similar written express waivers from each of its subcontractors.

   B. Additional Insured Status. All liability policies including general liability, products and completed operations, excess liability, pollution liability, and automobile liability, if required, shall provide or be endorsed to provide that City, its City Council, boards and commissions, officers, agents, volunteers, employees, and any person or entity owning or otherwise in legal control of the property upon which Contractor performs the Project and/or Services contemplated by this Agreement shall be included as insureds under such policies.

   C. Primary and Non Contributory. All liability coverage shall apply on a primary basis and shall not require contribution from any insurance or self-insurance maintained by City.

   D. Notice of Cancellation. All policies shall provide City with thirty (30) calendar days notice of cancellation (except for nonpayment for which ten (10) calendar days notice is required) or nonrenewal of coverage for each required coverage.

5. Additional Agreements Between the Parties. The parties hereby agree to the following:

   A. Evidence of Insurance. Contractor shall provide certificates of insurance to City as evidence of the insurance coverage required herein, along with a waiver of subrogation endorsement for workers' compensation and other endorsements as specified herein for each coverage. Insurance certificates and endorsement must be approved by City's Risk Manager prior to commencement of performance. Current certification of insurance shall be

kept on file with City at all times during the term of this Agreement. City reserves the right to require complete, certified copies of all required insurance policies, at any time.

B. City's Right to Revise Requirements. City reserves the right at any time during the term of the Agreement to change the amounts and types of insurance required by giving Contractor sixty (60) calendar days advance written notice of such change. If such change results in substantial additional cost to Contractor, City and Contractor may renegotiate Contractor's compensation.

C. Right to Review Subcontracts. Contractor agrees that upon request, all agreements with subcontractors or others with whom Contractor enters into contracts with on behalf of City will be submitted to City for review. Failure of City to request copies of such agreements will not impose any liability on City, or its employees. Contractor shall require and verify that all subcontractors maintain insurance meeting all the requirements stated herein, and Contractor shall ensure that City is an additional insured on insurance required from subcontractors. For CGL coverage, subcontractors shall provide coverage with a format at least as broad as CG 20 38 04 13.

D. Enforcement of Agreement Provisions. Contractor acknowledges and agrees that any actual or alleged failure on the part of City to inform Contractor of non-compliance with any requirement imposes no additional obligations on City nor does it waive any rights hereunder.

E. Requirements not Limiting. Requirements of specific coverage features or limits contained in this Section are not intended as a limitation on coverage, limits or other requirements, or a waiver of any coverage normally provided by any insurance. Specific reference to a given coverage feature is for purposes of clarification only as it pertains to a given issue and is not intended by any party or insured to be all inclusive, or to the exclusion of other coverage, or a waiver of any type. If the Contractor maintains higher limits than the minimums shown above, the City requires and shall be entitled to coverage for higher limits maintained by the Contractor. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the City.

F. Self-insured Retentions. Any self-insured retentions must be declared to and approved by City. City reserves the right to require that self-insured retentions be eliminated, lowered, or replaced by a deductible. Self-insurance will not be considered to comply with these requirements unless approved by City.

G. City Remedies for Non-Compliance. If Contractor or any subcontractor fails to provide and maintain insurance as required herein, then City shall have

the right but not the obligation, to purchase such insurance, to terminate this Agreement, or to suspend Contractor's right to proceed until proper evidence of insurance is provided. Any amounts paid by City shall, at City's sole option, be deducted from amounts payable to Contractor or reimbursed by Contractor upon demand.

H. Timely Notice of Claims. Contractor shall give City prompt and timely notice of claims made or suits instituted that arise out of or result from Contractor's performance under this Agreement, and that involve or may involve coverage under any of the required liability policies. City assumes no obligation or liability by such notice, but has the right (but not the duty) to monitor the handling of any such claim or claims if they are likely to involve City.

I. Contractor's Insurance. Contractor shall also procure and maintain, at its own cost and expense, any additional kinds of insurance, which in its own judgment may be necessary for its proper protection and prosecution of the Work.

CITY OF

NEWPORT BEACH

City Council Staff Report

September 10, 2019
Agenda Item No. 8

TO:	HONORABLE MAYOR AND MEMBERS OF THE CITY COUNCIL
FROM:	David A. Webb, Public Works Director - 949-644-3311, dawebb@newportbeachca.gov
PREPARED BY:	Micah Martin, Deputy Director of Public Works – Municipal Operations Division mmartin@newportbeachca.gov
PHONE:	949-644-3059
TITLE:	Amendment No. One to On-Call Professional Services Agreement with ECO/NOMICS, Inc. (C-8478-1)

ABSTRACT:

On May 9, 2017, the City entered into an On-Call Professional Services Agreement with ECO/NOMICS, Inc., doing business in California as ECAL/NOMICS, Inc. (EcoNomics), to provide solid waste consulting services. The contracted services include providing assistance to City staff in the development of a new solid waste franchise system, assisting in the data collection required by CalRecycle, and performing community and business outreach to meet mandatory commercial and organics recycling goals. At this time, additional services are necessary to fully update the City's solid waste program as well as assist with the implementation of a multitude of new state mandated regulations. The requested amendment extends the term of the agreement until May 8, 2025, and increases the total not to exceed limit from $300,000 to $1,050,000.

RECOMMENDATION:

a) Determine this action is exempt from the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(2) and 15060(c)(3) of the CEQA Guidelines because this action will not result in a physical change to the environment, directly or indirectly; and

b) Approve Amendment No. One to Professional Services Agreement with ECO/NOMICS, Inc. to extend the term of the agreement until May 8, 2025, and to increase the not to exceed amount by $750,000 for a total not to exceed amount of $1,050,000, and authorize the Mayor and City Clerk to execute the amendment.

FUNDING REQUIREMENTS:

The current adopted budget includes sufficient funding for these services. It will be expensed to the Professional Services account in the Environmental Liability Fund, 16003-811008. This account is funded through the application of a franchise fee set at 5.5% of gross receipts derived from each franchisee's solid waste handling services within the City. Expenditures related to the preparation, adoption, or implementation of an integrated waste management plan are considered an authorized use of these funds.

DISCUSSION:

California's Department of Resources Recycling and Recovery (CalRecycle) enforces standards set by the state legislature for solid waste diversion in California in an effort to restore, protect, and enhance the environment to ensure public health, environmental quality, and economic viability. CalRecycle requires local jurisdictions to implement programs to reduce the amount of solid waste going to landfills. The State of California has passed several bills to mandate commercial recycling and the diversion of organic materials from the waste stream by businesses and residents throughout the state. These bills put the responsibility on each city to ensure these programs are in place and to complete significant reports and documentation for CalRecycle on an annual basis.

The City of Newport Beach utilizes regulations included in our non-exclusive solid waste franchise agreements to help us achieve these state mandated diversion requirements. Currently in these agreements, haulers are required to have a recycling program at each account and recycle 55% of the material collected. Additionally, they pay a 16% franchise fee on all revenues collected from City accounts: 10.5% goes into the General Fund and 5.5% goes into the Environmental Liability Fund. The current commercial franchise agreements went into effect on November 9, 2017, and will expire on November 8, 2024.

This is a time of significant change for solid waste management in California. AB1826, which was passed in 2014, requires businesses generating organic waste to have a compliant mandatory organics recycling program in place. As of January 1, 2019, businesses that generate 4 cubic yards of commercial solid waste per week are required to arrange for organic waste recycling services. There are currently 530 food service establishments in the City. Of these, approximately 300 are currently required to recycle organic waste per AB 1826. Of these 300, approximately 100 have a compliant AB 1826 program in place, and 200 are non-compliant. The majority of the food-based businesses are currently subject to AB 1826 recycling and are now under this mandate.

Further, the 2016 California Green Building Code update included new regulations for construction and demolition waste disposal as of January 1, 2017 that required a 65% diversion rate, which was then increased to 75% effective January 1, 2019, and is under the current review.

Consequently, to prepare for compliance with this new legislation, the City still has a number of tasks to complete. First, the Public Works staff and the City Attorney's Office are in the process of amending the commercial franchise agreement to include current regulations that contain additional and extensive reporting requirements in order to show CalRecycle the City's compliance with the law. Second, we are in the process of updating our Municipal Code to contain an enforcement tool for cases of non-compliance by waste haulers, businesses, or property owners. Finally, we need to be able to provide more outreach and training to assist business owners in achieving compliance.

In 2016, we identified the need to utilize a specialized consultant to assist with the management of our solid waste program for a number of reasons. While the City Attorney's Office is responsible for preparing the new franchise documents and Municipal Code revisions, a consultant has knowledge about the many requirements placed on haulers in franchise agreements, verifiable reporting systems, and other items that help gain compliance with mandatory waste goals. Additionally, the City has a responsibility to be business-friendly and provide assistance to meet these mandates and our current staffing level does not provide for this important, additional service to the business community.

On March 14, 2017, the City of Newport Beach circulated a Request for Qualifications (RFQ) to firms performing these services and Council awarded a three-year contract to EcoNomics, Inc. with a not to exceed amount of $300,000 to provide these services.

Due to the significant amount of work staff has requested of EcoNomics to assist with reviewing and updating our solid waste program, we are approaching the not to exceed amount at a greater rate than anticipated. EcoNomics has provided technical assistance in the process of updating the Municipal Code to conform to current legislation and CalGreen mandated requirements. They have also assisted in performing analysis of haulers and businesses to determine their compliance with AB 341 and AB 1826. Their staff has conducted site visits to many businesses to analyze what and how much waste the businesses generate, as well as provide training for staff of the businesses who will be responsible for implementing and continuing with compliant programs.

Moving forward, EcoNomics has a number of outstanding projects to complete before the end of their current contract on May 8, 2020. Their projects involve continued assistance with Council/staff working group meetings, assistance with the development of compliant CalGreen programs, working with haulers to target non-compliant generators, participating in workshops with haulers to educate them regarding the changes to the franchise hauler program, assistance with compliance notification, and assistance with the development of a compliant residential organics program.

Legislation is already in place that will require municipalities to implement new programs and make significant changes to current municipal solid waste programs. Beginning January 2020, green waste will no longer be accepted at the landfills for free and will not be counted as a diversion credit as a result of AB 1383. In addition, this bill will require all municipalities to implement a curbside organics recycling program to all residents. EcoNomics has developed an extensive understanding of Newport Beach and the challenges facing the community. Over the course of their contract, EcoNomics will continue to provide necessary technical assistance and guidance to assist the City in gaining compliance with the new laws and regulations.

Staff requests Amendment No. One with EcoNomics be executed to extend the term of the agreement to May 8, 2025, and to increase the not to exceed amount by $750,000 for a total not to exceed amount of $1,050,000. This amendment will allow for continued technical assistance with active programs in the city, the development of additionally required programs, and to assist businesses and haulers to gain compliance with state and City solid waste regulations.

ENVIRONMENTAL REVIEW:

Staff recommends the City Council find this action 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, Chapter 3, because it has no potential for resulting in physical change to the environment, directly or indirectly.

NOTICING:

The agenda item has been noticed according to the Brown Act (72 hours in advance of the meeting at which the City Council considers the item).

ATTACHMENT:

Attachment A – Amendment No. One with ECO/NOMICS, Inc.

AMENDMENT NO. ONE TO ON-CALL PROFESSIONAL SERVICES AGREEMENT WITH ECO/NOMICS, INC., WHICH WILL DO BUSINESS IN CALIFORNIA AS ECAL/NOMICS, INC. FOR SOLID WASTE CONSULTING

THIS AMENDMENT NO. ONE TO PROFESSIONAL SERVICES AGREEMENT ("Amendment No. One") is made and entered into as of this 10th day of September, 2019 ("Effective Date"), by and between the CITY OF NEWPORT BEACH, a California municipal corporation and charter city ("City"), and ECO/NOMICS, INC., WHICH WILL DO BUSINESS IN CALIFORNIA AS ECAL/NOMICS, INC., a Colorado Corporation ("Consultant"), whose address is PO Box 2790 Del Mar, CA 92014, and is made with reference to the following:

RECITALS

A. On the 9th day of May, 2017, City and Consultant entered into a Professional Services Agreement ("Agreement") for Solid Waste Consulting ("Project").

B. The parties desire to enter into this Amendment No. One to extend the term of the Agreement to May 8, 2025 and to increase the total compensation.

NOW, THEREFORE, it is mutually agreed by and between the undersigned parties as follows:

1. TERM

Section 1 of the Agreement is amended in its entirety and replaced with the following: "The term of this Agreement shall commence on the Effective Date, and shall terminate on May 8, 2025, unless terminated earlier as set forth herein."

2. COMPENSATION TO CONSULTANT

Exhibit B to the Agreement shall be amended in its entirety and replaced to include the Schedule of Billing Rates, attached hereto as Exhibit B and incorporated herein by reference ("Services" or "Work"). Exhibit B to Amendment No. One shall be known as "Exhibit B".

Section 4.1 of the Agreement is amended in its entirety and replaced with the following: "City shall pay Consultant for the Services on a time and expense not-to-exceed basis in accordance with the provisions of this Section and the Schedule of Billing Rates attached to this Amendment as Exhibit B. Consultant's compensation for all Work performed in accordance with this Agreement, including all reimbursable items and subconsultant fees, shall not exceed **One Million Fifty Thousand Dollars and 00/100 ($1,050,000.00)**, without prior written authorization from City. No billing rate changes shall be made during the term of this Agreement without the prior written approval of City."

The total amended compensation reflects Consultant's additional compensation for additional Services to be performed in accordance with this Amendment No. One, including all reimbursable items and subconsultant fees, in an amount not to exceed **Seven Hundred Fifty Thousand Dollars and 00/100 ($750,000.00)**.

Section 4.5 shall be added in its entirety to the Agreement as follows: "As of May 8, 2020, and upon each anniversary of May 8, 2020 thereafter, the billing rates set forth in Exhibit B ("Billing Rates") shall be adjusted in proportion to changes in the Consumer Price Index, subject to the maximum adjustment set forth below. Such adjustment shall be made by multiplying the Billing Rates in Exhibit B by a fraction, the numerator of which is the value of the Consumer Price Index for the calendar month three (3) months preceding the calendar month for which such adjustment is to be made, and the denominator of which is the value of the Consumer Price Index for the same calendar month immediately prior to Effective Date. The Consumer Price Index to be used in such calculation is the "Consumer Price Index, All Items, 1982-84=100 for All Urban Consumers (CPI-U)", for the Los Angeles Riverside-Orange County Metropolitan Area, published by the United States Department of Labor, Bureau of Labor Statistics. If both an official index and one or more unofficial indices are published, the official index shall be used. If said Consumer Price Index is no longer published at the adjustment date, it shall be constructed by conversion tables included in such new index. In no event, however, shall the amount payable under this Agreement be reduced below the Billing Rates in effect immediately preceding such adjustment. The maximum adjustment increase to the Billing Rates, for any year where an adjustment is made pursuant to this Section, shall not exceed the Consumer Price Index or 2.0% of the Billing Rates in effect immediately preceding such adjustment, whichever is less."

3. PROJECT MANAGER

Section 5.1 of the Agreement is amended in its entirety and replaced with the following: "Consultant shall designate a Project Manager, who shall coordinate all phases of the Project. This Project Manager shall be available to City at all reasonable times during the Agreement term. Consultant has designated William O'Toole to be its Project Manager. Consultant shall not remove or reassign the Project Manager or any personnel listed in Exhibit B of this Amendment or assign any new or replacement personnel to the Project without the prior written consent of City. City's approval shall not be unreasonably withheld with respect to the removal or assignment of non-key personnel.

4. INTEGRATED CONTRACT

Except as expressly modified herein, all other provisions, terms, and covenants set forth in the Agreement shall remain unchanged and shall be in full force and effect.

[SIGNATURES ON NEXT PAGE]

IN WITNESS WHEREOF, the parties have caused this Amendment No. One to be executed on the dates written below.

APPROVED AS TO FORM:
CITY ATTORNEY'S OFFICE
Date: 8/26/2019

By: Aaron Harkani
For: Aaron C. Harp
City Attorney

ATTEST:
Date:_____

By:_____
Leilani I. Brown
City Clerk

CITY OF NEWPORT BEACH,
a California municipal corporation
Date:_____

By:_____
Diane B. Dixon
Mayor

CONSULTANT: Eco/Nomics, Inc., which will do business in California as Ecal/nomics, Inc., a Colorado Corporation
Date:_____

By:_____
William O'Toole
President

[END OF SIGNATURES]

EXHIBIT B
SCHEDULE OF BILLING RATES

Person	Title	Hourly Rates
William O'Toole	President	$205
Cerene St. John, JD	Legal Analysis	$225
Trevor S. Blythe, MBA	Vice President	$135
Geiza Goulart da Silva, MF	Project Manager	$100
Ian Bevan, MBA	Project Analyst	$90
Tina Nguyen, MA	Project Analyst	$90
Yvonne Lau	Associate Analyst	$65

CITY OF

NEWPORT BEACH

City Council Staff Report

September 10, 2019
Agenda Item No. 9

TO:	HONORABLE MAYOR AND MEMBERS OF THE CITY COUNCIL
FROM:	David A. Webb, Public Works Director - 949-644-3311, dawebb@newportbeachca.gov
PREPARED BY:	Kyle Brodowski, Facilities and Equipment Manager, kbrodowski@newportbeachca.gov
PHONE:	949-718-3464
TITLE:	Amendment No. One to On-Call Maintenance and Repair Services Agreements with Academy Electric, Inc. (C-7150-1), Laughlin & White, Inc. (C-7149-1), and A.C. Pozos Electric Corp. (C-7148-1) for On-Call Electrical Repair Services

ABSTRACT:

In July of 2017, the City executed three-year on-call agreements with Academy Electric, Inc., Laughlin & White, Inc., and A.C. Pozos Electric Corp. to perform as-needed electrical repair services at various City facilities. Since execution, multiple departments have utilized these on-call agreements for necessary electrical repairs. The requested amendment extends the term of each of the agreements from three to five years and increases the total not-to-exceed limit for each agreement from $100,000 to $250,000.

RECOMMENDATION:

a) Determine this action is exempt from the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(2) and 15060(c)(3) of the CEQA Guidelines because this action will not result in a physical change to the environment, directly or indirectly;

b) Approve Amendment No. One to On-Call Maintenance and Repair Services Agreement for On-Call Electrical Repair Services with Academy Electric, Inc. to extend the term of the agreement to five years and increase the not to exceed amount by $150,000, for a total not to exceed $250,000, and authorize the Mayor and City Clerk to execute the amendment;

c) Approve Amendment No. One to On-Call Maintenance and Repair Services Agreement for On-Call Electrical Repair Services with Laughlin & White, Inc. to extend the term of the agreement to five years and increase the not to exceed amount by $150,000, for a total not to exceed $250,000, and authorize the Mayor and City Clerk to execute the amendment; and

d) Approve Amendment No. One to On-Call Maintenance and Repair Services Agreement for On-Call Electrical Repair Services with A.C. Pozos Electric Corporation to extend the term of the agreement to five years and increase the not to exceed amount by $150,000, for a total not to exceed $250,000, and authorize the Mayor and City Clerk to execute the amendment.

FUNDING REQUIREMENTS:

The current adopted budget includes sufficient funding for these services. It will be expensed to the Facility Maintenance account in the Public Works Department, 0109041-851016, or other Department maintenance accounts as services are used.

DISCUSSION:

The City maintains the electrical systems at nearly 100 facilities. In April of 2017, the City issued Request for Proposal (RFQ) No. 17-61 for Electrical Repair Services. As a result of the RFP, the City selected the three top scoring vendors to award three-year on-call maintenance and repair services agreements with not-to-exceed limits of $100,000 each. Staff has been pleased with the quality of services received from the selected vendors.

Since execution, the initial estimated contract values have been used up quicker than anticipated as multiple departments have utilized these on-call agreements for necessary electrical repairs. Departments including Recreation and Senior Services, Utilities, Fire and Police each have facilities with electrical service needs.

In addition, many City buildings, garages, and public restrooms are high-use and in close proximity to the ocean, requiring more frequent maintenance and repairs. The humid and salty environment is corrosive to electrical circuits, exterior electrical devices, and hi-voltage service panels.

Further contributing to the higher than anticipated use, some City facilities have exceeded their useful life and, as a result, have dated electrical systems. The age of the structure along with the conditions of a corrosive environment can make a simple or routine repair more complex. In some cases, staff has found it more cost effective to retrofit equipment and electrical fixtures with new more efficient technology.

Due to the higher than anticipated demand and unexpected needs that arise from multi-departmental use of these contract services, forecasting these repairs in advance can be difficult. In order to accommodate the necessary maintenance and repairs moving forward, and to more effectively cover unanticipated costs from other departments, staff recommends amending all three current agreements to extend the agreement term from three to five years and to increase the not to exceed amount by $150,000 for a new total not to exceed limit of $250,000 each.

ENVIRONMENTAL REVIEW:

Staff recommends the City Council find this action 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, Chapter 3, because it has no potential for resulting in physical change to the environment, directly or indirectly.

NOTICING:

The agenda item has been noticed according to the Brown Act (72 hours in advance of the meeting at which the City Council considers the item).

ATTACHMENTS:

Attachment A – Amendment No. One to On-Call Maintenance and Repair Services Agreement with Academy Electric, Inc. (7150-1)
Attachment B – Amendment No. One to On-Call Maintenance and Repair Services Agreement with Laughlin & White, Inc. (7149-1)
Attachment C – Amendment No. One to On-Call Maintenance and Repair Services Agreement with A.C. Pozos Electric Corporation (7148-1)

ATTACHMENT A

AMENDMENT NO. ONE TO ON-CALL MAINTENANCE/REPAIR SERVICES AGREEMENT WITH ACADEMY ELECTRIC, INC. FOR ON-CALL ELECTRICAL REPAIR SERVICES

THIS AMENDMENT NO. ONE TO ON-CALL MAINTENANCE/REPAIR SERVICES AGREEMENT ("Agreement") is made and entered into as of this 10th day of September, 2019 ("Effective Date"), by and between the CITY OF NEWPORT BEACH, a California municipal corporation and charter city ("City"), and ACADEMY ELECTRIC, INC., a California corporation ("Contractor"), whose address is P.O. Box 2364 Orange, CA 92859, and is made with reference to the following:

RECITALS

A. On the 17th day of July, 2017, City and Contractor entered into an On-Call Maintenance/Repair Services Agreement ("Agreement") to engage Contractor to perform on-call electrical repair services for City ("Project").

B. City and Contractor desires to enter into this Amendment No. One to extend the term and to increase the total compensation for Contractor to perform on-call maintenance and/or repair services for City.

C. City and Contractor mutually desire to amend the agreement, as provided below.

NOW, THEREFORE, it is mutually agreed by and between the undersigned parties as follows:

1. TERM

Section 1 of the Agreement is amended in its entirety and replaced with the following: "The term of this Agreement shall commence on the Effective Date, and shall terminate on June 30, 2022, unless terminated earlier as set forth herein".

2. COMPENSATION TO CONTRACTOR

Section 4.1 of the Agreement is amended in its entirety and replaced with the following: "City shall pay Contractor for the Services on a time and expense not-to-exceed basis in accordance with the provisions of this Section and the Letter Proposal and the Schedule of Billing Rates attached hereto as Exhibit B and incorporated herein by reference. Except as otherwise provided herein, no rate changes shall be made during the term of this Agreement without the prior written approval of City. Contractor's compensation for all Services performed in accordance with this Agreement, including all reimbursable items, shall not exceed **Two Hundred Fifty Thousand Dollars and 00/100 ($250,000.00)**, without prior written amendment to the Agreement."

The total amended compensation reflects Contractor's additional compensation for an increase in the volume of Services to be performed in accordance with this Amendment No. One, including all reimbursable items and subcontractor fees, in an amount not to exceed **One Hundred Fifty Thousand Dollars and 00/100 ($150,000.00)**.

3. INTEGRATED CONTRACT

Except as expressly modified herein, all other provisions, terms, and covenants set forth in the Agreement shall remain unchanged and shall be in full force and effect.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed on the dates written below.

APPROVED AS TO FORM:
CITY ATTORNEY'S OFFICE
Date: 8/22/2019

By: _____
For: Aaron C. Harp
City Attorney

CITY OF NEWPORT BEACH,
a California municipal corporation
Date: _____

By: _____
Diane Dixon
Mayor

ATTEST:
Date: _____

By: _____
Leilani I. Brown
City Clerk

CONTRACTOR: Academy Electric, Inc., a California corporation
Date: _____

By: _____
Diane R. Gentry
President

Date: _____

By: _____
Donald B. Gentry
Secretary and Treasurer

[END OF SIGNATURES]

ATTACHMENT B

AMENDMENT NO. ONE TO ON-CALL MAINTENANCE/REPAIR SERVICES AGREEMENT WITH LAUGHLIN & WHITE, INC. FOR ON-CALL ELECTRICAL REPAIR SERVICES

THIS AMENDMENT NO. ONE TO ON-CALL MAINTENANCE/REPAIR SERVICES AGREEMENT ("Agreement") is made and entered into as of this 10th day of September, 2019 ("Effective Date"), by and between the CITY OF NEWPORT BEACH, a California municipal corporation and charter city ("City"), and LAUGHLIN & WHITE, INC., a California corporation ("Contractor"), whose address is 17071 Imperial Highway, Unit A6 Yorba Linda, CA 92886, and is made with reference to the following:

RECITALS

A. On the 17th day of July 2017, City and Contractor entered into an On-Call Maintenance/Repair Services Agreement ("Agreement") to engage Contractor to perform on-call electrical repair services for City owned and operated facilities.

B. City and Contractor desire to enter into this Amendment No. One to extend the term of the Agreement to June 30, 2022 and to increase the total compensation for the Contractor to perform on-call maintenance and/or repair services for City

C. City and Contractor mutually desire to amend the agreement, as provided below.

NOW, THEREFORE, it is mutually agreed by and between the undersigned parties as follows:

1. TERM

Section 1 of the Agreement is amended in its entirety and replaced with the following: "The term of this Agreement shall commence on the Effective Date, and shall terminate on June 30, 2022, unless terminated earlier as set forth herein.

2. COMPENSATION TO CONTRACTOR

Section 4.1 of the Agreement is amended in its entirety and replaced with the following: "City shall pay Consultant for the Services on a time and expense not-to-exceed basis in accordance with the provisions of this Section and the Letter Proposal and the Schedule of Billing Rates attached hereto as Exhibit B and incorporated herein by reference. Consultant's compensation for all Work performed in accordance with this Agreement, including all reimbursable items and subconsultant fees, shall not exceed **Two Hundred Fifty Thousand Dollars and 00/100 ($250,000.00),** without prior written authorization from City. No billing rate changes shall be made during the term of this Agreement without the prior written approval of City."

The total amended compensation reflects Contractor's additional compensation for an increase in the volume of Services to be performed in accordance with this Amendment No. One, including all reimbursable items and subcontractor fees, in an amount not to exceed **One Hundred Fifty Thousand Dollars and 00/100 ($150,000.00)**.

3. INTEGRATED CONTRACT

Except as expressly modified herein, all other provisions, terms, and covenants set forth in the Agreement shall remain unchanged and shall be in full force and effect.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed on the dates written below.

APPROVED AS TO FORM:
CITY ATTORNEY'S OFFICE
Date: 8/22/2019

By: _____
For: Aaron C. Harp HMI 8-2-19
City Attorney

ATTEST:
Date: _____

By: _____
Leilani I. Brown
City Clerk

CITY OF NEWPORT BEACH,
a California municipal corporation
Date: _____

By: _____
Diane Dixon
Mayor

CONTRACTOR: Laughlin & White, Inc.,
a California corporation
Date: _____

By: _____
Ken White
Chief Executive Officer

Date: _____

By: _____
Derrick Laughlin
Chief Financial Officer

[END OF SIGNATURES]

ATTACHMENT C

AMENDMENT NO. ONE TO ON-CALL MAINTENANCE/REPAIR SERVICES AGREEMENT WITH A.C. POZOS ELECTRIC CORPORATION FOR ON-CALL ELECTRICAL REPAIR SERVICES

THIS AMENDMENT NO. ONE TO ON-CALL MAINTENANCE/REPAIR SERVICES AGREEMENT ("Amendment No. One"), is made and entered into as of this 2nd day of August, 2019 ("Effective Date"), by and between the CITY OF NEWPORT BEACH, a California municipal corporation and charter city ("City"), and A.C. POZOS ELECTRIC CORPORATION, a California corporation ("Contractor"), whose address is 2948 Royal Palm Dr. Costa Mesa, CA 92626, and is made with reference to the following:

RECITALS

A. On the 17th day of July, 2017, City and Contractor entered into an On-Call Maintenance/Repair Services Agreement ("Agreement") to engage Contractor to perform electrical repair services for City ("Project").

B. City desires to enter into this Amendment No. One to extend the term and increase the total compensation for Contractor to perform on-call maintenance and/or repair services for City.

C. City and Contractor mutually desire to amend the agreement, as provided below.

NOW, THEREFORE, it is mutually agreed by and between the undersigned parties as follows:

1. TERM

Section 1 of the Agreement is amended in its entirety and replaced with the following: "The term of this Agreement shall commence on the Effective Date, and shall terminate on June 30, 2022, unless terminated earlier as set forth herein".

2. COMPENSATION TO CONTRACTOR

Section 4.1 of the Agreement is amended in its entirety and replaced with the following: "City shall pay Contractor for the Services on a time and expense not-to-exceed basis in accordance with the provisions of this Section and the Letter Proposal and the Schedule of Billing Rates attached hereto as Exhibit B and incorporated herein by reference. Except as otherwise provided herein, no rate changes shall be made during the term of this Agreement without the prior written approval of City. Contractor's compensation for all Services performed in accordance with this Agreement, including all reimbursable items, shall not exceed **Two Hundred Fifty Thousand Dollars and 00/100 ($250,000.00)**, without prior written amendment to the Agreement."

The total amended compensation reflects Contractor's additional compensation for an increase in the volume of Services to be performed in accordance with this Amendment No. One, including all reimbursable items and subcontractor fees, in an amount not to exceed **One Hundred Fifty Thousand Dollars and 00/100 ($150,000.00)**.

3. INTEGRATED CONTRACT

Except as expressly modified herein, all other provisions, terms, and covenants set forth in the Agreement shall remain unchanged and shall be in full force and effect.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed on the dates written below.

APPROVED AS TO FORM:
CITY ATTORNEY'S OFFICE
Date: 8/22/2019

By: _____
For: Aaron C. Harp
City Attorney

HMI
8-22-19

CITY OF NEWPORT BEACH,
a California municipal corporation
Date: _____

By: _____
Diane Dixon
Mayor

ATTEST:
Date: _____

By: _____
Leilani I. Brown
City Clerk

CONTRACTOR: A.C. Pozos Electric Corporation, a California corporation
Date: _____

By: _____
Anthony C. Pozos
CEO and Secretary

[END OF SIGNATURES]

CITY OF

NEWPORT BEACH

City Council Staff Report

September 10, 2019
Agenda Item No. 10

TO:	HONORABLE MAYOR AND MEMBERS OF THE CITY COUNCIL
FROM:	David A. Webb, Public Works Director - 949-644-3311, dawebb@newportbeachca.gov
PREPARED BY:	Kyle Brodowski, Facilities & Equipment Manager, kbrodowski@newportbeachca.gov
PHONE:	949-644-3464
TITLE:	Amendment No. One to On-Call Maintenance and Repair Services Agreement for Roll-Up Door Preventative Maintenance and As-Needed Repairs with Excel Door and Gate Company, Inc.

ABSTRACT:

In March of 2018, the City executed a two-year on-call agreement with Excel Door and Gate Company, Inc. to perform roll-up door maintenance and repair services at various City facilities. Since the execution of the agreement, ongoing maintenance for our facilities including Fire Stations, Libraries, Maintenance Yards, Marina Park, Oasis Senior Center and unforeseen emergency repairs has exceeded initial anticipated needs. The requested amendment extends the agreement term from two to five years and increases the total not to exceed limit from $120,000 to $500,000.

RECOMMENDATION:

a) Determine this action is exempt from the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(2) and 15060(c)(3) of the CEQA Guidelines because this action will not result in a physical change to the environment, directly or indirectly; and

b) Approve Amendment No. One to On-Call Maintenance and Repair Services Agreement for roll-up door preventative maintenance and as-needed repairs with Excel Door and Gate Company, Inc. to extend the term of the agreement to five years and increase the not to exceed amount by $380,000 for a total not to exceed amount of $500,000, and authorize the Mayor and City Clerk to execute the amendment.

FUNDING REQUIREMENTS:

The current adopted budget includes sufficient funding for these services. It will be expensed to the Facility Maintenance account in the Public Works Department, 0109041-851016, or other Department maintenance accounts as services are used.

DISCUSSION:

Many City facilities including fire stations, City yards, and community centers including the Civic Center, Marina Park, and Oasis Senior Center have large roll-up, sliding, and exterior swing doors that require service for safe and proper operation. In February of 2018, the City issued Request for Proposal (RFP) No. 18-34 for roll-up door maintenance and repair services. As a result of the RFP, the City selected Excel Door and Gate Company, Inc. and awarded a two-year on-call maintenance and repair services agreement with a not to exceed limit of $120,000. The contract includes a set amount of regular and routine door maintenance as well as an allowance for emergency and other needed door repairs.

Since the execution of the agreement, ongoing maintenance of specialized doors at our City facilities as well as unforeseen emergency door repairs has exceeded initial anticipated needs. Emergency repairs at Fire Station No. 3, replacement of double glass doors at the Civic Center, and the replacement of electric door motors at the Corporation Yard are a few examples of the unanticipated repairs that have required the use of these on-call services. Additionally, other Departments' needs for door services have been higher than originally projected, resulting in a Citywide annual door services and maintenances need of around $100,000 per year rather than $60,000.

Staff has been pleased with the quality and timeliness of services received from this vendor to date. In order to accommodate the necessary maintenance and repairs moving forward, staff recommends amending the current agreement with Excel Door and Gate Company, Inc. to extend the agreement term from two to five years and to increase the not to exceed amount by $380,000 for a new total not to exceed limit of $500,000.

ENVIRONMENTAL REVIEW:

Staff recommends the City Council find this action 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, Chapter 3, because it has no potential for resulting in physical change to the environment, directly or indirectly.

NOTICING:

The agenda item has been noticed according to the Brown Act (72 hours in advance of the meeting at which the City Council considers the item).

ATTACHMENT:

Attachment A – Amendment No. One to On-Call Maintenance and Repair Services Agreement (C-7381-1)

ATTACHMENT A

AMENDMENT NO. ONE TO ON-CALL MAINTENANCE/REPAIR SERVICES AGREEMENT WITH EXCEL DOOR & GATE COMPANY, INC. FOR ROLL-UP DOOR PREVENTATIVE MAINTENANCE AND AS-NEEDED REPAIRS

THIS AMENDMENT NO. ONE TO ON-CALL MAINTENANCE/REPAIR SERVICES AGREEMENT ("Amendment No. One") is made and entered into as of this 10th day of September, 2019 ("Effective Date"), by and between the CITY OF NEWPORT BEACH, a California municipal corporation and charter city ("City"), and Excel Door & Gate Company, Inc., a California corporation ("Contractor"), whose address is 13242 Solomon Peak Dr. Riverside, CA 92503, and is made with reference to the following:

RECITALS

A. On March 2, 2018, City and Contractor entered into an On-Call Maintenance/Repair Services Agreement ("Agreement") to engage Contractor to perform on-call maintenance and/or repair services for City ("Project").

B. City desires to enter into this Amendment No. One to extend the term and increase the total compensation for Contractor to perform on-call maintenance and/or repair services for City ("Project").

C. City and Contractor mutually desire to amend the agreement, as provided below.

NOW, THEREFORE, it is mutually agreed by and between the undersigned parties as follows:

1. TERM

Section 1 of the Agreement is amended in its entirety and replaced with the following: "The term of this Agreement shall commence on the Effective Date, and shall terminate on March 1, 2023, unless terminated earlier as set forth herein."

2. COMPENSATION TO CONTRACTORS

Section 4.1 of the Agreement is amended in its entirety and replaced with the following: "City shall pay Contractor for the Services in accordance with the provisions of this Section and the Letter Proposal and the Schedule of Billing Rates attached to Agreement as Exhibit B and incorporated herein by reference. Except as otherwise provided herein, no rate changes shall be made during the term of this Agreement without the prior written approval of City. Contractor's compensation for all Services performed in accordance with this Agreement, including all reimbursable items, shall not exceed **Five Hundred Thousand Dollars and 00/100 ($500,000.00)**, without prior written amendment to the Agreement."

The total amended compensation reflects Contractor's additional compensation for an increase in the volume of Services to be performed in accordance with this Amendment No. One, including all reimbursable items and subcontractor fees, in an amount not to exceed **Three Hundred Eighty Thousand Dollars and 00/100 ($380,000.00)**.

3. INTEGRATED CONTRACT

Except as expressly modified herein, all other provisions, terms, and covenants set forth in the Agreement shall remain unchanged and shall be in full force and effect.

[SIGNATURES ON NEXT PAGE]

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed on the dates written below.

APPROVED AS TO FORM:
CITY ATTORNEY'S OFFICE
Date: 8/1/2019

By: _____
For: Aaron C. Harp
City Attorney

MM1
8/1/19

ATTEST:
Date: _____

By: _____
Leilani I. Brown
City Clerk

CITY OF NEWPORT BEACH,
a California municipal corporation
Date: _____

By: _____
Diane B. Dixon
Mayor

CONTRACTOR: Excel Door & Gate Company, Inc., a California corporation
Date: _____

By: _____
Rodwell Pascascio Sr.
President

Date: _____

By: _____
Michelle Pascascio
Secretary

[END OF SIGNATURES]

CITY OF

NEWPORT BEACH

City Council Staff Report

September 10, 2019
Agenda Item No. 11

TO:	HONORABLE MAYOR AND MEMBERS OF THE CITY COUNCIL
FROM:	David A. Webb, Public Works Director - 949-644-3311, dawebb@newportbeachca.gov
PREPARED BY:	Andy Tran, Senior Civil Engineer, atran@newportbeachca.gov
PHONE:	949-644-3315
TITLE:	Approval of Amendment No. One to Professional Services Agreement with Chambers Group, Inc. for Environmental Services for the Superior Avenue Pedestrian and Bicycle Bridge and Parking Lot Project (15T09)

ABSTRACT:

On May 1, 2019, the City entered into a Professional Services Agreement (PSA) with Chambers Group, Inc. to perform environmental services for the Superior Avenue Pedestrian and Bicycle Bridge and Parking Lot project (C-8020-4). Upon initial review of the draft environmental documents and the Coastal Development Permit requirements by Caltrans and the California Coastal Commission, respectively, the regulatory agencies have requested that some additional technical studies will be required. Amendment No. One is needed to complete these additional environmental and permitting documents.

RECOMMENDATION:

a) Determine this action is exempt from the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(2) and 15060(c)(3) of the CEQA Guidelines because this action will not result in a physical change to the environment, directly or indirectly; and

b) Approve Amendment No. One in the amount of $44,242.00 to the Professional Services Agreement with Chambers Group, Inc. for additional environmental services for a new not-to-exceed total price of $161,217.00, and authorize the Mayor and City Clerk to execute the Amendment.

FUNDING REQUIREMENTS:

The consultant's proposed fee for Amendment No. One is $44,242.00. Sufficient funding is available in the current Capital Improvement Program budget. Services will be expensed to account No. 56201-980000-15T09 (Parks and Community Centers).

DISCUSSION:

On May 1, 2019, the City entered into a PSA with Chambers Group, Inc. in the amount of $116,975.00, to complete the environmental services for the Superior Avenue Pedestrian and Bicycle Bridge and Parking Lot project. The PSA scope of work includes completing several technical studies to satisfy both National Environmental Policy Act (NEPA) and California Environmental Quality Act (CEQA) requirements. This project is located within the Coastal Zone, approximately 1,000 feet from the Pacific Ocean. Proposed improvements include constructing a new pedestrian and bicycle bridge overcrossing Superior Avenue, a larger replacement parking lot and a dog park. Because of potential view impacts, some view simulations were included in the PSA. During our public outreach efforts, residents expressed concerns about potential view impacts. To better address specific concerns on potential view impacts, staff recommends completing additional view simulations to model both steel and concrete bridge options.

Staff has also been coordinating with Caltrans to satisfy the NEPA requirements as required by the funding grant. Upon their initial review, Caltrans requested a Coastal California Gnatcatcher focused survey. The Coastal California Gnatcatcher is listed as a "Threatened" bird by the US Fish & Wildlife Service. The focused survey is required because the project is located in potential habitat for the Coastal California Gnatcatcher.

Additionally, since this project is located in the Coastal Zone and involves constructing a bridge abutment at Sunset Ridge Park, staff has been coordinating with the California Coastal Commission (CCC) to amend the Sunset Ridge Park Coastal Development Permit. Upon their initial review of the proposed improvements, CCC staff requested for a Jurisdictional Delineation of the wetlands that is nearby the project location.

Amendment No. One is needed to compensate the consultant for the additional view simulations, Coastal California Gnatcatcher focused survey, and the Jurisdictional Delineation of the wetlands efforts.

ENVIRONMENTAL REVIEW:

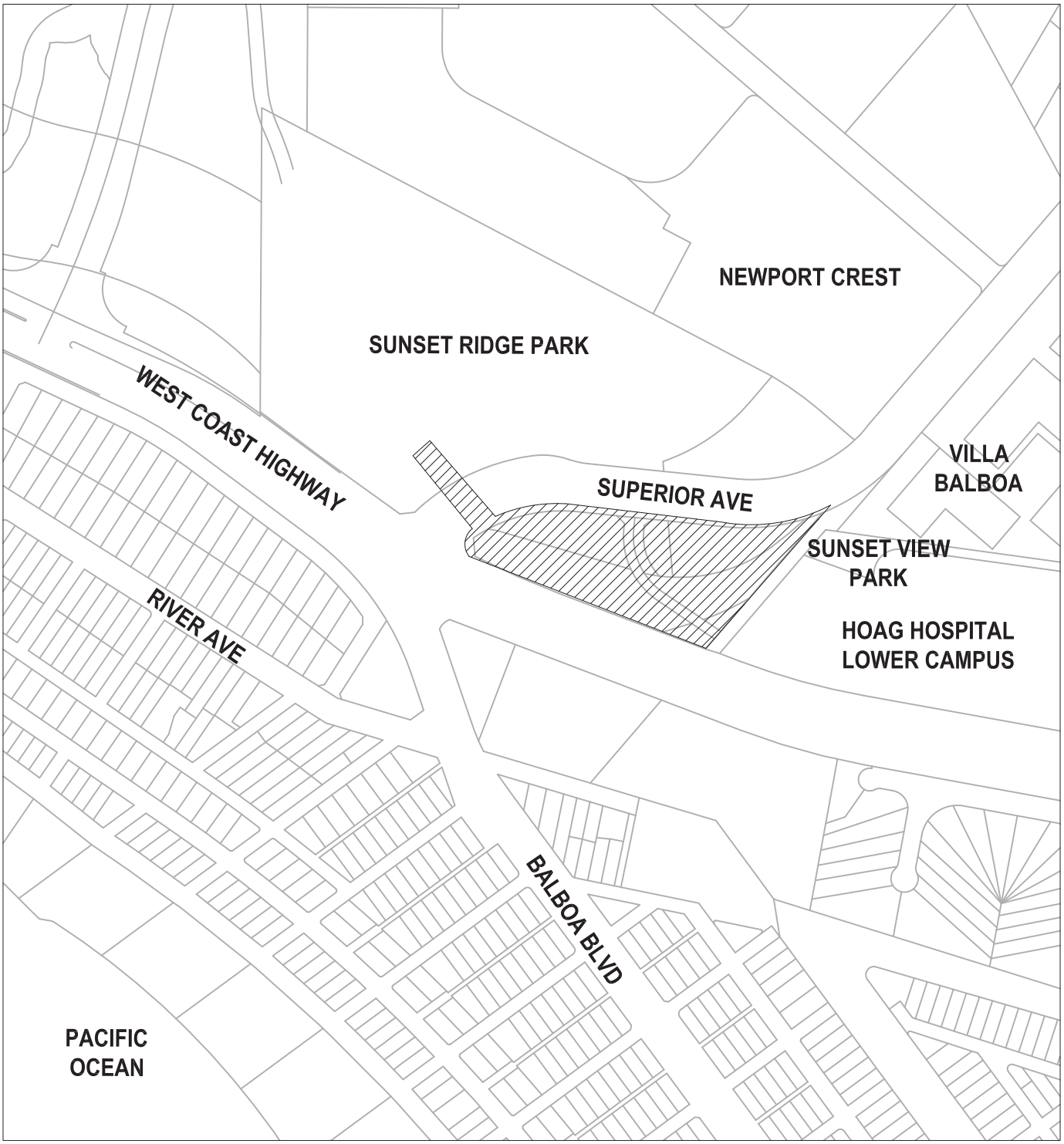
Staff recommends the City Council find this action is not subject to the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment) and 15060(c)(3) (the activity is not a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

NOTICING:

The agenda item has been noticed according to the Brown Act (72 hours in advance of the meeting at which the City Council considers the item).

ATTACHMENTS:

Attachment A – Location Map
Attachment B – Professional Services Agreement



SUPERIOR AVENUE PEDESTRIAN AND BICYCLE BRIDGE AND PARKING LOT
LOCATION MAP

CITY OF NEWPORT BEACH
PUBLIC WORKS DEPARTMENT

C-8020-4	15T09	9/10/19

F:\Users\PBW\Shared\Contracts\FY19-20 CURRENT\400 - PARKS HARBORS BEACHES\Lower Sunset View Park Extension C-7088-1\Exhibits\Location Map Exhibition A.dwg 08/15/19 - 12:00pm jatran

AMENDMENT NO. ONE TO PROFESSIONAL SERVICES AGREEMENT WITH CHAMBERS GROUP, INC. FOR ENVIRONMENTAL SERVICES FOR THE SUPERIOR AVENUE PEDESTRIAN AND BICYCLE BRIDGE AND PARKING LOT PROJECT

THIS AMENDMENT NO. ONE TO PROFESSIONAL SERVICES AGREEMENT ("Amendment No. One") is made and entered into as of this 10th day of September, 2019 ("Effective Date"), by and between the CITY OF NEWPORT BEACH, a California municipal corporation and charter city ("City"), and CHAMBERS GROUP, INC., a California corporation ("Consultant"), whose address is 5 Hutton Centre Drive, Suite 750, Santa Ana, CA 92707, and is made with reference to the following:

RECITALS

A. On May 1, 2019, City and Consultant entered into a Professional Services Agreement ("Agreement") to engage Consultant to provide professional environmental services and support for the Superior Avenue Pedestrian and Bicycle Bridge and Parking Lot Project ("Project").

B. The parties desire to enter into this Amendment No. One to reflect additional Services not included in the Agreement, and to increase the total compensation.

NOW, THEREFORE, it is mutually agreed by and between the undersigned parties as follows:

1. SERVICES TO BE PERFORMED

Exhibit A to the Agreement shall be supplemented to include the Scope of Services, attached hereto as Exhibit A and incorporated herein by reference ("Services" or "Work"). Exhibit A to the Agreement and Exhibit A to this Amendment No. One shall collectively be known as "Exhibit A." The City may elect to delete certain Services within the Scope of Services at its sole discretion.

2. COMPENSATION TO CONSULTANT

Exhibit B to the Agreement shall be amended in its entirety and replaced to include the Schedule of Billing Rates, attached hereto as Exhibit B and incorporated herein by reference ("Services" or "Work"). Exhibit B to Amendment No. One shall be known as "Exhibit B."

Section 4.1 of the Agreement is amended in its entirety and replaced with the following: "City shall pay Consultant for the Services on a time and expense not-to-exceed basis in accordance with the provisions of this Section and the Schedule of Billing Rates attached hereto as Exhibit B and incorporated herein by reference. Consultant's compensation for all Work performed in accordance with this Agreement, including all reimbursable items and subconsultant fees, shall not exceed **One Hundred Sixty One Thousand Two Hundred Seventeen Dollars and 00/100 ($161,217.00)**, without prior

written authorization from City. No billing rate changes shall be made during the term of this Agreement without the prior written approval of City."

The total amended compensation reflects Consultant's additional compensation for additional Services to be performed in accordance with this Amendment No. One, including all reimbursable items and subconsultant fees, in an amount not to exceed **Forty Four Thousand Two Hundred Forty Two Dollars and 00/100 ($44,242.00)**.

3. INTEGRATED CONTRACT

Except as expressly modified herein, all other provisions, terms, and covenants set forth in the Agreement shall remain unchanged and shall be in full force and effect.

[SIGNATURES ON NEXT PAGE]

IN WITNESS WHEREOF, the parties have caused this Amendment No. One to be executed on the dates written below.

APPROVED AS TO FORM:
CITY ATTORNEY'S OFFICE
Date: 8/23/2019

By: _____
For: Aaron C. Harp
City Attorney

08.23.19 dmt

ATTEST:
Date: _____

By: _____
Leilani I. Brown
City Clerk

CITY OF NEWPORT BEACH,
a California municipal corporation
Date: _____

By: _____
Diane B. Dixon
Mayor

CONSULTANT: CHAMBERS GROUP, INC., a California corporation
Date: _____

By: _____
Mike McEntree
Vice President/Chief Operating Officer

Date: _____

By: _____
Alex Gurrola
Chief Financial Officer/Chief Executive Officer

[END OF SIGNATURES]

Attachments: Exhibit A – Scope of Services
Exhibit B – Schedule of Billing Rates

EXHIBIT A
SCOPE OF SERVICES

EXHIBIT A
SCOPE OF SERVICES

Amendment No. 1
Environmental Services for the Superior Avenue Pedestrian & Bicycle Bridge and Parking Lot Project

Consultant shall accomplish the scope of work as described below.

Task 8:1 Additional Visual Simulations

Subconsultant (Estrada Land Planning) will provide simulations for two additional key viewpoints (in addition to the 4 previously scoped) for the steel truss bridge design. Subconsultant will provide simulations for the six key viewpoints for the concrete span bridge design. These services include:

1. Model and render new concrete bridge into 3-D model.
2. Export 3-D model to photoshop.
3. Edit six simulations in photoshop.
4. Revise simulations per City's comments (1 round).

Task 10: California Coastal Commission Jurisdictional Delineation

The California Coastal Commission (Commission), through provisions of the California Coastal Act, is empowered to issue Coastal Development Permits for any project located within the Coastal Zone. The Commission's definition of wetlands, as defined in Section 30121 of the Coastal Act and Title 14 §13577 of the Commission's regulations, is distinctly different from the United States Army Corps of Engineers' (USACE) definition of wetlands. According to the Commission's regulations, wetlands are defined as "land where the water table is at, near, or above the land surface long enough to promote the formation of hydric soils or to support the growth of hydrophytes." Both definitions focus on three fundamental wetland characteristics: hydrology, soils, and vegetation. However, while the USACE definition requires the existence of all three wetland characteristics for an area to be considered a wetland, the Commission's definition of wetlands is based on the existence of only two characteristics: wetland hydrology and either a prevalence of hydrophytic vegetation or formation of hydric soils (exceptions include certain areas that lack wetland soils and vegetation for one reason or another). It is noted that under certain circumstances, reliable indicators of all required characteristics are not necessarily apparent, and like Commission wetlands these areas may be delineated as wetlands by the USACE on the basis of indicators of only two of the three characteristics. The Commission routinely makes jurisdictional wetlands determinations based on the presence of one characteristic indicator (i.e., wetland soils or vegetation) unless there is substantial evidence that this indicator is not valid. Nevertheless, the presence of wetland hydrology during some portion of most years is fundamental to the existence of any wetland. However, the Commission will typically assume the presence of wetland hydrology when there is insufficient evidence to conclusively refute the presence of wetland hydrology and when there is a prevalence of hydrophytic vegetation or the formation of hydric soils.

Chambers Group will review available maps and documents pertaining to any wetland and/or jurisdictional resources on site, including vegetation maps, biological survey documentation, and aerial photographs of the area, prior to conducting any fieldwork on site. Aerial photographs and topographic maps will be used to aid in the identification and mapping of potential jurisdictional

wetlands/waterbodies. A Chambers Group wetland delineator will identify and delineate areas located both on site and immediately adjacent to the project area that fall under the wetland regulatory jurisdiction of the Commission using the approach and delineation methodology described above. This will entail using the currently accepted methodology prescribed in the USACE 1987 Wetland Delineation Manual and the USACE 2008 Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Arid West Region (Version 2) to map the boundaries of any Commission jurisdictional wetlands. Photographs will be taken to document the current conditions of any such wetlands.

Following completion of the fieldwork, Chambers Group will incorporate the methods and results of the delineation fieldwork into a draft report. This will include text describing the results of the limits of jurisdiction pursuant to Commission regulations. In addition, the report will include a map showing the location of any Commission jurisdictional wetlands on or adjacent to the project site and representative photographs of these wetlands. Any wetland data sheets will be provided as an appendix to the report. Chambers Group anticipates no more than one round of client/project team review and revisions to the draft report before finalizing the jurisdictional delineation report.

Assumptions

- This scope of work does not include agency consultations, permitting services, or subsequent follow-up meetings with the client.

- Meetings and coordination with the agencies regarding the results of the Jurisdictional Delineation are provided in Optional Task 12.

- The cost for this task includes the field survey, ODC's including travel and equipment, and reporting services.

Task 11: Coastal California Gnatcatcher Focused Surveys and Report

Chambers Group's team of qualified and USFWS permitted biologists will conduct focused surveys within the project site for coastal California Gnatcatcher (CAGN) according to the Coastal California Gnatcatcher (*Polioptila californica californica*) Presence/Absence Survey Guidelines (USFWS 1997), and includes a 500-foot buffer, where feasible. The appropriate USFWS field office will be notified prior to surveys. Three (3) surveys will be conducted at least one (1) week apart from each other, in accordance with surveys conducted in NCCP/HCP jurisdictions. Complete bird lists will be maintained for each survey day. The locations of the target species and other sensitive species and/or their nests will be documented in field notes and/or approved data sheets, recorded with a handheld Global Positioning System (GPS), mapped onto high-resolution aerial photographs, and photographed clearly showing the location of the species in reference to work areas. Observed territories will be drawn directly onto high-resolution aerial photographs on each survey, resulting in a comprehensive territory map at the close of the season. These territory maps will then be transcribed using GIS software. If a CAGN is identified during the survey efforts, Chambers Group will notify the City immediately to discuss the need for a formal or informal consultation with the agencies.

Following the completion of the CAGN survey effort, Chambers Group will complete a 45-day report of results in accordance with the 1997 USFWS protocol. The draft report will be issued for comment and review within three weeks of the completion of the surveys. Chambers Group will incorporate one

(1) round of comments into a Final Report within ten (10) business days of receipt of comments on the Draft Report. One electronic copy and up to three hardcopies (upon request) of the final report will be provided. The final report will then be submitted to the USFWS and CDFW as appropriate.

Assumptions

- The cost for this task includes approximately three (3) full days for one permitted CAGN biologist, ODC's including travel and equipment, agency notification, and reporting.

- This scope of work does not include agency consultations, permitting services, or subsequent follow-up meetings with the client.

- Meetings and coordination with the agencies regarding the results of the CAGN surveys are provided in Optional Task 13.

Task 12: Meetings and Coordination Regarding Jurisdictional Delineation

Since Commission wetlands have been identified on the project site, Chambers Group recognizes that in-person meetings with City of Newport Beach (City) representatives and perhaps Commission staff may be needed to discuss and resolve issues involving the wetlands and the proposed project activities. It may also be necessary for Chambers Group biologists to discuss these issues via phone calls (video/audio conference calls) or via email. Therefore, Chambers Group has allocated a maximum of 20 hours for a Senior Biologist and 10 hours for the Director of Biology to 1) attend meetings where Commission wetland jurisdictional issues need to be discussed, 2) participate in video or audio conference calls, and 3) communicate via email or other online means. The hours specified above include travel time for requested meetings.

Assumptions

- This scope of work does not include permitting services or subsequent preparation of documents, including letters or memoranda.

- If additional hours are needed beyond what is specified in this proposal, a subsequent change order will be required.

Task 13: Meetings and Coordination Regarding Coastal California Gnatcatcher Informal Consultation

Chambers Group understands that if sensitive resources are present, preparation of additional avoidance and protection measures may be required to address potential direct and indirect impacts to the species. Although low quality habitat for CAGN is present within portions of the project site, the likelihood of CAGN to be present on site is low. Presence or absence of this species will be confirmed through focused CAGN surveys as described above. Therefore, Chambers Group proposes to assist the City during negotiations with the agencies for an informal Section 7 consultation. This scope does not include a formal Section 7 consultation. Chambers Group has allocated a maximum of 20 hours for a Senior Biologist and 10 hours for the Director of Biology to attend a site visit with the agencies as part of the negotiation process. This optional task may include Chambers Group biologists to

discuss these issues via phone calls (video/audio conference calls), in person at the City office, or via email. This task may also include the preparation of a memo regarding updates on surveys, sensitive resource issues, avoidance and minimization measures, and other relevant project information.

Assumptions

- This scope of work does include informal permitting services such as meetings with the City and agencies, and subsequent preparation of a memo document.

- If additional hours are needed beyond what is specified in this proposal, a subsequent change order will be required.

EXHIBIT B
SCHEDULE OF BILLING RATES

CHAMBERS

Chambers Group, Inc. — Commercial Terms

BILLING RATES

Charges for all professional, technical, and administrative personnel directly charging time to the project will be calculated and billed on the basis of the following staff category hourly "Billing Rates". Billing Rates include fringe benefits, burden, and fee.

Staff Title	Rate	Staff Title	Rate
Senior Director	220.00	Managing Environ. Planner	160.00
Director/Program Manager	195.00	Senior Environ. Planner	150.00
Sr. Project Manager	160.00	Project Environ. Planner	130.00
Project Manager	135.00	Staff Environ. Planner	110.00
		Environ. Planner	100.00
		Assistant Environ. Planner	90.00
Managing Cultural Resources Specialist	160.00		
Senior Cultural Resources Specialist	130.00	Managing Biologist / Botanist	180.00
Project Cultural Resources Specialist	115.00	Senior Biologist / Botanist	145.00
Staff Cultural Resources Specialist	100.00	Project Biologist / Botanist	125.00
Cultural Resources Specialist	90.00	Staff Biologist / Botanist	110.00
Assistant Cultural Resources Specialist	70.00	Biologist / Botanist	100.00
		Assistant Biologist / Botanist	90.00
Senior GIS Analyst	143.00		
Staff GIS Analyst	118.00		
GIS Technician	103.00		
Project Controls Specialist	90.00		
Project Assistant/Tech. Editor	80.00		
Word Processor	70.00		
Clerical/Technician	60.00		

The full scope of work detailed in Exhibit A will be executed for a not-to-exceed amount of $161,217.00

CITY OF

NEWPORT BEACH

City Council Staff Report

September 10, 2019
Agenda Item No. 12

TO:	HONORABLE MAYOR AND MEMBERS OF THE CITY COUNCIL
FROM:	David A. Webb, Public Works Director - 949-644-3311, dawebb@newportbeachca.gov
PREPARED BY:	Peter Tauscher, Senior Civil Engineer, ptauscher@newportbeachca.gov
PHONE:	949-644-3316
TITLE:	Approval of Amendment No. One to Lease Agreement with Williams Scotsman, Inc. for Temporary Fire Station No. 5 Facility (15F12)

ABSTRACT:

On January 23, 2018, the City entered into a Lease Agreement with Williams Scotsman, Inc. to provide a modular building for the temporary relocation of the Fire Station No. 5 facility during the construction of the new Corona del Mar Library and Fire Station No. 5 (C-8136-1). Due to nearly 50 rain days, the project completion was extended beyond the June 16, 2019, completion date. Amendment No. One is needed to cover the additional rental period.

RECOMMENDATION:

a) Determine this action is exempt from the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(2) and 15060(c)(3) of the CEQA Guidelines because this action will not result in a physical change to the environment, directly or indirectly; and

b) Approve Amendment No. One in the amount of $30,000.00 to the Lease Agreement with Williams Scotsman, Inc. for additional rental charges for a new not-to-exceed total price of $150,000.00, and authorize the Mayor and City Clerk to execute the Amendment.

FUNDING REQUIREMENTS:

Sufficient funding is available in the current Capital Improvement Program budget. Charges will be expensed to account No. 53201-980000-15F12 (Facilities Maintenance CIP - Major Facility Financing Plan).

DISCUSSION:

On January 23, 2018, the City entered into a Lease Agreement with Williams Scotsman, Inc. in the amount of $120,000 to provide a modular building for the temporary relocation of the Fire Station No. 5 facility during the construction of the new Corona del Mar Library and Fire Station No. 5. Construction, and in turn the initial lease term was planned for 14 months. However, an unusually wet winter resulted in 50 rain days and significantly impacted the project timeline. In addition, the contractor has experienced difficulty in obtaining final supplies to complete the building for occupancy. Staff is working diligently to bring the project to completion.

Amendment No. One will allow for extension of the modular building lease for continuous operation of the Corona del Mar Fire Station No. 5 during final construction. Removal of the Temporary Fire Station 5 complex is set to begin in mid-September 2019.

ENVIRONMENTAL REVIEW:

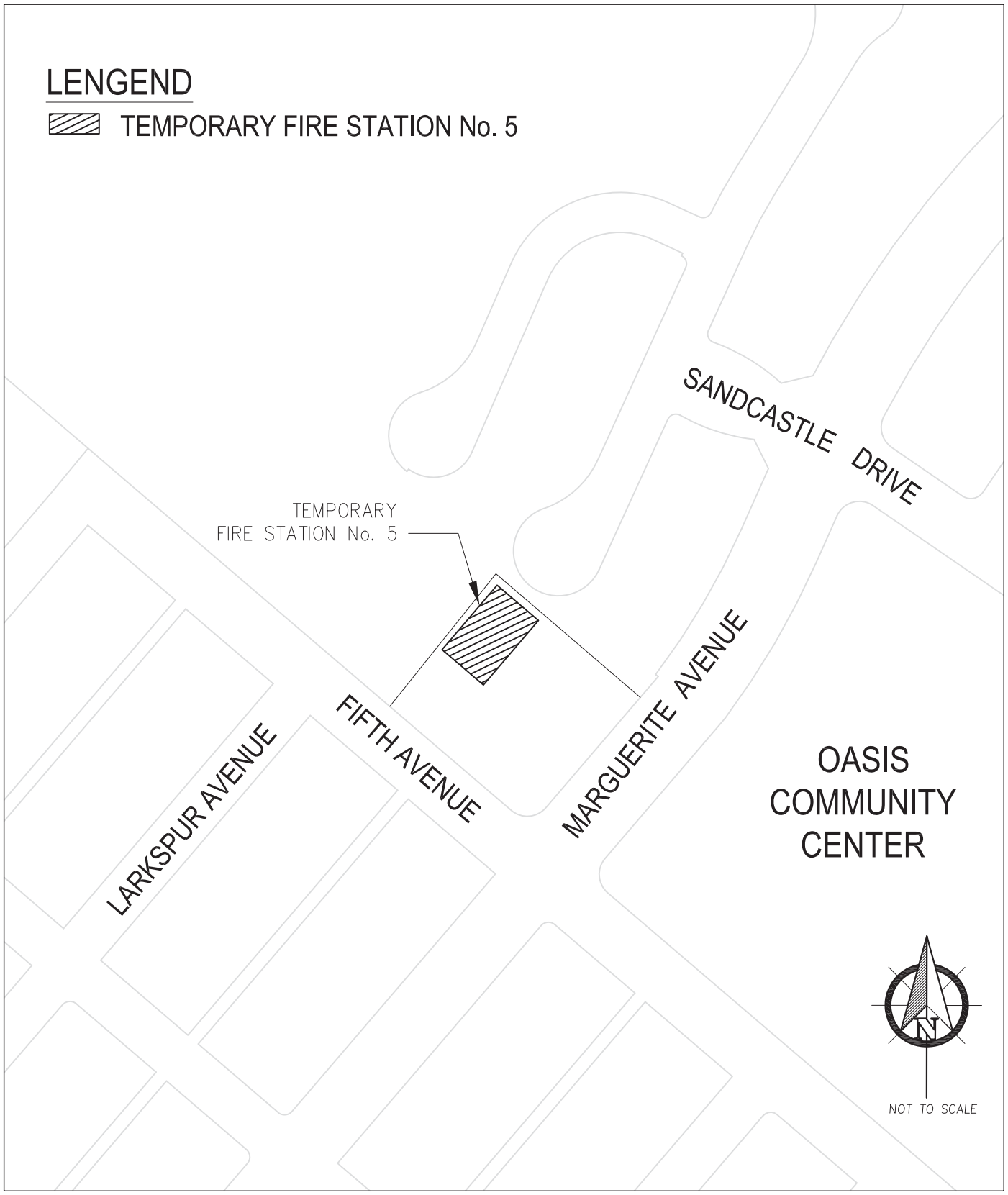
Leasing services are not subject to the California Environmental Quality Act ("CEQA") pursuant to Sections 15060(c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment) and 15060(c)(3) (the activity is not a project as defined in Section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

NOTICING:

This agenda item has been noticed according to the Brown Act (72 hours in advance of the meeting at which the City Council considers the item). The Notice Inviting Bids was advertised in the City's official publication and in construction industry publications.

ATTACHMENTS:

Attachment A – Location Map
Attachment B – Professional Services Agreement



TEMPORARY FIRE STATION #5

LOCATION MAP

CITY OF NEWPORT BEACH
PUBLIC WORKS DEPARTMENT

C-8136

09/10/19

ATTACHMENT B

AMENDMENT NO. ONE TO LEASE AGREEMENT WITH WILLIAMS SCOTSMAN, INC. FOR TEMPORARY TRAILER

THIS AMENDMENT NO. ONE TO LEASE AGREEMENT ("Amendment No. One") is made and entered into as of this 10th day of September, 2019 ("Effective Date"), by and between the CITY OF NEWPORT BEACH, a California municipal corporation and charter city ("Lessee"), and WILLIAMS SCOTSMAN, INC., a Maryland Corporation ("Lessor"), whose address is 11811 Greenstone Avenue, Santa Fe Sprints, CA 90670-4628, and is made with reference to the following:

RECITALS

A. On January 23, 2018, Lessee and Lessor entered into a Lease Agreement ("Lease Agreement").

B. The parties desire to enter into this Amendment No. One to increase the total compensation and amend the "Term of Lease; Extension" clause.

NOW, THEREFORE, it is mutually agreed by and between the undersigned parties as follows:

1. TERM OF LEASE: EXTENSION CLAUSE

Section 5 of the Lease Agreement is amended in its entirety and replaced with the following: "5. Term of Lease; Extension. The term of this Lease Agreement begins on the date of delivery of the Equipment ("Date of Delivery") and ends on the last day of the Minimum Lease Term, as defined in the Lease Order Agreement ("Term") or the Extension Period (as herein defined). Either party may terminate this Lease Agreement, with or without cause, upon (30) days' written notice of intent to terminate. Acceptance of Equipment returned to Lessor prior to expiration of the Term or any Extension Period thereof, does not constitute a release of Lessee's rental obligations. In the event Lessee terminates the Lease Agreement during the Term, Lessee unconditionally agrees to pay any applicable charges for services or modifications performed by Lessor to make the Equipment ready for Lessee's use, and any applicable charges related to Ancillary Products, plus the Final Return Charges. At the end of the Term or Extension Period, Lessee shall be responsible for any "Final Return Charges" as estimated in the Lease Order Agreement. Lessee understands and agrees that the Final Return Charges stated in the Lease Order Agreement are estimates only and that Final Return Charges including, but not limited to, dismantle and return freight charges, will be charged at Lessor's then prevailing rate at the time of surrender. Any amounts prepaid by Lessee for rent or estimated return freight and knockdown shall be applied as a credit to Lessee's final invoice once final charges are determined by Lessor. At the end of the Term, this Lease Agreement is automatically extended on a month-to-month basis on the same terms and conditions until the Equipment is returned to Lessor (the "Extension Period"); except that Lessee's rental rate shall be automatically adjusted to Lessor's then prevailing renewal rental rate. **Notwithstanding the above and unless agreed to by Lessee in writing, in no case shall the total consideration to be paid by Lessee to Lessor**

under this Lease Agreement, including but not limited to any Final Return Charges, exceed One Hundred Fifty Thousand Dollars and 00/100 ($150,000.00) nor shall the entire term of the Agreement extend beyond two (2) years after the Date of Delivery. After the end of the Term, either party can terminate this Lease Agreement on thirty (30) days written notice."

The total amended compensation reflects Lessee's additional compensation for this Amendment No. One, in an amount not to exceed **Thirty Thousand Dollars and 00/100 ($30,000.00)**.

2. INTEGRATED CONTRACT

Except as expressly modified herein, all other provisions, terms, and covenants set forth in the Agreement shall remain unchanged and shall be in full force and effect.

[SIGNATURES ON NEXT PAGE]

IN WITNESS WHEREOF, the parties have caused this Amendment No. One to be executed on the dates written below.

APPROVED AS TO FORM:
CITY ATTORNEY'S OFFICE
Date: 8/27/2019

By: _____
For: Aaron C. Harp
City Attorney

08.23.19 amz

ATTEST:
Date: _____

By: _____
Leilani I. Brown
City Clerk

CITY OF NEWPORT BEACH,
a California municipal corporation
Date: _____

By: _____
Diane B. Dixon
Mayor

CONSULTANT: Williams Scotsman, Inc.,
a Maryland Corporation
Date: _____

By: _____
Bradley L Soultz
Chief Executive Officer

Date: _____

By: _____
Bradley L. Bacon
Secretary

[END OF SIGNATURES]

CITY OF

NEWPORT BEACH

City Council Staff Report

September 10, 2019
Agenda Item No. 13

TO:	HONORABLE MAYOR AND MEMBERS OF THE CITY COUNCIL
FROM:	Jon Lewis, Chief of Police - 949-644-3701, jlewis@nbpd.org
PREPARED BY:	Joe Cartwright, Lieutenant, jcartwright@nbpd.org
PHONE:	949-644-3740
TITLE:	Acceptance of the State of California Office of Traffic Safety Selective Traffic Enforcement Program Grant

ABSTRACT:

The Newport Beach Police Department (NBPD) seeks acceptance of a grant totaling $250,000 from the State of California, Office of Traffic Safety (OTS) to fund a Driving Under the Influence (DUI) Enforcement and Awareness Program, Traffic Safety Enforcement Operations, and DUI Sobriety Checkpoints.

RECOMMENDATION:

a) Determine that the action is exempt from the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(2) and 15060(c)(3) of the CEQA Guidelines because it will not result in a physical change to the environment, directly or indirectly;

b) Authorize the City Council to accept a $250,000 Selective Traffic Enforcement Program (STEP) award granted to the NBPD by the OTS per Council Policies F-3 and F-25. To comply with Council Policy F-3, City Council must formally accept the award of $250,000 and create a new appropriation to expend the funds; and

c) Approve Budget Amendment No. 20-010 increasing NBPD revenue estimates and expenditure appropriations by $250,000.

FUNDING REQUIREMENTS:

The Budget Amendment records and appropriates $250,000 in additional revenue from the OTS STEP Grant and $250,000 in increased expenditure appropriations. The revenue will be posted to the OTS STEP FY 2019-20 Account #11035-431360-G2001 and the expenditure appropriations will be posted to the various expenditure accounts within the OTS Fund, according to the following breakdown:

Account	Category	Amount
11035-713002-G2001	Overtime, Safety	$238,394
11035-727016-G2001	Medicare Fringes	$3,457
11035-861001-G2001	Travel & Meetings	$1,000
11035-841015-G2001	Supplies	$7,149
Total FY 2019-20 STEP Grant		**$250,000**

DISCUSSION:

Newport Beach is an attractive locale for Orange County nightlife and routinely competes with other cities for the most Department of Alcoholic Beverage Control licensed establishments in the State of California (per capita). The population of Newport Beach is approximately 87,000 residents; however, during the summer months the City experiences an increase in daily visitors that routinely exceeds 100,000. While tourism generates positive tax revenue for the City, it also stresses the infrastructure, the NBPD, and other City departments.

In 2007, our first grant was requested and awarded through the OTS. Since then, the NBPD has been dedicated to community education, traffic enforcement, and the reduction of DUI-related collisions. The City and the NBPD continue to recognize the need for ongoing DUI enforcement and education. The most recent data (2016) supplied by the OTS indicates our ongoing efforts have been impactful, as the NBPD ranked in the top 5 of 104 similar-sized California cities in the category of DUI arrests.

Traffic Data Summary: (local data)

Collision Type	2016				2017				2018			
	Collisions		Victims		Collisions		Victims		Collisions		Victims	
Fatal	1		1		4		4		3		3	
Injury	527		759		513		706		448		611	
	Fatal	Injury	Killed	Injured	Fatal	Injury	Killed	Injured	Fatal	Injury	Killed	Injured
Alcohol-Involved	0	57	0	82	2	57	2	82	0	50	0	61
Hit & Run	1	30	1	40	1	40	1	49	0	29	0	36
Nighttime (2100-0259 hours)	1	69	1	99	1	65	1	88	1	58	1	73
Top 3 Primary Collision Factors									**Fatal**	**Injury**	**Killed**	**Injured**
#1 -	Speed								0	97	0	136
#2 -	Unsafe Turn								1	51	1	60
#3 -	DUI								0	31	0	41

The Newport Beach Police Department applied for, and has been awarded, a grant from the State of California Office of Traffic Safety to increase DUI enforcement and awareness and to fund additional traffic safety enforcement in the City of Newport Beach. Grant number PT20091 will become effective October 1, 2019 and will expire September 30, 2020.

The grant funds will pay overtime and benefit costs for officers specifically assigned to DUI enforcement and awareness programs, including DUI Checkpoint Operations, DUI Saturation Patrol Operations, and Traffic Enforcement Operations related to distracted driving, motorcycle safety, and bicycle/pedestrian enforcement. In-state travel and training expenses are also included in the grant for officers attending the Standardized Field Sobriety Testing (SFST), Advanced Roadside Impaired Driving Enforcement (ARIDE), and Drug Recognition Expert (DRE) training courses.

The “Know Your Limits” program is also a part of the grant this year. The “Know Your Limits” program is a collaborative effort between the NBPD and Alcoholic Beverage Control (ABC) licensed establishments to educate patrons about the dangers of drinking and driving. Our NBPD personnel visit local alcohol-licensed establishments and provide patrons with voluntary breath tests in order to educate them on their blood alcohol concentration, thereby allowing patrons to “Know Your Limit” before they consider driving after consuming alcohol.

Almost all DUI efforts involve overtime, as they are unique and short-term assignments that do not involve personnel scheduled to work a regular patrol assignment. In other words, we retain the same number of officers on regularly scheduled patrol while additional officers are added for the sole purpose of conducting OTS grant-funded DUI enforcement at no additional cost to the City.

ENVIRONMENTAL REVIEW:

Staff recommends the City Council find this action 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, Chapter 3, because it has no potential for resulting in physical change to the environment, directly or indirectly.

NOTICING:

The agenda item has been noticed according to the Brown Act (72 hours in advance of the meeting at which the City Council considers the item).

ATTACHMENTS:

Attachment A – Budget Amendment
Attachment B – OTS Grant Agreement

ATTACHMENT A

City of Newport Beach
BUDGET AMENDMENT
2019-20

BA#: 20-010

Department: Police

Requestor: Lieutenant Cartwright

ONE TIME: ☑ Yes ☐ No

☐ **CITY MANAGER'S APPROVAL ONLY**

☑ **COUNCIL APPROVAL REQUIRED**

Approvals

Prepared by: W HARDING

Finance Director:

City Clerk: Date

EXPLANATION FOR REQUEST:

To increase revenue estimates and expenditure appropriations to accept the 2020 State of California, Office of Traffic Safety (OTS) Selective Traffic Enforcement Program (STEP) Grant (#PT20091) for increasing DUI Enforcement and Awareness and funding additional traffic safety enforcement, as well as DUI Sobriety Checkpoints. Funds will be used to pay for overtime costs specifically used for this program and related costs for travel, training, and supplies.

☐ from existing budget appropriations
☑ from additional estimated revenues
☐ from unappropriated fund balance

REVENUES

Fund #	Org	Object	Project	Description	Increase or (Decrease) $
			2020 OTS Selective Traffic Enfr Prg Grant PT20091	-	
110	11035	431360	F-G2001 -STATE -110 -GRANT	OTS Police Dept - OTS Rev	$250,000.00
				-	
				-	
				-	
				-	
				-	
				Subtotal	$250,000.00

EXPENDITURES

Fund #	Org	Object	Project	Description	Increase or (Decrease) $
			2020 OTS Selective Traffic Enfr Prg Grant PT20091	-	
				-	
110	11035	713002	E -G2001 -DUIDLCkP -CFDA20608 -Overtime	OTS Police Dept - Overtime Safty & 1/2 Time	$25,000.00
110	11035	713002	E -G2001 -DUISatPat -CFDA20608 -Overtime	OTS Police Dept - Overtime Safty & 1/2 Time	$124,600.00
110	11035	713002	E -G2001 -KnowLimit -CFDA20608 -Overtime	OTS Police Dept - Overtime Safty & 1/2 Time	$16,680.00
110	11035	713002	E -G2001 -TrafEnfrc -CFDA20600 -Overtime	OTS Police Dept - Overtime Safty & 1/2 Time	$36,000.00
110	11035	713002	E -G2001 -DisDrvOps -CFDA20600 -Overtime	OTS Police Dept - Overtime Safty & 1/2 Time	$4,800.00
110	11035	713002	E -G2001 -MtrSftOps -CFDA20600 -Overtime	OTS Police Dept - Overtime Safty & 1/2 Time	$3,200.00
110	11035	713002	E -G2001 -BikePedSf -CFDA20600 -Overtime	OTS Police Dept - Overtime Safty & 1/2 Time	$6,400.00
110	11035	713002	E -G2001 -TrfSftEdPr -CFDA20600 -Overtime	OTS Police Dept - Overtime Safty & 1/2 Time	$2,000.00
110	11035	713002	E -G2001 -SFST/ARIDE -CFDA20616 -Overtime	OTS Police Dept - Overtime Safty & 1/2 Time	$19,714.00
				-	
110	11035	727016	E -G2001 -PRSNL BENF -CFDA20608 -Medicare	OTS Police Dept - Medicare Fringes	$2,411.00
110	11035	727016	E -G2001 -PRSNL BENF -CFDA20600 -Medicare	OTS Police Dept - Medicare Fringes	$760.00
110	11035	727016	E -G2001 -PRSNL BENF -CFDA20616 -Medicare	OTS Police Dept - Medicare Fringes	$286.00
				-	
110	11035	861001	E -G2001 -OTSOverall -CFDA20600 -TRAVEL	OTS Police Dept - Travel & Meetings NOC	$1,000.00
				-	
110	11035	841015	E -G2001 -OTSOverall -CFDA20608 -SUPPLIES	OTS Police Dept - Special Dept Supplies NOC	$6,309.00
110	11035	841015	E -G2001 -OTSOverall -CFDA20600 -EDU MATL	OTS Police Dept - Special Dept Supplies NOC	$840.00
				-	
				Subtotal	$250,000.00

FUND BALANCE

Fund #	Object	Description	Increase or (Decrease) $
		-	
		-	
		-	
		-	
		-	
		-	
		Subtotal	

No Change In Fund Balance

1. GRANT TITLE
Selective Traffic Enforcement Program (STEP)

2. NAME OF AGENCY
Newport Beach

3. **Grant Period**
From: 10/01/2019
To: 09/30/2020

4. AGENCY UNIT TO ADMINISTER GRANT
Newport Beach Police Department

5. GRANT DESCRIPTION
Best practice strategies will be conducted to reduce the number of persons killed and injured in crashes involving alcohol and other primary collision factors. The funded strategies may include impaired driving enforcement, enforcement operations focusing on primary collision factors, distracted driving, night-time seat belt enforcement, special enforcement operations encouraging motorcycle safety, enforcement and public awareness in areas with a high number of bicycle and pedestrian collisions, and educational programs. These strategies are designed to earn media attention thus enhancing the overall deterrent effect.

6. **Federal Funds Allocated Under This Agreement Shall Not Exceed: $250,000.00**

7. TERMS AND CONDITIONS: The parties agree to comply with the terms and conditions of the following which are by this reference made a part of the Agreement:
- Schedule A – Problem Statement, Goals and Objectives and Method of Procedure
- Schedule B – Detailed Budget Estimate and Sub-Budget Estimate (if applicable)
- Schedule B-1 – Budget Narrative and Sub-Budget Narrative (if applicable)
- Exhibit A – Certifications and Assurances
- Exhibit B* – OTS Grant Program Manual

*Items shown with an asterisk (*), are hereby incorporated by reference and made a part of this agreement as if attached hereto.

These documents can be viewed at the OTS home web page under Grants: www.ots.ca.gov.

We, the officials named below, hereby swear under penalty of perjury under the laws of the State of California that we are duly authorized to legally bind the Grant recipient to the above described Grant terms and conditions.
IN WITNESS WHEREOF, this Agreement has been executed by the parties hereto.

8. **Approval Signatures**

A. GRANT DIRECTOR
NAME: Joe Cartwright
TITLE: Lieutenant
ADDRESS: 870 Santa Barbara Drive, Newport Beach, CA 92660
EMAIL: jcartwright@nbpd.org
PHONE: (949) 644-3740
FAX:
LT/1228 — 08-22-19
(Signature) (Date)

B. AUTHORIZING OFFICIAL OF AGENCY
NAME: Jon T. Lewis
TITLE: Chief of Police
ADDRESS: 870 Santa Barbara Drive, Newport Beach, CA 92660
EMAIL: jlewis@nbpd.org
PHONE: 949-644-3701
FAX: 949-644-3700
8-28-19
(Signature) (Date)

C. FISCAL OR ACCOUNTING OFFICIAL
NAME: Dan Matusiewicz
TITLE: Finance Director
ADDRESS: 100 Civic Center Drive, Newport Beach, CA 92660
EMAIL: dmatusiewicz@newportbeachca.gov
PHONE: 949-644-3123
FAX: 949-644-3339
(Signature) (Date)

D. AUTHORIZING OFFICIAL OF OFFICE OF TRAFFIC SAFETY
NAME: Randy Weissman
TITLE: Acting Director
ADDRESS: 2208 Kausen Drive Suite 300, Elk Grove, CA 95758
EMAIL: randy.weissman@ots.ca.gov
PHONE: (916) 509-3030
FAX: (916) 509-3055
(Signature) (Date)

E. ACCOUNTING OFFICER OF OFFICE OF TRAFFIC SAFETY
NAME: Carolyn Vu
ADDRESS: 2208 Kausen Drive, Suite 300, Elk Grove, CA 95758

9. **DUNS INFORMATION**
DUNS #: 060752482
REGISTERED ADDRESS: 100 Civic Center Drive
CITY: Newport Beach
ZIP+4: 92660-3267

10. PROJECTED EXPENDITURES						
FUND	**CFDA**	**ITEM/APPROPRIATION**	**F.Y.**	**CHAPTER**	**STATUTE**	**PROJECTED EXPENDITURES**
405d AL-20	20.616	0521-0890-101	2019	2019	BA/19	$20,000.00
402PT-20	20.600	0521-0890-101	2019	2019	BA/19	$55,000.00
164 AL-20	20.608	0521-0890-101	2019	2019	BA/19	$175,000.00
				AGREEMENT TOTAL		**$250,000.00**
				AMOUNT ENCUMBERED BY THIS DOCUMENT **$250,000.00**		
I CERTIFY upon my own personal knowledge that the budgeted funds for the current budget year are available for the period and purpose of the expenditure stated above.				PRIOR AMOUNT ENCUMBERED FOR THIS AGREEMENT **$ 0.00**		
OTS ACCOUNTING OFFICER'S SIGNATURE		DATE SIGNED		TOTAL AMOUNT ENCUMBERED TO DATE **$250,000.00**		

APPROVED AS TO FORM:
CITY ATTORNEY'S OFFICE
Date: 9.3.19

By: _____
Aaron C. Harp, City Attorney

1. PROBLEM STATEMENT

The City of Newport Beach is a unique and dynamic community located along the scenic coastline of Southern California. The city and surrounding areas are deeply rooted in history. In the early 20th century, Newport Beach was home to celebrities such as John Wayne, James Cagney, Humphrey Bogart, and Shirley Temple. At approximately 51 square miles, including areas of water, Newport Beach consists of rugged coastline, inland waterways, and has a diverse mix of commerce, tourism, and distinct residential communities.

Newport Beach is a hot spot for Orange County nightlife and routinely competes against other cities for the most Department of Alcoholic Beverage Control licensed establishments in the State of California (per capita). The population of Newport Beach is approximately 86,000 residents; however, during the summer months the city experiences an increase in daily visitors that routinely exceeds 100,000 per day. While the tourism generates a positive tax revenue for the city, it also stresses the infrastructure and city departments, including the police department.

In 2007, our first grant was requested and awarded through the Office of Traffic Safety. Since then, the department has been dedicated to the reduction of DUI-related incidents, community education, and enforcement. The City and Police Department continue to recognize the need for ongoing DUI education and enforcement.

The most recent data (2016) supplied by the California Office of Traffic Safety, reveal the City of Newport Beach to be in ranked 65 out of 104 similar-sized California cities in collision-related categories per capita. In substance, the City of Newport Beach could noticeably improve their ranking by taking a robust approach with grant funding directed at reducing fatal/injury collisions related to motorcyclists, bicyclists, unsafe speed, and impaired drivers. Newport Beach markets itself as a destination location and attracts visitors from all over the region, state, and world. The daily increase in population – including people who do not live in Newport Beach, but come to work, shop, visit, dine, or recreate – is a component of our current rankings. To provide ongoing education and enforcement to our residents, businesses, and visitors -- and to pursue increased roadway safety for all users -- we will continue to utilize OTS grant funding to combat DUI alcohol, DUI drugs, distracted driving, primary collisions factors, motorcycle-related driving violations, and bicyclist/motorist/pedestrian-related violations.

2. PERFORMANCE MEASURES

A. Goals:

1. Reduce the number of persons killed in traffic collisions.
2. Reduce the number of persons injured in traffic collisions.
3. Reduce the number of pedestrians killed in traffic collisions.
4. Reduce the number of pedestrians injured in traffic collisions.
5. Reduce the number of bicyclists killed in traffic collisions.
6. Reduce the number of bicyclists injured in traffic collisions.
7. Reduce the number of persons killed in alcohol-involved collisions.
8. Reduce the number of persons injured in alcohol-involved collisions.
9. Reduce the number of persons killed in drug-involved collisions.
10. Reduce the number of persons injured in drug-involved collisions.
11. Reduce the number of persons killed in alcohol/drug combo-involved collisions.
12. Reduce the number of persons injured in alcohol/drug combo-involved collisions.
13. Reduce the number of motorcyclists killed in traffic collisions.
14. Reduce the number of motorcyclists injured in traffic collisions.
15. Reduce hit & run fatal collisions.
16. Reduce hit & run injury collisions.
17. Reduce nighttime (2100 - 0259 hours) fatal collisions.
18. Reduce nighttime (2100 - 0259 hours) injury collisions.

B. Objectives:	Target Number
1. Issue a press release announcing the kick-off of the grant by November 15. The kick-off press releases and media advisories, alerts, and materials must be emailed to the OTS Public Information Officer at pio@ots.ca.gov, and copied to your OTS Coordinator, for approval 14 days prior to the issuance date of the release.	1

2. Participate and report data (as required) in the following campaigns, National Walk to School Day, National Teen Driver Safety Week, NHTSA Winter Mobilization, National Distracted Driving Awareness Month, National Motorcycle Safety Month, National Bicycle Safety Month, National Click it or Ticket Mobilization, NHTSA Summer Mobilization, National Child Passenger Safety Week, and California's Pedestrian Safety Month.	10
3. Develop (by December 31) and/or maintain a " HOT Sheet" program to notify patrol and traffic officers to be on the lookout for identified repeat DUI offenders with a suspended or revoked license as a result of DUI convictions. Updated HOT sheets should be distributed to patrol and traffic officers monthly.	12
4. Send law enforcement personnel to the NHTSA Standardized Field Sobriety Testing (SFST) (minimum 16 hours) POST-certified training.	4
5. Send law enforcement personnel to the NHTSA Advanced Roadside Impaired Driving Enforcement (ARIDE) 16 hour POST-certified training.	2
6. Send law enforcement personnel to the Drug Recognition Expert (DRE) training.	1
7. Send law enforcement personnel to the DRE Recertification training.	1
8. Send law enforcement personnel to SFST Instructor training.	1
9. Send law enforcement personnel to DRE Instructor training.	1
10. Conduct DUI/DL Checkpoints. A minimum of 1 checkpoint should be conducted during the NHTSA Winter Mobilization and 1 during the Summer Mobilization. To enhance the overall deterrent effect and promote high visibility, it is recommended the grantee issue an advance press release and conduct social media activity for each checkpoint. For combination DUI/DL checkpoints, departments should issue press releases that mention DL's will be checked at the DUI/DL checkpoint. Signs for DUI/DL checkpoints should read "DUI/Driver's License Checkpoint Ahead." OTS does not fund or support independent DL checkpoints. Only on an exception basis and with OTS pre-approval will OTS fund checkpoints that begin prior to 1800 hours. When possible, DUI/DL Checkpoint screeners should be DRE- or ARIDE-trained.	2
11. Conduct DUI Saturation Patrol operation(s).	89
12. Conduct Traffic Enforcement operation(s), including but not limited to, primary collision factor violations.	18
13. Conduct highly publicized Distracted Driving enforcement operation(s) targeting drivers using hand held cell phones and texting.	3
14. Conduct highly publicized Motorcycle Safety enforcement operation(s) in areas or during events with a high number of motorcycle incidents or collisions resulting from unsafe speed, DUI, following too closely, unsafe lane changes, improper turning, and other primary collision factor violations by motorcyclists and other drivers.	2
15. Conduct highly publicized pedestrian and/or bicycle enforcement operation(s) in areas or during events with a high number of pedestrian and/or bicycle collisions resulting from violations made by pedestrians, bicyclists, and drivers.	4
16. Conduct Traffic Safety educational presentation(s) with an effort to reach community members. Note: Presentation(s) may include topics such as distracted driving, DUI, speed, bicycle and pedestrian safety, seat belts and child passenger safety.	1
17. Conduct Know Your Limit campaigns with an effort to reach members of the community.	10

3. **METHOD OF PROCEDURE**

A. **<u>Phase 1 – Program Preparation</u> (1st Quarter of Grant Year)**

- The department will develop operational plans to implement the "best practice" strategies outlined in the objectives section.
- All training needed to implement the program should be conducted this quarter.
- All grant related purchases needed to implement the program should be made this quarter.
- In order to develop/maintain the "Hot Sheets," research will be conducted to identify the "worst of the worst" repeat DUI offenders with a suspended or revoked license as a result of DUI convictions. The Hot Sheets may include the driver's name, last known address, DOB, description, current license status, and the number of times suspended or revoked for DUI. Hot Sheets should be updated and distributed to traffic and patrol officers at least monthly.
- Implementation of the STEP grant activities will be accomplished by deploying personnel at high collision locations.

Media Requirements

- Issue a press release announcing the kick-off of the grant by November 15, but no earlier than October 1. If unable to meet the November 15 date, communicate reasons to your OTS Coordinator. The kick-off press releases and any related media advisories, alerts, and materials must be emailed for approval to the OTS Public Information Officer at pio@ots.ca.gov, and copied to your OTS Coordinator, 14 days prior to the issuance date of the release.

B. Phase 2 – Program Operations (Throughout Grant Year)

- The department will work to create media opportunities throughout the grant period to call attention to the innovative program strategies and outcomes.

Media Requirements

- Send all grant-related activity press releases, media advisories, alerts and general public materials to the OTS Public Information Officer (PIO) at pio@ots.ca.gov, with a copy to your OTS Coordinator. The following requirements are for grant-related activities and are different from those regarding any grant kick-off release or announcement.
  - If an OTS-supplied, template-based press release is used, there is no need for pre-approval, however, the OTS PIO and Coordinator should be copied when at the same time as the release is distributed to the press.
  - If an OTS-supplied template is not used, or is substantially changed, a draft press release shall be sent to the OTS PIO for approval. Optimum lead-time would be 10 days prior to the release distribution date, but should be no less than 5 working days prior to the release distribution date.
  - Press releases reporting the immediate and time-valued results of grant activities such as enforcement operations are exempt from the recommended advance approval process, but still should be copied to the OTS PIO and Coordinator when the release is distributed to the press.
- Use the following standard language in all press, media, and printed materials: Funding for this program was provided by a grant from the California Office of Traffic Safety, through the National Highway Traffic Safety Administration.
- Email the OTS PIO at pio@ots.ca.gov and copy your OTS Coordinator at least 30 days in advance, a short description of any significant grant-related traffic safety event or program so OTS has sufficient notice to arrange for attendance and/or participation in the event.
- Submit a draft or rough-cut of all printed or recorded material (brochures, posters, scripts, artwork, trailer graphics, etc.) to the OTS PIO at pio@ots.ca.gov and copy your OTS Coordinator for approval 14 days prior to the production or duplication.
- Space permitting, include the OTS logo, on grant-funded print materials; consult your OTS Coordinator for specifics and format-appropriate logos.
- Contact the OTS PIO or your OTS Coordinator, sufficiently far enough in advance of need, for consultation when deviation from any of the above requirements might be contemplated

C. Phase 3 – Data Collection & Reporting (Throughout Grant Year)

- Invoice Claims (due January 30, April 30, July 30, and October 30)
- Quarterly Performance Reports (due January 30, April 30, July 30, and October 30)
  - Collect and report quarterly, appropriate data that supports the progress of goals and objectives.
  - Provide a brief list of activity conducted, procurement of grant-funded items, and significant media activities. Include status of grant-funded personnel, status of contracts, challenges, or special accomplishments.
  - Provide a brief summary of quarterly accomplishments and explanations for objectives not completed or plans for upcoming activities.
  - Collect, analyze and report statistical data relating to the grant goals and objectives.

4. METHOD OF EVALUATION

Using the data compiled during the grant, the Grant Director will complete the "Final Evaluation" section in the fourth/final Quarterly Performance Report (QPR). The Final Evaluation should provide a brief summary of the grant's accomplishments, challenges and significant activities. This narrative should also include whether goals and objectives were met, exceeded, or an explanation of why objectives were not completed.

5. ADMINISTRATIVE SUPPORT

This program has full administrative support, and every effort will be made to continue the grant activities after grant conclusion.

FUND NUMBER	CATALOG NUMBER (CFDA)	FUND DESCRIPTION	TOTAL AMOUNT
405d AL-20	20.616	Impaired Driving Countermeasures	$20,000.00
402PT-20	20.600	State and Community Highway Safety	$55,000.00
164 AL-20	20.608	Minimum Penalties for Repeat Offenders for Driving While Intoxicated	$175,000.00

COST CATEGORY	CFDA	TOTAL COST TO GRANT
A. PERSONNEL COSTS		
Straight time		$0.00
Overtime		
DUI/DL Checkpoints	20.608	$25,000.00
DUI Saturation Patrols	20.608	$124,600.00
Know Your Limit	20.608	$16,680.00
Benefits OT @ 1.45%	20.608	$2,411.00
Traffic Enforcement	20.600	$36,000.00
Distracted Driving	20.600	$4,800.00
Motorcycle Safety	20.600	$3,200.00
Pedestrian and Bicycle Enforcement	20.600	$6,400.00
Traffic Safety Education	20.600	$2,000.00
Benefits OT @ 1.45%	20.600	$760.00
SFST/ARIDE/DRE Instruction	20.616	$19,714.00
Benefits PT @ 1.45%	20.616	$286.00
Category Sub-Total		$241,851.00
B. TRAVEL EXPENSES		
In State Travel	20.600	$1,000.00
		$0.00
Category Sub-Total		$1,000.00
C. CONTRACTUAL SERVICES		
		$0.00
Category Sub-Total		$0.00
D. EQUIPMENT		
		$0.00
Category Sub-Total		$0.00
E. OTHER DIRECT COSTS		
DUI Checkpoint Supplies	20.608	$6,309.00
Educational Materials	20.600	$840.00
Category Sub-Total		$7,149.00
F. INDIRECT COSTS		
		$0.00
Category Sub-Total		$0.00
GRANT TOTAL		**$250,000.00**

BUDGET NARRATIVE	
PERSONNEL COSTS DUI/DL Checkpoints - Overtime for grant funded law enforcement operations conducted by appropriate department personnel.	QUANTITY 2
DUI Saturation Patrols - Overtime for grant funded law enforcement operations conducted by appropriate department personnel.	89
Know Your Limit - Overtime for grant funded traffic safety presentations or campaigns conducted by appropriate department personnel.	10
Benefits OT @ 1.45% - TOTAL BENEFIT RATE: 1.45% Medicare - 1.45%	1
Traffic Enforcement - Overtime for grant funded law enforcement operations conducted by appropriate department personnel.	18
Distracted Driving - Overtime for grant funded law enforcement operations conducted by appropriate department personnel.	3
Motorcycle Safety - Overtime for grant funded law enforcement operations conducted by appropriate department personnel.	2
Pedestrian and Bicycle Enforcement - Overtime for grant funded law enforcement operations conducted by appropriate department personnel.	4
Traffic Safety Education - Overtime for grant funded traffic safety presentations or campaigns conducted by appropriate department personnel.	1
Benefits OT @ 1.45% - TOTAL BENEFIT RATE: 1.45% Medicare - 1.45%	1
SFST/ARIDE/DRE Instruction - Overtime for grant funded instructor training conducted by appropriate department personnel.	1
Benefits PT @ 1.45% - TOTAL BENEFIT RATE: 1.45% Medicare - 1.45%	1
TRAVEL EXPENSES In State Travel - Costs are included for appropriate staff to attend conferences and training events supporting the grant goals and objectives and/or traffic safety. Local mileage for grant activities and meetings is included. All conferences, seminars or training not specifically identified in the Budget Narrative must be approved by OTS. All travel claimed must be at the agency approved rate. Per Diem may not be claimed for meals provided at conferences when registration fees are paid with OTS grant funds.	1
CONTRACTUAL SERVICES -	
EQUIPMENT -	
OTHER DIRECT COSTS	

DUI Checkpoint Supplies - On-scene supplies needed to conduct sobriety checkpoints. Costs may include 28" traffic cones, MUTCD compliant traffic signs, MUTCD compliant high visibility vests (maximum of 10), traffic counters (maximum of 2), generator, gas for generators, lighting, reflective banners, electronic flares, PAS device supplies, heater, propane for heaters, fan, anti-fatigue mats, and canopies. Additional items may be purchased if approved by OTS. The cost of food and beverages will not be reimbursed.	1
Educational Materials - Costs of purchasing, developing or printing brochures, pamphlets, fliers, coloring books, posters, signs, and banners associated with grant activities, and traffic safety conference and training materials. Items shall include a traffic safety message and if space is available the OTS logo. Additional items may be purchased if approved by OTS.	1
INDIRECT COSTS -	

STATEMENTS/DISCLAIMERS

There will be no program income generated from this grant.

Nothing in this "agreement" shall be interpreted as a requirement, formal or informal, that a particular law enforcement officer issue a specified or predetermined number of citations in pursuance of the goals and objectives here under.

CERTIFICATIONS AND ASSURANCES
HIGHWAY SAFETY GRANTS
(23 U.S.C. CHAPTER 4 AND SEC. 1906, PUB. L. 109-59, AS AMENDED)

Failure to comply with applicable Federal statutes, regulations, and directives may subject Grantee Agency officials to civil or criminal penalties and/or place the State in a high-risk grantee status in accordance with 49 CFR §18.12.

The officials named on the grant agreement, certify by way of signature on the grant agreement signature page, that the Grantee Agency complies with all applicable Federal statutes, regulations, and directives and State rules, guidelines, policies and laws in effect with respect to the periods for which it receives grant funding. Applicable provisions include, but are not limited to, the following:

- 23 U.S.C. Chapter 4—Highway Safety Act of 1966, as amended
- 49 CFR Part 18—Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments
- 23 CFR Part 1300—Uniform Procedures for State Highway Safety Grant Programs

NONDISCRIMINATION
(applies to subrecipients as well as States)

The State highway safety agency will comply with all Federal statutes and implementing regulations relating to nondiscrimination ("Federal Nondiscrimination Authorities"). These include but are not limited to:

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq., 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin) and 49 CFR part 21;
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Federal-Aid Highway Act of 1973, (23 U.S.C. 324 et seq.), and Title IX of the Education Amendments of 1972, as amended (20 U.S.C. 1681-1683 and 1685-1686) (prohibit discrimination on the basis of sex);
- Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. 794 et seq.), as amended, (prohibits discrimination on the basis of disability) and 49 CFR part 27;
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. 6101 et seq.), (prohibits discrimination on the basis of age);
- The Civil Rights Restoration Act of 1987, (Pub. L. 100-209), (broadens scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of the Federal aid recipients, subrecipients and contractors, whether such programs or activities are Federally-funded or not);
- Titles II and III of the Americans with Disabilities Act (42 U.S.C. 12131-12189) (prohibits discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing) and 49 CFR parts 37 and 38;

- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (prevents discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations); and

- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency (guards against Title VI national origin discrimination/discrimination because of limited English proficiency (LEP) by ensuring that funding recipients take reasonable steps to ensure that LEP persons have meaningful access to programs (70 FR 74087-74100).

The State highway safety agency—

- Will take all measures necessary to ensure that no person in the United States shall, on the grounds of race, color, national origin, disability, sex, age, limited English proficiency, or membership in any other class protected by Federal Nondiscrimination Authorities, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any of its programs or activities, so long as any portion of the program is Federally-assisted;

- Will administer the program in a manner that reasonably ensures that any of its subrecipients, contractors, subcontractors, and consultants receiving Federal financial assistance under this program will comply with all requirements of the Non-Discrimination Authorities identified in this Assurance;

- Agrees to comply (and require its subrecipients, contractors, subcontractors, and consultants to comply) with all applicable provisions of law or regulation governing US DOT's or NHTSA's access to records, accounts, documents, information, facilities, and staff, and to cooperate and comply with any program or compliance reviews, and/or complaint investigations conducted by US DOT or NHTSA under any Federal Nondiscrimination Authority;

- Acknowledges that the United States has a right to seek judicial enforcement with regard to any matter arising under these Non-Discrimination Authorities and this Assurance;

- Agrees to insert in all contracts and funding agreements with other State or private entities the following clause:

  "During the performance of this contract/funding agreement, the contractor/funding recipient agrees—

  a. To comply with all Federal nondiscrimination laws and regulations, as may be amended from time to time;

  b. Not to participate directly or indirectly in the discrimination prohibited by any Federal non-discrimination law or regulation, as set forth in appendix B of 49 CFR part 21 and herein;

  c. To permit access to its books, records, accounts, other sources of information, and its facilities as required by the State highway safety office, US DOT or NHTSA;

  d. That, in event a contractor/funding recipient fails to comply with any nondiscrimination provisions in this contract/funding agreement, the State highway safety agency will have the right to impose such contract/agreement sanctions as it or NHTSA determine are appropriate, including but not limited to withholding payments to the contractor/funding

     recipient under the contract/agreement until the contractor/funding recipient complies; and/or cancelling, terminating, or suspending a contract or funding agreement, in whole or in part; and

  e. To insert this clause, including paragraphs (a) through (e), in every subcontract and sub agreement and in every solicitation for a subcontract or sub-agreement, that receives Federal funds under this program.

POLITICAL ACTIVITY (HATCH ACT)
(applies to subrecipients as well as States)

The State will comply with provisions of the Hatch Act (5 U.S.C. 1501-1508), which limits the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

CERTIFICATION REGARDING FEDERAL LOBBYING
(applies to subrecipients as well as States)

Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement;

2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with
this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit
Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions;

3. The undersigned shall require that the language of this certification be included in the award documents for all sub-award at all tiers (including subcontracts, subgrants, and contracts under grant, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than
$100,000 for each such failure.

RESTRICTION ON STATE LOBBYING
(applies to subrecipients as well as States)

None of the funds under this program will be used for any activity specifically designed to urge or influence a State or local legislator to favor or oppose the adoption of any specific legislative proposal pending before any State or local legislative body. Such activities include both direct and indirect (e.g., "grassroots") lobbying activities, with one exception. This does not preclude a State official whose salary is supported with NHTSA funds from engaging in direct communications with State or local legislative officials, in accordance with customary State practice, even if such communications urge legislative officials to favor or oppose the adoption of a specific pending legislative proposal.

CERTIFICATION REGARDING DEBARMENT AND SUSPENSION
(applies to subrecipients as well as States)

Instructions for Primary Tier Participant Certification (States)

1. By signing and submitting this proposal, the prospective primary tier participant is providing the certification set out below and agrees to comply with the requirements of 2 CFR parts 180 and 1200.

2. The inability of a person to provide the certification required below will not necessarily result in denial of participation in this covered transaction. The prospective primary tier participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective primary tier participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.

3. The certification in this clause is a material representation of fact upon which reliance was placed when the department or agency determined to enter into this transaction. If it is later determined that the prospective primary tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default or may pursue suspension or debarment.

4. The prospective primary tier participant shall provide immediate written notice to the department or agency to which this proposal is submitted if at any time the prospective primary tier participant learns its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

5. The terms covered transaction, civil judgment, debarment, suspension, ineligible, participant, person, principal, and voluntarily excluded, as used in this clause, are defined in 2 CFR parts 180 and 1200. You may contact the department or agency to which this proposal is being submitted for assistance in obtaining a copy of those regulations.

6. The prospective primary tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.

7. The prospective primary tier participant further agrees by submitting this proposal that it will include the clause titled "Instructions for Lower Tier Participant Certification" including the "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transaction," provided by the department or agency entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions and will require lower tier participants to comply with 2 CFR parts 180 and 1200.

8. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. To verify the eligibility of its principals, as well as the eligibility of any prospective lower tier participants, each participant may, but is not required to, check the System for Award Management Exclusions website (https://www.sam.gov/).

9. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

10. Except for transactions authorized under paragraph 6 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal government, the department or agency may terminate the transaction for cause or default.

Certification Regarding Debarment, Suspension, and Other Responsibility Matters-Primary Tier Covered Transactions

(1) The prospective primary tier participant certifies to the best of its knowledge and belief, that it and its principals:
(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency;

(b) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or Local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and
(d) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State, or local) terminated for cause or default.

(2) Where the prospective primary tier participant is unable to certify to any of the Statements in this certification, such prospective participant shall attach an explanation to this proposal.

Instructions for Lower Tier Participant Certification

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below and agrees to comply with the requirements of 2 CFR parts 180 and 1200.

2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal government, the department or agency with which this transaction originated may pursue available remedies, including suspension or debarment.

3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

4. The terms covered transaction, civil judgment, debarment, suspension, ineligible, participant, person, principal, and voluntarily excluded, as used in this clause, are defined in 2 CFR parts 180 and 1200.
You may contact the person to whom this proposal is submitted for assistance in obtaining a copy of those regulations.

5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

6. The prospective lower tier participant further agrees by submitting this proposal that it will include the clause titled "Instructions for Lower Tier Participant Certification" including the "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions and will require lower tier participants to comply with 2 CFR parts 180 and 1200.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. To verify the eligibility of its principals, as well as the eligibility of any prospective lower tier participants, each participant may, but is not required to, check the System for Award Management Exclusions website (https://www.sam.gov/).

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information
of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal government, the department or agency with which this transaction originated may pursue available remedies,
including suspension or debarment.

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion -- Lower Tier Covered Transactions:

1. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency.

2. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

BUY AMERICA ACT
(applies to subrecipients as well as States)

The State and each subrecipient will comply with the Buy America requirement (23 U.S.C. 313) when purchasing items using Federal funds. Buy America requires a State, or subrecipient, to purchase with Federal funds only steel, iron and manufactured products produced in the United States, unless the Secretary of Transportation determines that such domestically produced items would be inconsistent with the public interest, that such materials are not reasonably available and of a satisfactory quality, or
that inclusion of domestic materials will increase the cost of the overall project contract by more than 25 percent. In order to use Federal funds to purchase foreign produced items, the State must submit a
waiver request that provides an adequate basis and justification for approval by the Secretary of Transportation.

PROHIBITION ON USING GRANT FUNDS TO CHECK FOR HELMET USAGE
(applies to subrecipients as well as States)

The State and each subrecipient will not use 23 U.S.C. Chapter 4 grant funds for programs to check helmet usage or to create checkpoints that specifically target motorcyclists.

LAW ENFORCEMENT AGENCIES
All subrecipient law enforcement agencies shall comply with California law regarding profiling. Penal Code section 13519.4, subdivision (e), defines "racial profiling" as the "practice of detaining a suspect based on a broad set of criteria which casts suspicion on an entire class of people without any individualized suspicion of the particular person being stopped." Then, subdivision (f) of that section goes on to provide, "A law enforcement officer shall not engage in racial profiling."

CITY OF

NEWPORT BEACH

City Council Staff Report

September 10, 2019
Agenda Item No. 14

TO:	HONORABLE MAYOR AND MEMBERS OF THE CITY COUNCIL
FROM:	Grace K. Leung, City Manager - 949-644-3001, gleung@newportbeachca.gov Barbara J. Salvini, Human Resources Director - 949-644-3259, bsalvini@newportbeachca.gov
PREPARED BY:	Barbara J. Salvini, Human Resources Director, bsalvini@newportbeachca.gov
PHONE:	949-644-3259
TITLE:	Tentative Agreement with Newport Beach Lifeguard Management Association (NBLMA)

ABSTRACT:

The Memorandum of Understanding (MOU) between the City of Newport Beach (City) and the Newport Beach Lifeguard Management Association (NBLMA) expired December 31, 2018. A Tentative Agreement (Agreement) has been reached for a successor agreement. The Agreement addresses wages, benefits, and other terms and conditions of employment for employees represented by the NBLMA, as required under the Meyers-Milias-Brown Act, California Government Code §3500.

To promote greater transparency in the negotiations process, including the costs associated with the labor contract, the Agreement is being presented at this time for public review and comment in Attachment A. The Agreement, which spans the time period from January 1, 2019 through December 31, 2021, will be presented again for City Council adoption (or rejection) at the September 24, 2019 regular meeting.

RECOMMENDATION:

a) Determine this action is exempt from the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(2) and 15060(c)(3) of the CEQA Guidelines because this action will not result in a physical change to the environment, directly or indirectly; and

b) Receive and consider the Tentative Agreement between the City of Newport Beach and the Newport Beach Lifeguard Management Association.

FUNDING REQUIREMENTS:

The NBLMA Resolution and MOU will be presented to the Council for consideration at the September 24, 2019 regular meeting, along with a budget amendment appropriating the cost to implement the terms for the remaining fiscal year, FY 2019-20, from the General Fund unappropriated surplus fund balance in the amount of $62,449. The fiscal impact of the NBLMA contract is estimated at $257,421 for the entire three-year term of the contract as shown in Attachment B.

DISCUSSION:

The Newport Beach Lifeguard Management Association (NBLMA or Association) is an exclusively recognized bargaining unit and represents 11 full-time safety employees (Lifeguard Captain, Lifeguard Battalion Chief) and 2.25 part-time safety employees (Lifeguard Officer). Positive and productive discussions between the Association and City have resulted in a proposed successor Agreement.

Salient provisions of the Agreement include:

- Term of three (3) years, from January 1, 2019 through December 31, 2021
- Wage adjustments
  - ✓ Pay Period Following Council Approval – 1.75%
  - ✓ January 1, 2020 – 1.75%
  - ✓ January 1, 2021 – 1.75%
- Adjustments to the City's contribution to the Cafeteria Plan as follows:
  - ✓ $21 per month increase for full-time members
  - ✓ $16 per month increase for part-time members
  - ✓ Revisions to the Cafeteria Plan for new employees
- Adjustments to ability to earn and use Compensatory Time Off
- A one-time, lump sum payment of $1,500 for each member, which will not be reported to CalPERS as compensation earned/pensionable compensation.

A proposed draft version of the Agreement between the City and Association is included in Attachment A (revisions noted in this staff report are in this redlined version) with costing information included in Attachment B. The total cost of the NBLMA MOU is estimated to be $257,421.

On August 21, 2019, the City was notified that in accordance with its ratification procedures, the majority of NBLMA members voted to approve the Agreement. The Agreement will not become effective, per Government Code §3505.1, until the governing body, i.e., City Council, takes action to adopt it. If the City Council approves adoption of a successor MOU, Human Resources staff will work to implement the provisions as soon as practicable.

Following tonight's City Council review of the proposed NBLMA MOU, a final version of the successor MOU will be presented at the September 24, 2019 regular meeting. Tonight's costing information and proposed revisions to the MOU will be posted for public review on the City's website.

ENVIRONMENTAL REVIEW:

Staff recommends the City Council find this action 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, Chapter 3, because it has no potential for resulting in physical change to the environment, directly or indirectly.

NOTICING:

The agenda item has been noticed according to the Brown Act (72 hours in advance of the meeting at which the City Council considers the item).

ATTACHMENTS:

Attachment A – Tentative Agreement and proposed MOU between the City and the NBLMA (redline) with signature of NBLMA President Gary Conwell
Attachment B – Estimated Cost of Contract with NBLMA

ATTACHMENT A

Tentative Agreement - August 13, 2019

MEMORANDUM OF UNDERSTANDING BETWEEN THE CITY OF NEWPORT BEACH AND THE NEWPORT BEACH LIFEGUARD MANAGEMENT ASSOCIATION

This Memorandum of Understanding (hereinafter referred to as "MOU") is entered into with reference to the following:

PREAMBLE

1. Authorized representatives of the CITY OF NEWPORT BEACH (hereinafter referred to as "CITY") and authorized representatives of the NEWPORT BEACH LIFEGUARD MANAGEMENT ASSOCIATION (hereinafter referred to as "NBLMA") a recognized employee organization, met and conferred, exchanging various proposals concerning wages, hours, fringe benefits and other terms and conditions of employment of employees represented by NBLMA (hereinafter referred to as "EMPLOYEES") for the period of *January 1, 2019 – December 31, 2021* ~~*June 12, 2018 – December 31, 2018*~~.

SECTION 1. GENERAL PROVISIONS

A. Duration of Memorandum

The terms of this MOU are to remain in full force and effect from *January 1, 2019 – December 31, 2021* ~~*June 12, 2018 – December 31, 2018*~~.

B. Scope

1. All present written rules and currently established practices and employee rights, privileges and benefits that are within the scope of representation shall remain in full force and effect during the term of this MOU unless specifically amended by the provisions of this MOU, or in the case of the Department Standard Operating Procedures (SOPs) falling within the scope of representation, the City has given notice to the Association and, upon request, met and conferred on any proposed changes which fall within the scope of representation.

   When the Department proposes to change any SOP departmental rule or regulation, it will provide a copy of such change to the Association no less than seven (7) days prior to implementation of the proposed change. If such proposed change materially impacts any matter within the scope of representation, then the parties agree to meet and confer over such impact.

2. Pursuant to this MOU, the City reserves and retains all of its inherent exclusive and non-exclusive managerial rights, powers, functions and authorities ("Management Rights") as set forth in Resolution No. 2001-50.

C. Conclusiveness

Except as provided for in this agreement, this MOU contains all of the covenants, stipulations and provisions agreed upon by the parties.

D. Savings

Should any part of this MOU or any provision herein contained be rendered or declared invalid, by reason of any existing or subsequently enacted Legislation, or by decree of a Court of competent jurisdiction, such invalidation of such part or portion of this MOU shall not invalidate the remaining portion hereto, and same shall remain in full force and effect.

E. Other Terms and Conditions

Except as to those matters expressly covered by this MOU, all terms and conditions of employment may be changed or amended after meeting and conferring, in good faith.

Unless specifically provided in this MOU, Part-time members shall only receive those benefits in this MOU which are specifically set forth as applicable to Part-time members.

F. Unit Classification Titles

Unit classifications are listed in Exhibit A.

For all compensation comparison purposes, actual job duties, and not classification titles, will be utilized.

SECTION 2. COMPENSATION

A. Salary Adjustments

Base salary increases for all NBLMA represented classifications shall be as follows and as specified in Exhibit A:

~~*Effective the pay period following City Council approval of this MOU, base salaries will be increased by one percent (1.0%) for all members of the bargaining unit.*~~

~~*Effective the pay period following City Council approval of this MOU, base salaries will be increased by four and sixty-nine one hundredths percent (4.69%) for employees in the classification of Lifeguard Battalion Chief.*~~

~~*Effective the pay period following City Council approval of this MOU, base salaries will be increased by two and sixty-eight one hundredths percent (2.68%) for employees in the classification of Lifeguard Captain.*~~

Effective the pay period following City Council approval of this MOU, base salaries will be increased by one and three quarters percent (1.75%) for all members of the bargaining unit.

Effective the pay period including January 1, 2020, base salaries will be increased by one and three quarters percent (1.75%) for all members of the bargaining unit.

Effective the pay period including January 1, 2021, base salaries will be increased by one and three quarters percent (1.75%) for all members of the bargaining unit.

B. *One-Time Lump Sum Payment*

All members of the bargaining unit employed by the City at the beginning if the pay period following City Council approval of this 2019-2021 MOU shall receive a one-time payment (subject to tax withholdings) of one thousand five hundred dollars ($1,500.00). This payment shall be made by the beginning of the second pay period following City Council approval of this 2019-2021 MOU. This one-time payment shall not be reported to CalPERS as compensation earnable or pensionable compensation as it is being provided in the same fiscal year in which a base salary increase is being provided to members of this bargaining unit.

~~C~~B. Special Assignment Pay

Boat Pay: Lifeguard Captains certified for and assigned to boat operations shall receive additional compensation of 2.5% of base salary for their job classification. Boat assignment pay will be assigned to a qualified Captain and compensated only when performing boat duties.

Training Pay: The Lifeguard Captain assigned as the "Training Captain" will receive an additional 7.5% of base pay while assigned the responsibilities of training.

~~D~~C. Overtime

Unit employees shall receive overtime compensation for all hours worked in excess of forty (40) in any work week. Time worked shall be rounded to the nearest

quarter of an hour (seven (7) minutes or less round down; eight (8) minutes or more round up). Paid time off shall be considered time worked for the purposes of calculating MOU overtime.

The rate at which MOU overtime (overtime which is in addition to that which is required by the FLSA) is paid does not include any contributions to the City's Cafeteria Plan as set forth in Section 4 – Fringe Benefits of the MOU.

Unit employees shall have the option of requesting to earn compensatory time off (CTO) for all overtime, including training time, in lieu of overtime compensation. All use of compensatory time off shall be subject to existing City rules. The time during which an employee may use accrued *CTO~~compensatory time off~~* is subject to approval by the department head or his/her designee with due regard for the wishes of the employee and the need to provide service. However, an employee wishing to use his/her accrued *CTO~~compensatory time off~~* shall provide the City with reasonable notice of such request. A request to use *CTO~~compensatory time off~~* without reasonable notice may still be granted within the discretion of the supervisor or manager responsible for considering the request. *Notwithstanding this paragraph, the parties agree that employees cannot use CTO from June 15 through Labor Day each year.*

The maximum accrual of CTO shall be eighty (80) hours. *Effective January 1, 2020, an employee may only accrue up to eighty (80) hours of CTO per calendar year.*

E~~D~~. Uniforms

The City shall pay the entire cost of providing full-time and part-time NBLMA members with each component of the required NBLMA uniforms. The required NBLMA uniform includes uniform pants, uniform shirts, safety shoes, badges and insignias, uniform jackets and liners, belts, dive equipment, foul weather gear, personal floatation device and helmet. The City shall not be responsible for providing employees with socks, underwear, cap, workout shoes, or other clothing.

As permissible by law and subject to the provisions and limitations under the Public Employees' Retirement Law, including restrictions on reporting uniform allowance as pensionable compensation for "non-classic" members hired after January 1, 2013, the City shall report the value of provided uniforms at $838 per year ($32.23 per pay period) in accordance with PERS requirements. The parties agree the reported value of uniforms is intended to reflect clothing such as pants, shirts, jackets, and related attire and excludes health and safety related equipment.

F~~E~~. Call Out

Call out compensation shall be in accordance with the following provisions:

1. All emergency call out time shall be calculated to the nearest one quarter (1/4) hour of time worked.

2. A minimum of two (2) hours (including travel time).If the two hours causes the employee to exceed forty (40) hours in the week, the rate of pay shall be at one and one half (1 1/2) times the employee's rate of pay. Employees will be considered "on duty" at the beginning of each emergency call out for a minimum of *two (2)* hours or until completed. Employees will not be compensated for additional call outs that occur during the initial *two (2)* hour response period, or during normal working hours.

GF. Scholastic Achievement Pay

Employees in the classification of Lifeguard Captain shall receive two percent of base salary (2%) if they receive a Bachelor's Degree. Employees in the classification of Lifeguard Battalion Chief shall receive one percent (1%) of base salary if the receive a Master's Degree.

A "degree" shall be awarded by an institution accredited by the State of California, the United States Department of Education, the Council for Higher Education, or the Distance Education Training Council.

HG. Night Standby

A full-time or part-time employee assigned to standby duty (as defined by Department Policy) for purposes of being on call to handle emergency situations arising at times other than during normal working hours shall be guaranteed two and a half (2.5) hours of pay at the employee's rate of pay for each calendar day of such standby duty. Employees shall have the option of receiving compensatory time off at straight time in lieu of pay for night standby. *This compensatory time off is part of same bank which is subject to the maximum accrual of compensatory time off set forth in Section 2DG above.*

IH. Move-up Pay

Temporary upgrading shall be defined as the temporary assignment of an employee to work in a job classification, which is assigned to a salary schedule higher than his/her regular job classification.

Employees temporarily upgraded to the following job classifications and equivalent positions shall receive a five percent (5%) pay differential over their rate of pay for all time worked in the higher job classification if they are assigned to work in the higher job classification for a period of one (1) working hour or longer.

Lifeguard Captain
Lifeguard Battalion Chief

All holiday, flex leave and other paid leave shall be paid at the employee's rate of pay.

Assignments to higher rated classifications shall be made at the sole discretion of the City.

J. Move-down Pay

Employees who work down – a temporary assignment of an employee to work in a job classification, which is assigned to a salary schedule lower than his her regular job classification (i.e., a Battalion Chief who moves down as a Lifeguard Captain or a Lifeguard Captain who moves down as a Lifeguard Officer) shall be paid at the top step of the classification to which the employee moved down unless the top step of the moved down classification is higher than their current rate of pay. In that case, they will be paid at the regular pay rate.

KJ. Court Standby Pay

All NBLMA members who, pursuant to subpoena compelling attendance to testify to acts, observations, or omissions occurring in the course and scope of employment or at the direction of their supervisor, are required, while off–duty, to remain within a certain response time from court, shall be considered to be on "court standby time" and shall receive four hours of pay for each eight hours of court standby time. NBLMA members shall, when required to appear in court pursuant to a subpoena or the direction of their supervisor to testify at to matters relating to their employment with the City, be considered to be on duty and shall be paid accordingly. Members shall remit all witness fees received for testifying or appearing on any matter for which the member is eligible to receive court standby time.

LK. Longevity Pay

Employees in the Unit shall receive Longevity Pay as follows:

Years of Service	Longevity Pay
16 but less than 20	1.0%
20 but less than 25	1.5%
25 and over	2.5%

SECTION 3. LEAVES

A. Flex Leave

1. Basis for Accrual

Full-Time Members:

Regular full-time employees enrolled in the Flex Leave program will earn leave in accordance with the following schedule:

Years of continuous service in the unit	Accrual per pay period/hrs	Maximum Hours Annual Accrual
1 but less than 5	5.54	288.08
5 but less than 9	6.15	319.80
9 but less than 12	6.77	352.04
12 and over	7.69	399.88

Part-Time Members:

Regular part-time employees shall be enrolled in the Flex Leave program and accrue leave time at the rate of .04 hours for each hour worked.

2. Limit on Accumulation and Cash Out of Flex Leave

Employees shall be entitled to accrue flex leave up to a maximum of fifty-two (52) times the member's bi-weekly accrual rate. This limit on accumulation shall apply to both full-time and part-time members. Earned flex leave in excess of the maximum permitted is currently paid bi-weekly at the member's hourly rate of pay ("spillover pay"). Members shall be eligible for flex leave spillover pay only if they have utilized at least eighty (80) hours of flex leave the previous calendar year. Employees who have not utilized eighty (80) hours of leave for full time and sixty (60) hours for part-time the prior calendar year shall not be eligible for "spillover pay". Once an employee accrues the maximum accrual limit, he/she will not accrue additional flex leave until he/she uses leave and reduces his/her accrual below the accrual limit.

Employees shall have the option of converting accrued Flex Leave to cash on an hour for hour basis subject to the following: on or before the pay period which includes December 15 of each calendar year, an employee may make an irrevocable election to cash out accrued flex leave which will be earned in the following calendar year. The employee can elect to receive the cash out in the pay period which includes June 30 and the pay period which includes December 15 for those Flex Leave benefits that have been earned during that portion of the year. In no event shall the flex leave balance be reduced below one hundred and sixty (160) hours. On or before December 31, 2018, each employee shall have the one-time option of cashing out all or a portion of Flex Leave benefits credited to his/her account as of that date. However, in no event shall the flex leave balance be

reduced below one hundred and sixty (160) hours when the leave is cashed out.

3. Method of Use

Flex leave may not be taken in excess of that actually accrued. The Department Director or designee shall approve all requests for flex leave taking into consideration the needs of the Department, and whenever possible the seniority and wishes of the employee. Flex leave may be granted on an hourly basis.

B. Use of Flex

Level A staffing shall run from June 15th through Labor Day. During this period of time, full-time and part-time NBLMA personnel may be limited to a total of forty (40) hours usage of flex leave requiring backfill. Additional flex leave during this period may be approved if, in the opinion of management, adequate staffing levels can be maintained.

C. Family Sick Leave

Unit employees shall be entitled to use an amount of time equal to one-half (1/2) of their annual leave accrual for an illness of a family member as defined below which requires the presence of the employee. Such time may be taken from the employee's annual leave accrual or leave bank, at the employee's choice. Leave shall be administered in accordance with the provisions of the Employee Policy Manual (EPM).

For purposes of family sick leave, family member shall mean spouse, parent, (parent shall mean biological, foster, or adoptive), child (child shall mean biological, adopted, or foster child; a stepchild; a legal ward; or a child of an employee standing in local parentis), grandchild, grandparent, sibling *or as modified by State or Federal law*.

D. Holiday Time

As described in the following paragraph, employees shall receive leave or pay for the following holidays:

Independence Day	July 4
Labor Day	1st Monday in September
Veteran's Day	November 11
Thanksgiving Day	4th Thurs. in November
Friday following Thanksgiving	
Christmas Eve	Last 1/2 of working day
Christmas	December 25
New Year's Eve	Last 1/2 of working day

New Year's Day	January 1
Martin Luther King Day	3rd Monday in January
Washington's Birthday	3rd Monday in February
Memorial Day	Last Monday in May
Floating Holiday (1)	For employee's birthday or other holiday.

Full time employees receive 96 hours of holiday time per year, 1/26th (3.69 hours) per pay period which will be paid or accrued each pay period. Part-time employees receive 72 hours of holiday time per year, 1/26th (2.77 hours) per pay period which will be paid or accrued each pay period. When an employee becomes an NBLMA member, he/she shall select to receive either pay, leave or a combination of both pay and leave for the holidays. When a part-time employee in the unit is appointed to a full-time classification, he/she shall select to receive either pay, leave or a combination of both pay and leave for the additional twenty-four (24) hours.

To the extent permitted by law, this holiday compensation shall be reported to PERS as special compensation and shall be regarded as compensation earnable as defined in Government Code Sec. 20636 (c) (6) for purposes of computing retirement benefits and contributions.

E. Bereavement Leave

Bereavement Leave shall be defined as the necessary absence from duty by an employee because of the death or terminal illness in his/her immediate family. NBLMA full-time members shall be entitled to 40 hours bereavement leave per incident (terminal illness followed by death is considered one incident) and 32 hours bereavement leave for part-time members. Leave hours need not be used consecutively, but should occur in proximate time to the occurrence, but no more than 90 days from the date of the death of the family member. Immediate family shall mean an employee's father, stepfather, mother, stepmother, brother, sister, spouse/domestic partner, child, stepchild and grandparent, and the employee's spouse/domestic partner's father, mother, brother, sister, child and grandparent. An employee requesting bereavement leave shall notify his/her supervisor as soon as possible of the need to take leave.

Probationary Employees. An employee serving his/her initial probationary period who takes leave under this section who for any reason terminates his/her employment prior to the completion of such probationary period shall have his/her final pay check reduced by the value of the leave taken.

SECTION 4. FRINGE BENEFITS

A. Insurance

1. Benefits Information Committee

The City has established a Benefits Information Committee composed of one representative from each employee association and up to three City representatives. The Benefits Information Committee has been established to allow the City to present data regarding carrier and coverage options, the cost of those options, appropriate coverage levels and other health care issues. The purpose of this Committee is to provide each employee association with information about health care issues and to receive timely input from associations regarding preferred coverage options and levels of coverage.

2. City Contribution

The City has implemented an IRS qualified Cafeteria Plan. The City contribution toward the Cafeteria Plan shall be as set forth below. Employees shall have the option of allocating Cafeteria Plan contributions towards the City's existing medical, dental and vision insurance/programs. The City and NBLMA will cooperate in pursuing additional optional benefits to be available through the Cafeteria Plan.

Any unused Cafeteria Plan funds shall be payable to the employee as taxable cash back. Employees shall be allowed to change coverages in accordance with plan rules and during regular open enrollment periods.

a. *Full-Time Members:*

The City's contribution towards the Cafeteria Plan *is* ~~will increase to~~ $1,6524 (plus the minimum CalPERS participating employer's contribution). *Effective the pay period following City Council approval of this 2019-2021 MOU, this amount will increase to $1,645.*

~~*Effective the pay period including June 23, 2018, the City contribution towards the Cafeteria Plan will be $1,624 (plus the minimum CalPERS participating employer's contribution).*~~

Full time NBLMA members who do not want to enroll in any medical plan offered by the City must provide proof of minimum essential coverage ("MEC") through another source (other than coverage in the individual market, whether or not obtained through Covered California) and execute an opt-out agreement releasing the City from any responsibility or liability to provide medical insurance coverage on an annual basis.

~~*The opt-out amount for full-time employees is $1,000 per month.*~~

Employees hired prior to the first day of the pay period following City Council approval of this 2019-2021 MOU who elect to opt out of medical coverage offered by the City because they have provided proof of minimum essential coverage ("MEC") through another source (other than

coverage in the individual market, whether or not obtained through Covered California) will receive $1,000 per month in taxable cash. For these same employees, if they elect medical coverage and spend less than the City contribution provided above, those unused cafeteria plan funds shall be paid to the employee as taxable cash.

Employees hired on or after the first day of the pay period following City Council approval of this 2019-2021 MOU who elect to opt out of medical coverage offered by the City because they have provided proof of minimum essential coverage ("MEC") through another source (other than coverage in the individual market, whether or not obtained through Covered California) shall receive $500 per month in taxable cash. For these same employees, if they elect medical coverage and spend less than the City contribution provided above, there shall be no cash back provided.

b. Part-Time Members:

Part-time NBLMA members ~~will~~ receive a monthly cafeteria benefit of $585. *Effective the pay period following City Council approval of this 2019-2021 MOU, this amount will increase to $601.* For part-time employees enrolled in medical plans, the cafeteria amount is inclusive of the PERS designated minimum medical insurance contribution.

For employees who do not enroll in a medical plan there shall be no opt out cafeteria benefit. Part-time time NBLMA members who do not want to enroll in any medical plan offered by the City must provide proof of minimum essential coverage ("MEC") through another source (other than coverage in the individual market, whether or not obtained through Covered California).

3. Dental Insurance

The existing or comparable dental plans shall be maintained as part of the City's health plan offerings for full-time employees as agreed upon by the Benefits Information Committee.

4. Vision Insurance

The existing or a comparable vision plan shall be maintained as part of the City's health plan offerings as agreed upon by the Benefits Information Committee for full-time employees.

B. Additional Health Insurance/Programs

1. IRS Section 125 Flexible Spending Account

Section 125 of the Internal Revenue Code authorizes an employee to reduce taxable income for payment of allowable expenses such as child care and medical expenses. The City shall maintain a "reimbursable account program" in accordance with the provisions of Section 125 of the Internal Revenue Code, pursuant to which a full-time Association member may request that medical, child care and other eligible expenses be paid or reimbursed by the City out of the employee's account. The base salary of the employee will be reduced by the amount designated by the employee for reimbursable expenses.

2. Disability Insurance

The City shall provide Short-*T*~~t~~erm (STD) and Long-*T*~~t~~erm (LTD) disability insurance to regular full-time employees with the following provisions:

~~Weekly Benefit 66.67% gross weekly wages~~

~~Maximum Benefit $10,000/month~~

~~Minimum Benefit $15 (STD) and $100 (LTD)~~
~~Waiting Period 30 Calendar Days (STD)~~
~~180 Calendar Days (LTD)~~

~~Employees shall not be required to exhaust accrued paid leaves prior to receiving benefits under the disability insurance program. Employees may not supplement the disability benefit with paid leave once the waiting period has been exhausted.~~

~~Employees have a one (1.0%) percent base salary reduction for the cost of this benefit.~~

	Short-Term Disability	*Long-Term Disability*
Benefit Amount	*66.67% of covered*	*66.67% of covered*
Maximum Benefit	*$1,846 weekly*	*$15,000 monthly*
Waiting Period	*30 calendar days*	*180 calendar days*

Employees shall not be required to exhaust accrued paid leaves prior to receiving benefits under the disability insurance program. Employees may not supplement the disability benefit with paid leave once the waiting period has been exhausted.

Employees shall pay one percent (1%) of base salary as a post-tax deduction for this benefit.

3. Life Insurance

The City shall provide life insurance *for full-time employees* in $1,000 increments equal to one times the employee's annual salary up to a maximum of $50,000. At age 70 the City-paid life insurance is reduced by 50% of the pre-70 amount (i.e., a maximum of $25,000). This amount remains in effect until the employee retires from City employment. Employees may also purchase supplemental life insurance at their own cost.

C. Employee Assistance Program

City shall provide an Employee Assistance Program (EAP) *for Association members* through a properly licensed provider. Association members and their family members may access the EAP subject to provider guidelines.

D. The Retirement Benefit

1. Retirement Benefit Formula

The City contracts with PERS to provide retirement benefits for its employees. Pursuant to prior agreements and state mandated reform, the City has implemented first, second and third tier retirement benefits:

Tier 1: For employees enrolled by the City of Newport Beach as Safety members on or before November 23, 2012, the retirement formula shall be 3%@50 calculated on the basis of the single highest year.

Tier 2: For classic member (as defined in the Public Employees' Pension Reform Act) employees enrolled in CalPERS by the City of Newport Beach as Safety members on or after November 24, 2012, the retirement formula is 2%@50. For these same employees, final compensation will be based on the highest annual average compensation earnable during the three consecutive years of employment immediately preceding the effective date of his or her retirement or any other three consecutive year period chosen by the employee as set forth in Government Code section 20037.

Tier 3: For employees enrolled by the City of Newport Beach as Safety members on or after January 1, 2013 who are new members as defined in the Public Employees' Pension Reform Act), the retirement formula shall be 2.7%@57 provided for by the Public Employees' Retirement Law at Government Code section 7522.25(d).

For these same employees, final compensation will be based on the highest annual average compensation earnable during the three consecutive years of employment immediately preceding the effective date of his or her retirement

or any other three consecutive year period chosen by the employee as set forth in Government Code section 7522.32(a).

The City's contract with PERS also provides for:

b. The military buy-back provisions pursuant to Section 20930.3 of the California Government Code and the highest year benefit pursuant to Section 20042.

c. The Level 4 1959 Survivors Benefits.

d. The pre-retirement option settlement 2 death benefit (Section 21548).

2. Employee Contributions

Tier 1 and 2 Employees: All unit members in Tiers 1 and 2 will pay the full 9% "safety member" contribution of PERS reportable earnings. This payment will be made on a pre-tax basis through payroll deduction pursuant to IRS Code Section 414(h)(2). This contribution will not be considered as part of employee's "compensation earnable" under Government Code section 20636.

Unit members will, in addition to the 9% normal member contribution, contribute 4.6% of pensionable compensation toward retirement costs as permitted under Government Code §20516(f), for a total contribution of 13.6%.

Tier 3 Employees: The minimum statutory employee contribution for employees in Tier 3 is subject to the provisions of the Public Employees' Pension Reform Act (PEPRA) and equals 50% of the "total normal cost" as determined by PERS. For FY17-18, the employee Safety rate is 10.5% and is subject to change based on annual PERS actuarial valuations.

In addition to the statutorily required 50% contribution of total normal costs, Tier III employees shall contribute 3.10% of pensionable compensation toward retirement costs pursuant to Government Code § 20516(f), for a total contribution of 13.6%. If future fiscal year member contribution rates for employees in Tier III become greater or less than 10.5%, the additional contribution made by the employee under 20516(f) will be increased or decreased accordingly so that the total employee contribution equals 13.6%.

In the event CalPERS pension provisions for new or existing employees are modified by State or Federal legislation, resulting in changes to previously negotiated terms, the parties agree to meet and confer to discuss

appropriate changes to the MOU.

E. Retiree Health Benefits Program (Full-Time Classifications Only)

1. Background

In 2005, the City and all Employee Associations agreed to replace the previous "defined benefit" retiree medical program with a new "defined contribution" program. The process of fully converting to the new program will be ongoing for an extended period. During the transition, employees and (then) existing retirees have been administratively classified into one of four categories. The benefit is structured differently for each of the categories. The categories are as follows:

a. Category 1 - Employees newly hired after January 1, 2006.

b. Category 2 - Active employees hired prior to January 1, 2006, whose age plus years of service as of January 1, 2006 was less than 50 (46 for public safety employees).

c. Category 3 - Active employees hired prior to January 1, 2006, whose age plus years of service was 50 or greater (46 for public safety employees) as of January 1, 2006.

2. Program Structure

This is an Integral Part Trust (IPT) Retiree Health Savings (RHS) Plan (formerly the Medical Expense Reimbursement Program "MERP") *and applies only to regular full-time NBLMA employees.*

a. For employees in Category 1, the program is structured as follows:

Each employee will have an individual RHS account for bookkeeping purposes, called his or her "Employee Account." This account will accumulate contributions to be used for health care expenses after separation. All contributions to the plan are either mandatory employee contributions or City paid employer contributions, so they are not taxable to employees at the time of deposit. Earnings from investment of funds in the account are not taxable when posted to the account. Benefit payments are not taxable when withdrawn, because the plan requires that all distributions be spent for specified health care purposes.

Contributions will be in three parts.

Part A contributions (mandatory employee contributions): 1% of salary.

Part B contributions (employer contributions): $2.50 per month for each year of service plus year of age (updated every January 1st based on status as of December 31st of the prior year).

Part C contributions (leave settlement as determined by Association):

The Association will determine the level of contribution for all employees it represents, subject to the following constraints. All employees within the Association must participate at the same level. The participation level should be specified as a percentage of the leave balance on hand in each employee's leave bank at the time of separation from the City.

For example, if the Association wishes to specify 50% of the leave balance as the participation level, then each member leaving the City or cashing out leave at any other time, would have the cash equivalent of 50% of the amount that is cashed out added to the RHS, on a pre-tax basis. The remaining 50% would be paid in cash as taxable income. Individual employees would not have the option to deviate from this breakout.

The Association has decided to participate in Part C contribution, at the level of zero percent (0%). This amount may be changed, on a go forward basis, as part of the future meet and confer process. However, the participation level must be the same for all employees within the Association. Additionally, the purpose and focus of these changes should be toward long-term, trend type adjustments. Due to IRS restrictions regarding "constructive receipt," the City will impose restrictions against frequent spikes or drops that appear to be tailored toward satisfying the desires of a group of imminent retirees.

Spillover pay is not eligible for Part C contributions.

Nothing in this section restricts taking leave for time off purposes.

Part A contributions may be included in PERS compensation. Part B and Part C contributions will not be included in PERS compensation.

Part A contributions begin upon enrolment in the program and are credited to each RHS Employee Account each pay period. Eligibility for Part B contributions is set at five years of vested City employment (i.e. five years at full time status). At that time, the City will credit the first five years' worth of Part B contributions into the Employee Account (interest does not accrue during that period). Thereafter, contributions are made bi-weekly. Part C deposits, if any, will be made at the time of employment separation.

Each Employee has a right to reimbursement of medical expenses (as defined below) from the Plan until the Employee Account balance is zero. This right is triggered upon separation. If an employee leaves the City prior to five years employment, only the Part A contributions and Part C leave settlement contributions, if any, will be in the RHS Employee Account. Such an employee will not be entitled to any Part B contributions. The exception to this is a full-time employee, participating in the program, who leaves the City due to industrial disability during the first five years of employment. In such cases, the employee will receive exactly five years' worth of Part B contributions, using the employee's age and compensation at the time of separation for calculation purposes. This amount will be deposited into the employee's RHS account at the time of separation.

Distributions from RHS Employee Accounts are restricted to use for health insurance and medical care expenses after separation, as defined by the Internal Revenue Code Section 213(d) (as explained in IRS Publication 502), and specified in the Plan Document. In accordance with current IRS regulations and practices, this generally includes premiums for medical insurance, dental insurance, vision insurance, supplemental medical insurance, long term care insurance, and miscellaneous medical expenses not covered by insurance for the employee and his or her spouse and legal dependents – again only as permitted by IRS Publication 502. Qualification for dependency status will be determined by guidelines in IRC 152. If used for these purposes, distributions from the RHS accounts will not be taxable. Cash withdrawal for any other purpose is prohibited. Under recent IRS Revenue Ruling 2005-24, any balance remaining in the Employee Account after the death of the employee and his or her spouse and/or other authorized dependents (if any) must be forfeited. That particular RHS Employee Account will be closed, and any remaining funds will become general assets of the plan.

The parties agree that the City's Part B contributions during active employment constitute the minimum CalPERS participating employer's contribution (i.e., the CalPERS statutory minimum amount) towards medical insurance after retirement. The parties also agree that, for retirees selecting a CalPERS medical plan, or any other plan with a similar employer contribution requirement, the required City contribution will be withdrawn from the retiree's RHS account.

b. For employees in Category 2, the program is the same as for those in Category 1, with the following exception:

In addition to the new plan contributions listed above, current employees who fully convert to the new plan will also receive a one-time City contribution to their individual RHS accounts that equates to

$100 per month for every month they contributed to the previous "defined benefit" plan, to a maximum of 15 years (180 months). This contribution will be made only if the employee retires from the City and at the time of retirement. No interest will be earned in the interim.

Employees in Category 2 who had less than five years' service with the City prior to implementation of the new program will only receive Part B contributions back to January 1, 2006 when they reach five years total service.

c. For employees in Category 3, the program is the same as for those in Category 2, with the following exception:

For employees in this category, the City will make no Part B contributions while the employees are still in the active work force. Instead, the City will contribute $400 per month into each of their RHS accounts after they retire from the City, to continue as long as the employee or spouse is still living.

Each employee will contribute a flat $100 per month to the plan for the duration of their employment to partially offset part of this expense to the City. The maximum benefit provided by the City after retirement is $4,800~~.~~ per year, accruing at the rate of $400~~.~~ per month. There is no cash out option for these funds, and they may not be spent in advance of receipt.

Employees in this category will also receive an additional one-time City contribution of $75 per month for every month they contributed to the previous plan prior to January 1, 2006, up to a maximum of 15 years (180 months). This contribution will be made to the RHS account at the time of retirement, and only if the employee retires from the City. No interest will be earned in the interim.

3. Administration

Vendors have been selected by the City to administer the program. The contract expense for program-wide administration by the vendor will be paid by the City. However, specific vendor charges for individual account transactions that vary according to the investment actions taken by each employee, such as fees or commissions for trades, will be paid by each employee.

The City's Deferred Compensation Committee, or its successor committee, will have the authority to determine investment options that will be available through the plan.

F. Tuition Reimbursement

Full-time and part-time NBLMA members attending accredited community colleges, colleges or universities may apply for reimbursement of one hundred percent (100%) of the actual cost of tuition, books, fees or other student expenses for approved job–related courses. Reimbursement is contingent upon the successful completion of the course. Successful completion means a grade of "C" or better for undergraduate courses and a grade of "B" or better for graduate courses. All claims for tuition reimbursement require the approval of the Human Resources Director.

NBLMA members attending pre-approved, directly job-related classes, courses and seminars given by recognized agencies, organizations or individuals other than accredited college institutions may apply for reimbursement of actual cost of tuition, books, fees or other student expenses. Reimbursement is contingent upon the successful completion of the course. Successful completion means a document or certificate showing successful completion of the course or seminar. All claims for reimbursement require the approval of Fire Chief or designee before submittal to Human Resources.

Maximum tuition reimbursement for full-time employees shall be $1,500 per fiscal year and the maximum reimbursement for part-time employees shall be $1,125 per fiscal year.

SECTION 5. MISCELLANEOUS PROVISIONS

A. Reductions in Force/Layoffs

The provisions of this section shall apply to full-time and part-time members when the City Manager determines that a reduction in the work force is warranted because of actual or anticipated reductions in revenue, reorganization of the work force, a reduction in municipal services, a reduction in the demand for service or other reasons unrelated to the performance of duties by any specific employee. Reductions in force are to be accomplished, to the extent feasible, on the basis of seniority within a particular Classification or Series and this Section should be interpreted accordingly.

1. Definitions

   a. "Layoffs" or "Laid off" shall mean the non–disciplinary termination of employment.

   b. "Seniority" shall mean the time an employee has worked in a Classification or Series calculated from the date on which the employee was first granted regular status in their current

Classification or any Classification within the Series, subject to the following:

i. Credit shall be given only for continuous service (as described in the next paragraph) subsequent to the most recent appointment to regular status in the Classification or Series;

ii. Seniority shall include time spent on industrial leave, military leave and leave of absence with pay, but shall not include time spent on any other authorized or unauthorized leave of absence.

c. "Classification" shall mean one or more full time positions identical or similar in duties and embraced by a single job title authorized in the City budget and shall not include part–time, seasonal or temporary positions. Classifications within a Series shall be ranked according to pay (lowest ranking, lowest pay).

d. In this bargaining unit, there is one Series made up of the three classifications represented by the Association – Lifeguard Officer, Lifeguard Captain and Lifeguard Battalion Chief.

e. "Bumping Rights", "Bumping" or "bump" shall mean the right of an employee, based upon seniority within a series, to displace a less senior employee in a lower Classification within the Series.

2. Procedures

In the event the City Manager determines to reduce the number of employees within a Classification, the following procedures are applicable:

a. Employees within a Classification shall be laid off in inverse order of seniority;

b. An employee subject to layoff in one Classification shall have the right to Bump a less senior employee in a lower ranking Classification within a Series within the bargaining unit, provided, however, that the determination of the employee to be terminated from the position shall be based on seniority within the Series. An employee who has Bumping Rights shall notify the Department Director within seven (7) working days after notice of layoff of his/her intention to exercise Bumping Rights.

d. In the event two or more employees in the same Classification are subject to layoff and have the same seniority, the employees shall be laid off in inverse order of their position on the eligibility list or lists

from which they were appointed. In the event at least one of the employees was not appointed from an eligibility list, the Department Director shall determine the employee(s) to be laid off.

3. Notice

Employees subject to lay–off shall be given at least thirty (30) days advance notice of the layoff or thirty (30) days' pay in lieu of notice. In addition, employees laid off will be paid for all accumulated paid leave, holiday leave (if any).

4. Re–Employment

Regular and probationary employees who are laid off shall be placed on a Department re–employment list in reverse order of layoff. The re–employment list shall remain in effect until exhausted by removal of all names on the list. In the event a vacant position occurs in the Classification which the employee occupied at the time of layoff, or a lower ranking Classification within a Series, the employee at the top of the Department re–employment list shall have the right to appointment to the position, provided, he or she reports to work within seven (7) days of written notice of appointment. Notice shall be deemed given when personally delivered to the employee or deposited in the U.S. Mail, certified, return receipt requested, and addressed to the employee at his or her last known address. Any employee shall have the right to refuse to be placed on the re–employment list or the right to remove his or her name from the re–employment list by sending written confirmation to the Human Resources Director.

5. Severance Pay

Regular employees who are laid off shall, as of the date of lay–off, receive one week severance pay for each year of continuous service with the City of Newport Beach, to a maximum of ten (10) weeks of severance pay.

B. Discipline

Any discipline shall be in accordance with the Department SOP and the Employee Policy Manual.

C. Health and Fitness Evaluations

All NBLMA members shall participate in the Department Fitness Program.

D. Provision for Sun Protection

1. *The first full pay period of each fiscal year, the City will provide $400 to each full-time unit member and $300 to each part-time unit member for sunglasses and other sun protection materials (not restricted to use at Lifeguard Store).*

2. Each unit employee shall receive an annual skin cancer screening, which will be conducted either on or off duty at the Department's discretion. Employees directed to receive this screening off duty shall receive one (1) hour of compensatory time off as compensation.

E. Fitness Equipment and Exercise Time

The City will provide up to $3,000 per year towards the purchase of fitness equipment to be used on duty for the intended benefit of NBLMA. The actual equipment to be purchased shall be recommended by NBLMA, and shall require the final approval of the Fire Chief. Unit employees shall be allowed up to three (3) hours per week for on duty physical fitness training.

F. Employee Policy Manual

The City and NBLMA have agreed on implementation of the City's revised *2001* Employee Policy Manual. *Should additional revisions to the Manual be proposed, the City will meet and confer on applicable policy manual provisions which are within the scope of bargaining.*

G. Direct Deposit

All Unit employees shall participate in the City's Direct Deposit Program.

Signatures on the following page

Executed this _____ day of_____, 2019~~98~~:

NEWPORT BEACH LIFEGUARD MANAGEMENT ASSOCIATION

BY:_____
Gary Conwell, President

BY:_____
Mike Ure~~Brent Jacobsen~~, Vice President

CITY OF NEWPORT BEACH

BY:_____
Diane B. Dixon~~Duffy Duffield~~, Mayor

CITY OF NEWPORT BEACH
APPROVED AS TO FORM

BY:_____
Peter J. Brown, *Special Counsel*

ATTEST:

BY:_____
Leilani Brown, City Clerk

Exhibit A

City of Newport Beach

LIFEGUARD MANAGEMENT ASSOCIATION

SALARY SCHEDULE ADJUSTMENTS

REVISION DATE: SEPTEMBER 28, 2019

1.75% COST OF LIVING ADJUSTMENT

Position Title	Hourly Pay Rate [1]		Monthly Pay Rate [2]	
	Min	Max	Min	Max
LIFEGUARD BATTALION CHIEF	$44.76	$62.92	$7,758	$10,907
LIFEGUARD CAPTAIN	$35.54	$50.05	$6,160	$8,675
LIFEGUARD CAPTAIN + 7.5% [3]	$38.20	$53.75	$6,621	$9,317
LIFEGUARD OFFICER (PART TIME)	$26.46	$37.23	$4,586	$6,453

REVISION DATE: JUNE 20, 2020

1.75% COST OF LIVING ADJUSTMENT

Position Title	Hourly Pay Rate [1]		Monthly Pay Rate [2]	
	Min	Max	Min	Max
LIFEGUARD BATTALION CHIEF	$45.54	$64.02	$7,894	$11,097
LIFEGUARD CAPTAIN	$36.16	$50.93	$6,268	$8,827
LIFEGUARD CAPTAIN + 7.5% [3]	$38.87	$54.70	$6,737	$9,481
LIFEGUARD OFFICER (PART TIME)	$26.92	$37.88	$4,666	$6,566

REVISION DATE: JUNE 19, 2021

1.75% COST OF LIVING ADJUSTMENT

Position Title	Hourly Pay Rate [1]		Monthly Pay Rate [2]	
	Min	Max	Min	Max
LIFEGUARD BATTALION CHIEF	$46.34	$65.14	$8,032	$11,292
LIFEGUARD CAPTAIN	$36.80	$51.82	$6,378	$8,982
LIFEGUARD CAPTAIN + 7.5% [3]	$39.55	$55.65	$6,855	$9,646
LIFEGUARD OFFICER (PART TIME)	$27.39	$38.54	$4,747	$6,681

[1] Hourly pay rates are rounded to the nearest hundredth.

[2] Monthly pay rates are rounded to the nearest whole dollar.

[3] LIFEGUARD CAPTAIN + 7.5% includes compensation for the Lifeguard Captain responsible for training.

ATTACHMENT B

NBLMA Tentative Agreement for Contract Term January 1, 2019 through December 31, 2021:
COLA 1.75% each year for 3 years, Cafeteria increase ($21/month full-time and $16/month part-time) & one-time payment of $1,500 per employee.
Savings in Year 1 due to implementation in October 2019 following Council approval.
am, 08/02/2019

11 Authorized Full-time Safety Employees
2.25 Authorized Part-time Safety Employees

			Year 1[1]			1.75%	1.75%	
		FY20 Budget	1.75 % COLA	Savings	Cost	COLA Year 2	COLA Year 3	Cost of Increases
Base Pay[2]		1,290,249	22,579	(16,935)	5,645	45,554	68,930	120,129
Supplemental Pay								
Scholastic Pay		13,102	229	(172)	57	463	700	1,220
Holiday Pay		53,089	929	(697)	232	1,874	2,836	4,943
Longevity		8,957	157	(118)	39	316.24	479	834
Boat Assignment (based on 1,111 hours)[3]		1,261	22	(17)	6	44.52	67	117
Standby Pay (based on 1,471 hours)[3]		65,636	1,149	(861)	287	2,317	3,507	6,111
	Subtotal	142,045	2,486	(1,864)	621	5,015	7,589	13,225
Pension Contribution [4]								
Pension Normal Cost (Safety = 28.092%)		380,471	6,719	(5,039)	1,680	13,555	20,511	35,745
Pension Unfunded Actuarial Liability (Safety = 48.277%)[5]		663,827	11,546	(8,660)	2,887	23,294	35,248	61,429
	Subtotal	1,044,298	18,265	(13,699)	4,566	36,849	55,759	97,174
Other City Paid Benefits								
Medicare (mandatory payment of 1.45%)		23,051	410	(307)	407	803	1,202	2,412
Compensated Absences		45,158	790	(593)	198	1,594	2,413	4,205
Cafeteria Plan[6]		238,852	3,348	(2,511)	837	3,348	3,348	7,533
Employee Assistance Program (EAP)		249	-	-	-	-	-	-
Uniform Allowance (Tier 1 & 2 eligible only)		8,380	-	-	-	-	-	-
Smartphone Allowance		1,920	-	-	-	-	-	-
Sun Protection Allowance ($400/year full-time & $300/year part-time)		5,300	-	-	-	-	-	-
Cancer Screening [7]		-	-	-	-	-	-	-
Life Insurance (policy based on annual base pay with cap of $50,000)		1,576	-	-	-	-	-	-
Retiree Health Savings (Post Employment Healthcare Contribution)		9,450	-	-	-	-	-	-
One-time non-PERSable lump sum payment[8]		-	-	-	21,000	-	-	21,000
	Subtotal	333,936	4,548	(3,411)	22,442	5,745	6,963	35,149
Offset - Employee Pick Up of PERS Pension Costs (Safety = 13.6%)		(184,859)	(3,253)	2,439	(813)	(6,562)	(9,930)	(17,305)
	Subtotal	(184,859)	(3,253)	2,439	(813)	(6,562)	(9,930)	(17,305)
Overtime (based on fiscal year 2018 actual hours = 2,612.25)		88,445	1,901	(1,426)	475	3,482	5,091	9,048
	Total	**2,714,114**	**46,527**	**(34,895)**	**32,936**	**90,083**	**134,402**	**257,421**
	Salary Increase Only		**1.75%**			**3.53%**	**5.34%**	
	Total Comp Increase Only		**1.71%**			**3.32%**	**4.95%**	

[1] Savings and cost based on COLA start date of October 2019, following Council approval.

[2] Estimate is based primarily on FY 20 budget with some pays and benefits based in prior year actuals as noted.

[3] Boat Assignment and Standby pay based on average of:
Boat - Fiscal Year 18 actual hours of 1,113 and Calendar Year 18 actual hours of 1,109.
Standby - Fiscal Year 18 actual hours of 1,517 and Calendar Year 18 actual hours of 1,425.

[4] PERS Tiers:
Tier 1 Full Time Employees = 11
Tier 3 Part Time Employees = 3
Pension Normal Cost and Unfunded Actuarial Liability (UAL) percentages from PERS FY 20 actuarial valuation.

[5] UAL cost excludes City's FY 20 discretionary UAL payment.

[6] Cafeteria for full-time increases by $252/EE ($21/month) in Yr 1 for full-time and $192/EE ($16/month) in Yr 1 for part-time employees
Cafeteria for full-time employees is currently $1,624 per month, will go to $1,645 per month in Yr 1.
Cafeteria for part-time employees is currently $585 per month, will go to $601 per month in Yr 1.

[7] Cancer Screening is optional to employees and was not utilized in FY19. Cost is $232 for each screening.
If all unit members participated in the cancer screening benefit, the annual cost would be $3,593.

CITY OF

NEWPORT BEACH

City Council Staff Report

September 10, 2019
Agenda Item No. 15

TO:	HONORABLE MAYOR AND MEMBERS OF THE CITY COUNCIL
FROM:	Laura Detweiler, Recreation & Senior Services Director
PREPARED BY:	Jonathon Harmon, Recreation Manager jharmon@newportbeachca.gov
PHONE:	949-644-3156
TITLE:	Approval and Award of Printing Services Agreement with I Color Printing & Mailing Inc. for the Newport Navigator and Summer Camp Guides

ABSTRACT:

Staff is requesting City Council approval to award the printing services contract for the *Newport Navigator* and summer camp guide to I Color Printing & Mailing.

RECOMMENDATION:

a) Determine this action is exempt from the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(2) and 15060(c)(3) of the CEQA Guidelines because this action will not result in a physical change to the environment, directly or indirectly; and

b) Award a five (5) year printing services contract for the *Newport Navigator* brochure and summer camp guide to I Color Printing & Mailing Inc. for the total not to exceed bid price of $520,000 ($104,000 each year), and authorize the Mayor and the City Clerk to execute the contract agreement.

FUNDING REQUIREMENTS:

The current adopted budget includes sufficient funding for this purchase. It will be expensed to the "Rec & Sr Svcs Admin, City Printing" account in the Recreation & Senior Services Department, 01070005-841006.

DISCUSSION:

The Recreation & Senior Services Department produces four (4) seasonal "Newport Navigator" activity publications annually (Fall, Winter, Spring and Summer), and one summer camp guide. The Newport Navigators and summer camp guides are the primary marketing and branding pieces used by the department to promote recreation and senior programs, facility rental opportunities, community events, and to provide information on our parks and natural resources. In addition, other departments use the Newport Navigator to highlight library programs, cultural arts, and community emergency response team (CERT) information.

Newport Beach residents and visitors rely heavily on these print publications for information on the wide variety of special interest classes, annual summer camps and aquatics classes, educational and lifelong learning programs, and senior community events and services.

Staff developed a Request for Proposals (RFP) solicitation that was publicly posted to the City's online bidding platform (PlanetBids) and distributed directly to known printing vendors. The City received three (3) proposals from the following companies:

- I Color Printing & Mailing, Inc. ("I Color")
- Southwest Offset Printing Company, Inc. ("Southwest")
- Trend Offset Printing ("Trend")

The RFP called for the production of the Newport Navigator brochure as well as the ability to produce a digital and interactive version of the document enabling users to click once to register. The RFP advised bidders that the evaluation and selection process would encompass two phases. In the first phase (Technical Evaluation), an evaluation panel consisting of staff from the Recreation & Senior Services Department assessed each proposer on factors such as experience, qualifications, resources and technical ability relative to the production of the Newport Navigator. The second phase (Cost Review) involved the City's Purchasing Agent performing an evaluation and comparison of each bidder's proposed production costs annually for four editions of the Newport Navigator and one Summer Camp guide. The table below summarizes the findings from this process:

PROPOSER	TECHNICAL EVALUATION – MAX. 50	COST REVIEW (ANNUAL COST) – MAX. 50	TOTAL SCORE	OVERALL RANK
I Color Printing & Mailing, Inc.	41.67	50.00 ($97,820)	91.67	1
Trend Offset Printing	44.17	39.19 ($124,817)	83.36	2
Southwest Offset Printing Company, Inc.	39.17	37.86 ($129,201)	77.03	3

All bidders were requested to present their pricing assuming a potential five-year contract term for this engagement. I Color was the only bidder that did not ask for year-over-year increases for the five-year term, whereas Trend and Southwest proposed annual increases of 2% and 5%, respectively.

I Color's proposed annual cost of $97,820 represents a significant cost savings compared to the other proposals from this RFP process as well as the $129,986 currently spent annually by the City. This represents an annual cost savings of $32,166 for the next five years. The proposed $104,000 annually includes a 6% buffer for any City adjustments to quantities, page counts and specifications.

In its proposal, I Color provided impressive references for which they have produced handbooks, mailing materials and brochures, including the Los Angeles Unified School District and the City of Huntington Beach. Most notably, I Color is the current producer of the SANDS Magazine, which is the recreation activity publication for the City of Huntington Beach. These references assured the panel that I Color can perform the services required in this engagement at the price proposed.

Following this RFP procurement process, staff recommends award to I Color Printing & Mailing, Inc. as the highest-qualified proposer for printing services related to the production of the Newport Navigator brochure.

ENVIRONMENTAL REVIEW:

Staff recommends the City Council find this action 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, Chapter 3, because it has no potential for resulting in physical change to the environment, directly or indirectly.

NOTICING:

The agenda item has been noticed according to the Brown Act (72 hours in advance of the meeting at which the City Council considers the item).

ATTACHMENT:

Attachment A – Agreement for Printing Services between the City of Newport Beach and I Color Printing and Mailing Inc.

PROFESSIONAL SERVICES AGREEMENT WITH I COLOR PRINTING & MAILING, INC. FOR PRODUCTION OF NEWPORT NAVIGATOR BROCHURE

THIS PROFESSIONAL SERVICES AGREEMENT ("Agreement") is made and entered into as of this 10th day of September, 2019 ("Effective Date"), by and between the CITY OF NEWPORT BEACH, a California municipal corporation and charter city ("City"), and I COLOR PRINTING & MAILING, INC., a California corporation ("Consultant"), whose address is 13000 South Broadway, Los Angeles, CA 90061, and is made with reference to the following:

RECITALS

A. City is a municipal corporation duly organized and validly existing under the laws of the State of California with the power to carry on its business as it is now being conducted under the statutes of the State of California and the Charter of City.

B. City desires to engage Consultant to provide production of digital and printed versions of the Newport Navigator Brochure and Summer Camp Brochure ("Project").

C. Consultant possesses the skill, experience, ability, background, certification and knowledge to provide the professional services described in this Agreement.

D. City has solicited and received a proposal from Consultant, has reviewed the previous experience and evaluated the expertise of Consultant, and desires to retain Consultant to render professional services under the terms and conditions set forth in this Agreement.

NOW, THEREFORE, it is mutually agreed by and between the undersigned parties as follows:

1. TERM

The term of this Agreement shall commence on the Effective Date, and shall terminate on September 9, 2020, unless terminated earlier as set forth herein. City shall have the option, at its sole discretion, to extend the term of this Agreement for four (4) additional successive terms of one (1) year, the first commencing on the expiration of the initial term, on the same terms and conditions as contained in this Agreement.

2. SERVICES TO BE PERFORMED

Consultant shall diligently perform all the services described in the Scope of Services attached hereto as Exhibit A and incorporated herein by reference ("Services" or "Work"). City may elect to delete certain Services within the Scope of Services at its sole discretion.

2. TIME OF PERFORMANCE

2.1 Time is of the essence in the performance of Services under this Agreement and Consultant shall perform the Services in accordance with the schedule included in Exhibit A. In the absence of a specific schedule, the Services shall be performed to completion in a diligent and timely manner. The failure by Consultant to strictly adhere to the schedule set forth in Exhibit A, if any, or perform the Services in a diligent and timely manner may result in termination of this Agreement by City.

2.2 Notwithstanding the foregoing, Consultant shall not be responsible for delays due to causes beyond Consultant's reasonable control. However, in the case of any such delay in the Services to be provided for the Project, each party hereby agrees to provide notice within two (2) calendar days of the occurrence causing the delay to the other party so that all delays can be addressed.

2.3 Consultant shall submit all requests for extensions of time for performance in writing to the Project Administrator as defined herein not later than ten (10) calendar days after the start of the condition that purportedly causes a delay. The Project Administrator shall review all such requests and may grant reasonable time extensions for unforeseeable delays that are beyond Consultant's control.

2.4 For all time periods not specifically set forth herein, Consultant shall respond in the most expedient and appropriate manner under the circumstances, by hand-delivery or mail.

3. COMPENSATION TO CONSULTANT

3.1 City shall pay Consultant for the Services on a time and expense not-to-exceed basis in accordance with the provisions of this Section and the Schedule of Billing Rates attached hereto as Exhibit B and incorporated herein by reference. Consultant's compensation for all Work performed in accordance with this Agreement, including all reimbursable items and subconsultant fees, shall not exceed **Five Hundred Twenty Thousand Dollars and 00/100 ($520,000.00),** without prior written authorization from City. No billing rate changes shall be made during the term of this Agreement without the prior written approval of City.

3.2 Consultant shall submit monthly invoices to City describing the Work performed the preceding month. Consultant's bills shall include the name of the person who performed the Work, a brief description of the Services performed and/or the specific task in the Scope of Services to which it relates, the date the Services were performed, the number of hours spent on all Work billed on an hourly basis, and a description of any reimbursable expenditures. City shall pay Consultant no later than thirty (30) calendar days after approval of the monthly invoice by City staff.

3.3 City shall reimburse Consultant only for those costs or expenses specifically identified in Exhibit B to this Agreement or specifically approved in writing in advance by City.

3.4 Consultant shall not receive any compensation for Extra Work performed without the prior written authorization of City. As used herein, "Extra Work" means any Work that is determined by City to be necessary for the proper completion of the Project, but which is not included within the Scope of Services and which the parties did not reasonably anticipate would be necessary at the execution of this Agreement. Compensation for any authorized Extra Work shall be paid in accordance with the Schedule of Billing Rates as set forth in Exhibit B.

4. PROJECT MANAGER

4.1 Consultant shall designate a Project Manager, who shall coordinate all phases of the Project. This Project Manager shall be available to City at all reasonable times during the Agreement term. Consultant has designated Sameer Khan to be its Project Manager. Consultant shall not remove or reassign the Project Manager or any personnel listed in Exhibit A or assign any new or replacement personnel to the Project without the prior written consent of City. City's approval shall not be unreasonably withheld with respect to the removal or assignment of non-key personnel.

4.2 Consultant, at the sole discretion of City, shall remove from the Project any of its personnel assigned to the performance of Services upon written request of City. Consultant warrants that it will continuously furnish the necessary personnel to complete the Project on a timely basis as contemplated by this Agreement.

4.3 If Consultant is performing inspection services for City, the Project Manager and any other assigned staff shall be equipped with a cellular phone to communicate with City staff. The Project Manager's cellular phone number shall be provided to City.

5. ADMINISTRATION

This Agreement will be administered by the Recreation & Senior Services Department. City's Deputy Recreation & Senior Services Director or designee shall be the Project Administrator and shall have the authority to act for City under this Agreement. The Project Administrator shall represent City in all matters pertaining to the Services to be rendered pursuant to this Agreement.

6. CITY'S RESPONSIBILITIES

To assist Consultant in the execution of its responsibilities under this Agreement, City agrees to provide access to and upon request of Consultant, one copy of all existing relevant information on file at City. City will provide all such materials in a timely manner so as not to cause delays in Consultant's Work schedule.

7. STANDARD OF CARE

7.1 All of the Services shall be performed by Consultant or under Consultant's supervision. Consultant represents that it possesses the professional and technical personnel required to perform the Services required by this Agreement, and that it will perform all Services in a manner commensurate with community professional standards

and with the ordinary degree of skill and care that would be used by other reasonably competent practitioners of the same discipline under similar circumstances. All Services shall be performed by qualified and experienced personnel who are not employed by City. By delivery of completed Work, Consultant certifies that the Work conforms to the requirements of this Agreement, all applicable federal, state and local laws, and legally recognized professional standards.

7.2 Consultant represents and warrants to City that it has, shall obtain, and shall keep in full force and effect during the term hereof, at its sole cost and expense, all licenses, permits, qualifications, insurance and approvals of whatsoever nature that is legally required of Consultant to practice its profession. Consultant shall maintain a City of Newport Beach business license during the term of this Agreement.

7.3 Consultant shall not be responsible for delay, nor shall Consultant be responsible for damages or be in default or deemed to be in default by reason of strikes, lockouts, accidents, acts of God, or the failure of City to furnish timely information or to approve or disapprove Consultant's Work promptly, or delay or faulty performance by City, contractors, or governmental agencies.

8. HOLD HARMLESS

8.1 To the fullest extent permitted by law, Consultant shall indemnify, defend and hold harmless City, its City Council, boards and commissions, officers, agents, volunteers and employees (collectively, the "Indemnified Parties") from and against any and all claims (including, without limitation, claims for bodily injury, death or damage to property), demands, obligations, damages, actions, causes of action, suits, losses, judgments, fines, penalties, liabilities, costs and expenses (including, without limitation, attorneys' fees, disbursements and court costs) of every kind and nature whatsoever (individually, a Claim; collectively, "Claims"), which may arise from or in any manner relate (directly or indirectly) to any breach of the terms and conditions of this Agreement, any Work performed or Services provided under this Agreement including, without limitation, defects in workmanship or materials or Consultant's presence or activities conducted on the Project (including the negligent, reckless, and/or willful acts, errors and/or omissions of Consultant, its principals, officers, agents, employees, vendors, suppliers, consultants, subcontractors, anyone employed directly or indirectly by any of them or for whose acts they may be liable, or any or all of them).

8.2 Notwithstanding the foregoing, nothing herein shall be construed to require Consultant to indemnify the Indemnified Parties from any Claim arising from the sole negligence or willful misconduct of the Indemnified Parties. Nothing in this indemnity shall be construed as authorizing any award of attorneys' fees in any action on or to enforce the terms of this Agreement. This indemnity shall apply to all claims and liability regardless of whether any insurance policies are applicable. The policy limits do not act as a limitation upon the amount of indemnification to be provided by Consultant.

9. INDEPENDENT CONTRACTOR

It is understood that City retains Consultant on an independent contractor basis and Consultant is not an agent or employee of City. The manner and means of conducting the Work are under the control of Consultant, except to the extent they are limited by statute, rule or regulation and the expressed terms of this Agreement. No civil service status or other right of employment shall accrue to Consultant or its employees. Nothing in this Agreement shall be deemed to constitute approval for Consultant or any of Consultant's employees or agents, to be the agents or employees of City. Consultant shall have the responsibility for and control over the means of performing the Work, provided that Consultant is in compliance with the terms of this Agreement. Anything in this Agreement that may appear to give City the right to direct Consultant as to the details of the performance of the Work or to exercise a measure of control over Consultant shall mean only that Consultant shall follow the desires of City with respect to the results of the Services.

10. COOPERATION

Consultant agrees to work closely and cooperate fully with City's designated Project Administrator and any other agencies that may have jurisdiction or interest in the Work to be performed. City agrees to cooperate with the Consultant on the Project.

11. CITY POLICY

Consultant shall discuss and review all matters relating to policy and Project direction with City's Project Administrator in advance of all critical decision points in order to ensure the Project proceeds in a manner consistent with City goals and policies.

12. PROGRESS

Consultant is responsible for keeping the Project Administrator informed on a regular basis regarding the status and progress of the Project, activities performed and planned, and any meetings that have been scheduled or are desired.

13. INSURANCE

Without limiting Consultant's indemnification of City, and prior to commencement of Work, Consultant shall obtain, provide and maintain at its own expense during the term of this Agreement or for other periods as specified in this Agreement, policies of insurance of the type, amounts, terms and conditions described in the Insurance Requirements attached hereto as Exhibit C, and incorporated herein by reference.

14. PROHIBITION AGAINST ASSIGNMENTS AND TRANSFERS

Except as specifically authorized under this Agreement, the Services to be provided under this Agreement shall not be assigned, transferred contracted or subcontracted out without the prior written approval of City. Any of the following shall be construed as an assignment: The sale, assignment, transfer or other disposition of any

of the issued and outstanding capital stock of Consultant, or of the interest of any general partner or joint venturer or syndicate member or cotenant if Consultant is a partnership or joint-venture or syndicate or co-tenancy, which shall result in changing the control of Consultant. Control means fifty percent (50%) or more of the voting power or twenty-five percent (25%) or more of the assets of the corporation, partnership or joint-venture.

15. SUBCONTRACTING

The subcontractors authorized by City, if any, to perform Work on this Project are identified in Exhibit A. Consultant shall be fully responsible to City for all acts and omissions of any subcontractor. Nothing in this Agreement shall create any contractual relationship between City and any subcontractor nor shall it create any obligation on the part of City to pay or to see to the payment of any monies due to any such subcontractor other than as otherwise required by law. City is an intended beneficiary of any Work performed by the subcontractor for purposes of establishing a duty of care between the subcontractor and City. Except as specifically authorized herein, the Services to be provided under this Agreement shall not be otherwise assigned, transferred, contracted or subcontracted out without the prior written approval of City.

16. OWNERSHIP OF DOCUMENTS

16.1 Each and every report, draft, map, record, plan, document and other writing produced, including but not limited to, websites, blogs, social media accounts and applications (hereinafter "Documents"), prepared or caused to be prepared by Consultant, its officers, employees, agents and subcontractors, in the course of implementing this Agreement, shall become the exclusive property of City, and City shall have the sole right to use such materials in its discretion without further compensation to Consultant or any other party. Additionally, all material posted in cyberspace by Consultant, its officers, employees, agents and subcontractors, in the course of implementing this Agreement, shall become the exclusive property of City, and City shall have the sole right to use such materials in its discretion without further compensation to Consultant or any other party. Consultant shall, at Consultant's expense, provide such Documents, including all logins and password information to City upon prior written request.

16.2 Documents, including drawings and specifications, prepared by Consultant pursuant to this Agreement are not intended or represented to be suitable for reuse by City or others on any other project. Any use of completed Documents for other projects and any use of incomplete Documents without specific written authorization from Consultant will be at City's sole risk and without liability to Consultant. Further, any and all liability arising out of changes made to Consultant's deliverables under this Agreement by City or persons other than Consultant is waived against Consultant, and City assumes full responsibility for such changes unless City has given Consultant prior notice and has received from Consultant written consent for such changes.

16.3 All written documents shall be transmitted to City in formats compatible with Microsoft Office and/or viewable with Adobe Acrobat.

17. CONFIDENTIALITY

All Documents, including drafts, preliminary drawings or plans, notes and communications that result from the Services in this Agreement, shall be kept confidential unless City expressly authorizes in writing the release of information.

18. INTELLECTUAL PROPERTY INDEMNITY

Consultant shall defend and indemnify City, its agents, officers, representatives and employees against any and all liability, including costs, for infringement or alleged infringement of any United States' letters patent, trademark, or copyright, including costs, contained in Consultant's Documents provided under this Agreement.

19. RECORDS

Consultant shall keep records and invoices in connection with the Services to be performed under this Agreement. Consultant shall maintain complete and accurate records with respect to the costs incurred under this Agreement and any Services, expenditures and disbursements charged to City, for a minimum period of three (3) years, or for any longer period required by law, from the date of final payment to Consultant under this Agreement. All such records and invoices shall be clearly identifiable. Consultant shall allow a representative of City to examine, audit and make transcripts or copies of such records and invoices during regular business hours. Consultant shall allow inspection of all Work, data, Documents, proceedings and activities related to the Agreement for a period of three (3) years from the date of final payment to Consultant under this Agreement.

20. WITHHOLDINGS

City may withhold payment to Consultant of any disputed sums until satisfaction of the dispute with respect to such payment. Such withholding shall not be deemed to constitute a failure to pay according to the terms of this Agreement. Consultant shall not discontinue Work as a result of such withholding. Consultant shall have an immediate right to appeal to the City Manager or designee with respect to such disputed sums. Consultant shall be entitled to receive interest on any withheld sums at the rate of return that City earned on its investments during the time period, from the date of withholding of any amounts found to have been improperly withheld.

21. ERRORS AND OMISSIONS

In the event of errors or omissions that are due to the negligence or professional inexperience of Consultant which result in expense to City greater than what would have resulted if there were not errors or omissions in the Work accomplished by Consultant, the additional design, construction and/or restoration expense shall be borne by Consultant. Nothing in this Section is intended to limit City's rights under the law or any other sections of this Agreement.

22. CITY'S RIGHT TO EMPLOY OTHER CONSULTANTS

City reserves the right to employ other Consultants in connection with the Project.

23. CONFLICTS OF INTEREST

23.1 Consultant or its employees may be subject to the provisions of the California Political Reform Act of 1974 (the "Act") and/or Government Code §§ 1090 et seq., which (1) require such persons to disclose any financial interest that may foreseeably be materially affected by the Work performed under this Agreement, and (2) prohibit such persons from making, or participating in making, decisions that will foreseeably financially affect such interest.

23.2 If subject to the Act and/or Government Code §§ 1090 et seq., Consultant shall conform to all requirements therein. Failure to do so constitutes a material breach and is grounds for immediate termination of this Agreement by City. Consultant shall indemnify and hold harmless City for any and all claims for damages resulting from Consultant's violation of this Section.

24. NOTICES

24.1 All notices, demands, requests or approvals, including any change in mailing address, to be given under the terms of this Agreement shall be given in writing, and conclusively shall be deemed served when delivered personally, or on the third business day after the deposit thereof in the United States mail, postage prepaid, first-class mail, addressed as hereinafter provided.

24.2 All notices, demands, requests or approvals from Consultant to City shall be addressed to City at:

Attn: Deputy Recreation & Senior Services Director
Recreation & Senior Services Department
City of Newport Beach
100 Civic Center Drive
PO Box 1768
Newport Beach, CA 92658

24.3 All notices, demands, requests or approvals from City to Consultant shall be addressed to Consultant at:

Attn: Sameer Khan
I Color Printing & Mailing, Inc.
13000 South Broadway
Los Angeles, CA 90061

25. CLAIMS

Unless a shorter time is specified elsewhere in this Agreement, before making its final request for payment under this Agreement, Consultant shall submit to City, in writing, all claims for compensation under or arising out of this Agreement. Consultant's acceptance of the final payment shall constitute a waiver of all claims for compensation under or arising out of this Agreement except those previously made in writing and identified by Consultant in writing as unsettled at the time of its final request for payment. Consultant and City expressly agree that in addition to any claims filing requirements set forth in the Agreement, Consultant shall be required to file any claim Consultant may have against City in strict conformance with the Government Claims Act (Government Code sections 900 *et seq.).*

26. TERMINATION

26.1 In the event that either party fails or refuses to perform any of the provisions of this Agreement at the time and in the manner required, that party shall be deemed in default in the performance of this Agreement. If such default is not cured within a period of two (2) calendar days, or if more than two (2) calendar days are reasonably required to cure the default and the defaulting party fails to give adequate assurance of due performance within two (2) calendar days after receipt of written notice of default, specifying the nature of such default and the steps necessary to cure such default, and thereafter diligently take steps to cure the default, the non-defaulting party may terminate the Agreement forthwith by giving to the defaulting party written notice thereof.

26.2 Notwithstanding the above provisions, City shall have the right, at its sole and absolute discretion and without cause, of terminating this Agreement at any time by giving no less than seven (7) calendar days' prior written notice to Consultant. In the event of termination under this Section, City shall pay Consultant for Services satisfactorily performed and costs incurred up to the effective date of termination for which Consultant has not been previously paid. On the effective date of termination, Consultant shall deliver to City all reports, Documents and other information developed or accumulated in the performance of this Agreement, whether in draft or final form.

27. STANDARD PROVISIONS

27.1 Recitals. City and Consultant acknowledge that the above Recitals are true and correct and are hereby incorporated by reference into this Agreement.

27.2 Compliance with all Laws. Consultant shall, at its own cost and expense, comply with all statutes, ordinances, regulations and requirements of all governmental entities, including federal, state, county or municipal, whether now in force or hereinafter enacted. In addition, all Work prepared by Consultant shall conform to applicable City, county, state and federal laws, rules, regulations and permit requirements and be subject to approval of the Project Administrator and City.

27.3 Waiver. A waiver by either party of any breach, of any term, covenant or condition contained herein shall not be deemed to be a waiver of any subsequent breach

of the same or any other term, covenant or condition contained herein, whether of the same or a different character.

27.4 Integrated Contract. This Agreement represents the full and complete understanding of every kind or nature whatsoever between the parties hereto, and all preliminary negotiations and agreements of whatsoever kind or nature are merged herein. No verbal agreement or implied covenant shall be held to vary the provisions herein.

27.5 Conflicts or Inconsistencies. In the event there are any conflicts or inconsistencies between this Agreement and the Scope of Services or any other attachments attached hereto, the terms of this Agreement shall govern.

27.6 Interpretation. The terms of this Agreement shall be construed in accordance with the meaning of the language used and shall not be construed for or against either party by reason of the authorship of the Agreement or any other rule of construction which might otherwise apply.

27.7 Amendments. This Agreement may be modified or amended only by a written document executed by both Consultant and City and approved as to form by the City Attorney.

27.8 Severability. If any term or portion of this Agreement is held to be invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions of this Agreement shall continue in full force and effect.

27.9 Controlling Law and Venue. The laws of the State of California shall govern this Agreement and all matters relating to it and any action brought relating to this Agreement shall be adjudicated in a court of competent jurisdiction in the County of Orange, State of California.

27.10 Equal Opportunity Employment. Consultant represents that it is an equal opportunity employer and it shall not discriminate against any subcontractor, employee or applicant for employment because race, religious creed, color, national origin, ancestry, physical handicap, medical condition, marital status, sex, sexual orientation, age or any other impermissible basis under law.

27.11 No Attorneys' Fees. In the event of any dispute or legal action arising under this Agreement, the prevailing party shall not be entitled to attorneys' fees.

27.12 Counterparts. This Agreement may be executed in two (2) or more counterparts, each of which shall be deemed an original and all of which together shall constitute one (1) and the same instrument.

[SIGNATURES ON NEXT PAGE]

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed on the dates written below.

APPROVED AS TO FORM:
CITY ATTORNEY'S OFFICE
Date: 8/26/2019

By: _____
For: Aaron C. Harp
City Attorney

8-26-19
MMI

CITY OF NEWPORT BEACH,
a California municipal corporation
Date: _____

By: _____
Diane B. Dixon
Mayor

ATTEST:
Date: _____

By: _____
Leilani I. Brown
City Clerk

CONSULTANT: I Color Printing & Mailing, Inc., a California corporation
Date: _____

By: _____
Mohammed Adil Khan
Chief Executive Officer and Secretary

[END OF SIGNATURES]

Attachments: Exhibit A – Scope of Services
Exhibit B – Schedule of Billing Rates
Exhibit C – Insurance Requirements

EXHIBIT A
SCOPE OF SERVICES

The Newport Navigator is a magazine published quarterly containing the most current recreational class offerings by the City of Newport Beach ("City"). In addition to the Navigator, a Summer Camp Brochure is also printed annually. The Newport Navigator is also produced in a fully interactive digital format. This project shall entail the printed and digital versions of the Newport Navigator and the printed version of the Summer Camp Brochure.

1. Navigator Magazine Specifications – Printed Version

Unless otherwise stated, the following specifications shall apply to all editions (Fall, Winter, Spring, Summer, etc.) of the Newport Navigator:

DETAIL:

Cover: 4 PGS, Nature FSC Matte, 4 color + UV Process

Inside Pages: 72-88 PGS, Nature Matte 10

Saddle Stitch

Weight Stock; Stock is Matte with a Gloss UV added to both sides of pages

Weight of the Stock: Cover: 100# Inside: 45# ALL: CFS#3 10% Recycled FSC, 4/4

Brochure Size Finished: 8.125" x 10.875"

BINDING:

Score cover, Fold, Saddle Stitch, Trim, Carton

INKS:

Soy or Vegetable Based

APPROXIMATE NUMBER OF PAGES FOR EACH BROCHURE:

Fall: 72 inside + 4 cover

Winter: 72 inside + 4 cover

Spring: 72 inside + 4 cover

Summer: 88 inside + 4 cover

Summer Brochure: 24 Self Cover 4/4

DELIVERY AND POSTAGE:

As part of the layout/design that will be provided by the City, the Presorted Standard Postage permit stamp shall be included. Contractor is required to print the permit stamp on the back of the Navigator and the post office will distribute. No individual addressing shall be required.

Approximately 46,000 brochures are to be boxed in cartons of 100. Approximately 42,000 will be delivered to the post office and approximately 4,000 will be delivered to the Recreation and Senior Services Department of the City of Newport Beach Civic Center located at 100 Civic Center Drive, Newport Beach CA 92658.

2. Navigator Magazine Specifications – Digital Version

Contractor shall produce an electronic version of the Newport Navigator in the form of a "digital file." Contractor shall post the digital file to its own web server and host the file. This file should be fully interactive with navigational pages. City will link to this file, through its ActiveNet registration site, and all advertising for the Navigator. As the City links to an external website, Contractor is required to have the ability to produce this complete digital version, in compliance with all Americans with Disability Act (ADA) standards for website accessibility.

A fully interactive brochure shall be produced and posted online within 72 hours from hard copies delivered to Post Office and Civic Center.

3. Summer Camp Brochure Specifications – Printed Only

Detail: Single page digital files supplied to Contractor in agreed upon specifications for computer-to-plate processing.

Quantity: Approximately 47,000. Same mailing list from Newport Navigator will be utilized. This includes 5,000 pieces to City of Newport Beach Civic Center.

Trim Size: 5 3/8" x 8 ½"

Pages: Approximately 24 pages, self cover (4/4)

Paper: 100 lb. CFS #3

Binding: Saddle Stitch on the 8 ½" edge

Packaging: Carton and pallet convenient.

Delivery: Contractor to deliver to post office and City of Newport Beach Civic Center.

Pieces must arrive on pallet to be unloaded by Contractor's driver. City staff shall not be responsible for unloading pieces at Civic Center.

4. **Navigator Magazine Specifications – DELIVERY AND POSTAGE:**

As part of the layout/design that will be provided by the City, the Presorted Standard Postage permit stamp shall be included. Contractor will print permit stamp on the back of the Navigator and the Post Office will distribute. No individual addressing shall be required.

Approximately 46,000 brochures are to be boxed in cartons of 100. Approximately 42,000 will be delivered to the post office and approximately 4,000 will be delivered to the Newport Beach Civic Center.

5. **Deliverables and Deadlines**

Printed copies must be at post office and Newport Beach Civic Center the Friday before registration dates open each season.

For example: Winter brochure registration opens November 21, 2019. Winter brochures need to be at the Post Office and Civic Center on November 15, 2019.

- Driver must drop off at Post Office and at Newport Beach Civic Center on same day.

- The time between City staff upload and approval of Newport Navigator to Contractor print and delivery must be within three (3) weeks.

EXHIBIT B
SCHEDULE OF BILLING RATES

NEWPORT NAVIGATOR EDITION	PRINTED VERSION	DIGITAL VERSION
Fall: 72 pages inside + 4 page cover	$19,660 per issue	$350 per issue
Winter: 72 pages inside + 4 page cover	$19,660 per issue	$350 per issue
Spring: 72 pages inside + 4 page cover	$19,660 per issue	$350 per issue
Summer: 88 pages inside + 4 page cover	$24,880 per issue	$350 per issue
Summer Camp Brochure: 24 Pages; Self Cover 4/4	$8,880 per issue	N/A
Annual Increases	N/A	N/A

The following are items that are included in the per-edition pricing above, unless otherwise specifically provided below:

ITEM/SERVICE	PRICING
Inline Inkjet and Delivery to Post Office	$736 per issue
Fulfillment	INCLUDED
Mailing List Preparation	INCLUDED
Sorting	INCLUDED

EXHIBIT C

INSURANCE REQUIREMENTS – PROFESSIONAL SERVICES

1. Provision of Insurance. Without limiting Consultant's indemnification of City, and prior to commencement of Work, Consultant shall obtain, provide and maintain at its own expense during the term of this Agreement, policies of insurance of the type and amounts described below and in a form satisfactory to City. Consultant agrees to provide insurance in accordance with requirements set forth here. If Consultant uses existing coverage to comply and that coverage does not meet these requirements, Consultant agrees to amend, supplement or endorse the existing coverage.

2. Acceptable Insurers. All insurance policies shall be issued by an insurance company currently authorized by the Insurance Commissioner to transact business of insurance in the State of California, with an assigned policyholders' Rating of A- (or higher) and Financial Size Category Class VII (or larger) in accordance with the latest edition of Best's Key Rating Guide, unless otherwise approved by the City's Risk Manager.

3. Coverage Requirements.

   A. Workers' Compensation Insurance. Consultant shall maintain Workers' Compensation Insurance, statutory limits, and Employer's Liability Insurance with limits of at least one million dollars ($1,000,000) each accident for bodily injury by accident and each employee for bodily injury by disease in accordance with the laws of the State of California, Section 3700 of the Labor Code.

      Consultant shall submit to City, along with the certificate of insurance, a Waiver of Subrogation endorsement in favor of City, its City Council, boards and commissions, officers, agents, volunteers and employees.

   B. General Liability Insurance. Consultant shall maintain commercial general liability insurance, and if necessary umbrella liability insurance, with coverage at least as broad as provided by Insurance Services Office form CG 00 01, in an amount not less than one million dollars ($1,000,000) per occurrence, two million dollars ($2,000,000) general aggregate. The policy shall cover liability arising from premises, operations, personal and advertising injury, and liability assumed under an insured contract (including the tort liability of another assumed in a business contract).

   C. Automobile Liability Insurance. Consultant shall maintain automobile insurance at least as broad as Insurance Services Office form CA 00 01 covering bodily injury and property damage for all activities of Consultant arising out of or in connection with Work to be performed under this Agreement, including coverage for any owned, hired, non-owned or rented vehicles, in an amount not less than one million dollars ($1,000,000) combined single limit each accident.

4. Other Insurance Requirements. The policies are to contain, or be endorsed to contain, the following provisions:

   A. Waiver of Subrogation. All insurance coverage maintained or procured pursuant to this Agreement shall be endorsed to waive subrogation against City, its City Council, boards and commissions, officers, agents, volunteers and employees or shall specifically allow Consultant or others providing insurance evidence in compliance with these requirements to waive their right of recovery prior to a loss. Consultant hereby waives its own right of recovery against City, and shall require similar written express waivers from each of its subconsultants.

   B. Additional Insured Status. All liability policies including general liability, excess liability, pollution liability, and automobile liability, if required, but not including professional liability, shall provide or be endorsed to provide that City, its City Council, boards and commissions, officers, agents, volunteers and employees shall be included as insureds under such policies.

   C. Primary and Non Contributory. All liability coverage shall apply on a primary basis and shall not require contribution from any insurance or self-insurance maintained by City.

   D. Notice of Cancellation. All policies shall provide City with thirty (30) calendar days' notice of cancellation (except for nonpayment for which ten (10) calendar days' notice is required) or nonrenewal of coverage for each required coverage.

5. Additional Agreements Between the Parties. The parties hereby agree to the following:

   A. Evidence of Insurance. Consultant shall provide certificates of insurance to City as evidence of the insurance coverage required herein, along with a waiver of subrogation endorsement for workers' compensation and other endorsements as specified herein for each coverage. Insurance certificates and endorsement must be approved by City's Risk Manager prior to commencement of performance. Current certification of insurance shall be kept on file with City at all times during the term of this Agreement. City reserves the right to require complete, certified copies of all required insurance policies, at any time.

   B. City's Right to Revise Requirements. City reserves the right at any time during the term of the Agreement to change the amounts and types of insurance required by giving Consultant sixty (60) calendar days' advance written notice of such change. If such change results in substantial additional cost to Consultant, City and Consultant may renegotiate Consultant's compensation.

   C. Enforcement of Agreement Provisions. Consultant acknowledges and agrees that any actual or alleged failure on the part of City to inform

Consultant of non-compliance with any requirement imposes no additional obligations on City nor does it waive any rights hereunder.

D. Requirements not Limiting. Requirements of specific coverage features or limits contained in this Section are not intended as a limitation on coverage, limits or other requirements, or a waiver of any coverage normally provided by any insurance. Specific reference to a given coverage feature is for purposes of clarification only as it pertains to a given issue and is not intended by any party or insured to be all inclusive, or to the exclusion of other coverage, or a waiver of any type. If the Consultant maintains higher limits than the minimums shown above, the City requires and shall be entitled to coverage for higher limits maintained by the Consultant. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the City.

E. Self-insured Retentions. Any self-insured retentions must be declared to and approved by City. City reserves the right to require that self-insured retentions be eliminated, lowered, or replaced by a deductible. Self-insurance will not be considered to comply with these requirements unless approved by City.

F. City Remedies for Non-Compliance. If Consultant or any subconsultant fails to provide and maintain insurance as required herein, then City shall have the right but not the obligation, to purchase such insurance, to terminate this Agreement, or to suspend Consultant's right to proceed until proper evidence of insurance is provided. Any amounts paid by City shall, at City's sole option, be deducted from amounts payable to Consultant or reimbursed by Consultant upon demand.

G. Timely Notice of Claims. Consultant shall give City prompt and timely notice of claims made or suits instituted that arise out of or result from Consultant's performance under this Agreement, and that involve or may involve coverage under any of the required liability policies. City assumes no obligation or liability by such notice, but has the right (but not the duty) to monitor the handling of any such claim or claims if they are likely to involve City.

H. Consultant's Insurance. Consultant shall also procure and maintain, at its own cost and expense, any additional kinds of insurance, which in its own judgment may be necessary for its proper protection and prosecution of the Work.

CITY OF

NEWPORT BEACH

City Council Staff Report

September 10, 2019
Agenda Item No. 16

TO: HONORABLE MAYOR AND MEMBERS OF THE CITY COUNCIL

FROM: Seimone Jurjis, Community Development Director - 949-644-3232, sjurjis@newportbeachca.gov

PHONE: 949-644-3210

TITLE: Planning Commission Agenda Report for August 22, 2019

ITEM NO. 1 **ELECTION OF OFFICERS**

SUMMARY: Election of Chair, Vice Chair and Secretary to serve for one year.

The Planning Commission elected:

- Peter Koetting as Chair;
- Erik Weigand as Vice Chair; and
- Lee Lowrey as Secretary.

ITEM NO. 2 **MINUTES OF AUGUST 8, 2019**

SUMMARY: Draft minutes from the August 8, 2019 meeting of the Planning Commission.

The Planning Commission considered the draft minutes and suggested amendments to the minutes.

AYES:	Ellmore, Klaustermeier, Koetting, Rosene, and Weigand
NOES:	None
ABSENT:	None
ABSTAIN:	Lowrey, Kleiman

ACTION: Approve as amended.

PUBLIC HEARING ITEMS:

ITEM NO. 3 **THE GARDEN OFFICE AND PARKING STRUCTURE (PA2019-023)**
Site Location: 215 Riverside Avenue

SUMMARY: A coastal development permit to demolish an existing restaurant/office building and associated surface parking lot, and to construct a new 47-space, two-level parking structure and a 2,830-square-foot office building. A conditional use permit is required to authorize the parking structure adjacent to residentially zoned property. A modification permit is required for 12 tandem parking spaces on the first and second floor levels. The project includes hardscape, drainage, and landscape improvements. The proposed development complies with all applicable development standards including height, setbacks, and floor area limits.

The Planning Commission conducted a public hearing and continued the item. The item will be re-noticed with a new hearing date.

AYES: Ellmore, Klaustermeier, Kleiman, Koetting, Lowrey, Rosene, and Weigand
NOES: None
ABSENT: None
ABSTAIN: None

ACTION: Item continued to the September 19, 2019 Planning Commission Meeting

ITEM NO. 4 **COAST BUSINESS CENTER PARKING WAIVER (PA2019-101)**
Site Location: 2121 East Coast Highway

SUMMARY: A coastal development permit and conditional use permit for a reduction of 18 of the required 160 off-street parking spaces to allow the entire 31,806-square-foot Coast Business Center building to be occupied by medical office uses. Coast Business Center is an existing office building currently occupied by a mix of professional office and medical office uses and a tutoring center. The existing on-site parking is provided in a two-level, subterranean, 142-space parking structure accessible from Avocado Avenue.

The Planning Commission conducted a public hearing and approved the project as recommended.

AYES: Ellmore, Klaustermeier, Kleiman, Koetting, Lowrey, Rosene, and Weigand
NOES: None
ABSENT: None
ABSTAIN: None

ACTION: Approve

ITEM NO. 5 **TRANSFER OF DEVELOPMENT RIGHTS LCP AMENDMENT (PA2019-154)**
Site Location: Citywide

SUMMARY: Amendments to the Coastal Land Use Plan of the Local Coastal Program (LCP) and Newport Beach Municipal Code (NBMC) Title 21 (Local Coastal Program Implementation Plan) to include a policy and regulations pertaining to the transfer of development rights in a manner consistent with and allowed by the Newport Beach General Plan.

The Planning Commission approved the project as recommended with modifications to the conditions.

AYES: Ellmore, Klaustermeier, Kleiman, Koetting, Lowrey, Rosene, and Weigand
NOES: None
ABSENT: None
ABSTAIN: None

ACTION: Approve as amended

CITY OF

NEWPORT BEACH

City Council Staff Report

September 10, 2019
Agenda Item No. 17

TO:	HONORABLE MAYOR AND MEMBERS OF THE CITY COUNCIL
FROM:	Tim Hetherton, Library Services Director - 949-717-3801, thetherton@newportbeachca.gov
PREPARED BY:	Melissa Hartson, Circulation and Technical Processing Coordinator, mhartson@newportbeachca.gov
PHONE:	949-717-3823
TITLE:	Budget Amendment to Accept a Check from the Friends of the Newport Beach Library and Appropriate Funds to the Library's Fiscal Year 2019-20 Maintenance and Operation Budget

ABSTRACT:

Staff requests approval of a budget amendment to accept a check from the Friends of the Newport Beach Library to enhance the Library collections and programs.

RECOMMENDATION:

a) Determine this action is exempt from the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(2) and 15060(c)(3) of the CEQA Guidelines because this action will not result in a physical change to the environment, directly or indirectly; and

b) Accept a check in the amount of $185,000 from the Friends of the Newport Beach Library and approve Budget Amendment No. 20-008 to increase revenues and expenditures by the same amount in Division 0106052 (Friends of the Library).

FUNDING REQUIREMENTS:

The Budget Amendment appropriates $185,000 in additional revenue from the Friends of the Newport Beach Library and $185,000 in increased expenditure appropriations. The revenue will be posted to the Friends of the Library account in the Library Services Department, 0106052-511080, and the purchases will be expensed to the following Friends of the Library accounts:

Library Materials	0106052-841052	$135,000
Programming	0106052-841004	$ 50,000

DISCUSSION:

A donation from the Friends of the Newport Beach Public Library in the amount of $185,000 is intended to fund Library materials and programs from the Library's Wish List for FY 2019-20, which was approved by the Board of Library Trustees.

The Friends' mission is to enhance the excellent services that the City already supports. This gift will augment the Library collections at all locations, in all formats and for all age groups. The funds will also sponsor programming for all ages, such as Summer Reading, National Library Week, Young Adult programs and First Grade Class Visits.

ENVIRONMENTAL REVIEW:

Staff recommends the City Council find this action 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, Chapter 3, because it has no potential for resulting in physical change to the environment, directly or indirectly.

NOTICING:

The agenda item has been noticed according to the Brown Act (72 hours in advance of the meeting at which the City Council considers the item).

ATTACHMENTS:

Attachment A – Budget Amendment
Attachment B – Copy of Check in the Amount of $185,000

ATTACHMENT A

City of Newport Beach

BUDGET AMENDMENT

2019-20

BA#: 20-008

Department: Library

Requestor: Melissa Hartson

☐ **CITY MANAGER'S APPROVAL ONLY**

☑ **COUNCIL APPROVAL REQUIRED**

ONE TIME: ☑ Yes ☐ No

Approvals

Prepared by: Amy Lewis Mayfield

Finance Director: [signature] Date 9-4-19

City Clerk: Date

EXPLANATION FOR REQUEST:

To increase revenue estimates and expenditure appropriations by accepting a check from the Friends of the Newport Beach Library to supplement Library operations and fund library materials and programming.

☐ from existing budget appropriations
☑ from additional estimated revenues
☐ from unappropriated fund balance

REVENUES

Fund #	Org	Object	Project	Description	Increase or (Decrease) $
010	0106052	511080		Friends Of The Library - Friends Of The Library	$185,000.00
				Subtotal	$185,000.00

EXPENDITURES

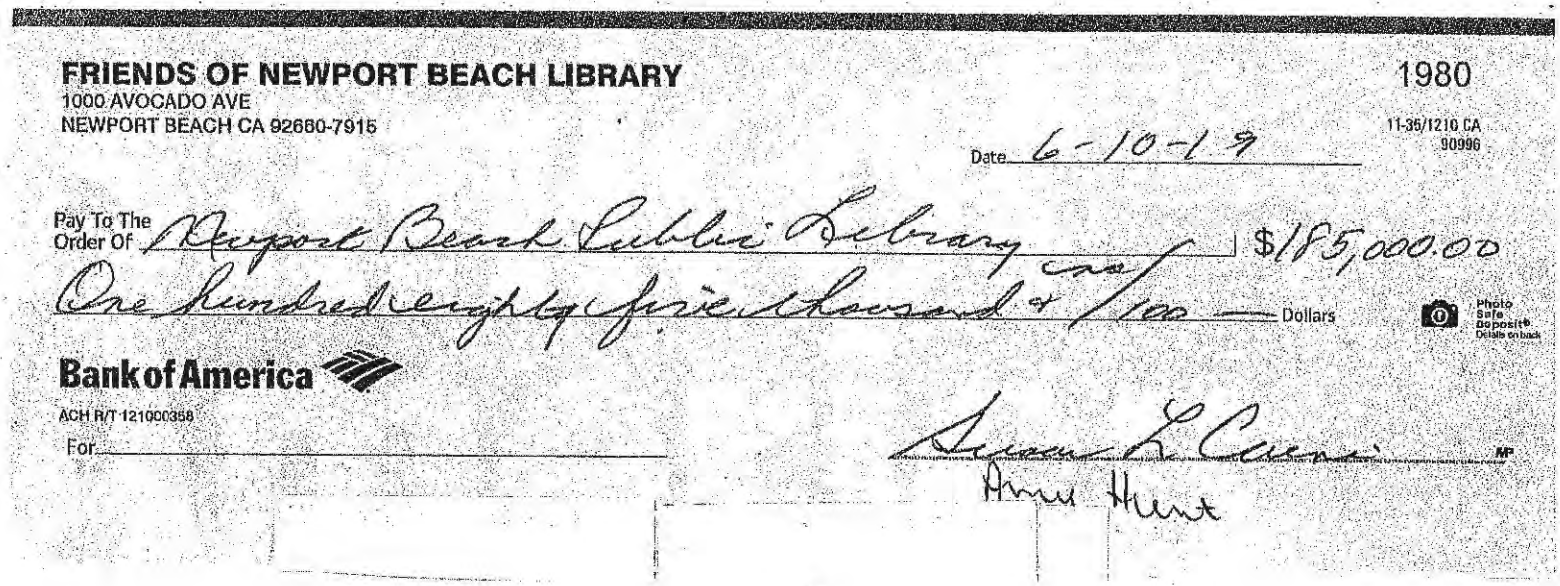
Fund #	Org	Object	Project	Description	Increase or (Decrease) $
010	0106052	841052		Friends Of The Library - Library Materials	$135,000.00
010	0106052	841004		Friends Of The Library - Programming	$50,000.00
				Subtotal	$185,000.00

FUND BALANCE

Fund #	Object	Description	Increase or (Decrease) $
		Subtotal	

No Change In Fund Balance

ATTACHMENT B



FRIENDS OF NEWPORT BEACH LIBRARY
1000 AVOCADO AVE
NEWPORT BEACH CA 92660-7915

1980

11-35/1210 CA
90996

Date 6-10-19

Pay To The Order Of Newport Beach Public Library $185,000.00

One hundred eighty five thousand & no/100 Dollars

Photo Safe Deposit® Details on back

Bank of America

ACH R/T 121000358

For

Susan L. Cuenca MP

Anne Hunt

CITY OF

NEWPORT BEACH

City Council Staff Report

September 10, 2019
Agenda Item No. 18

TO:	HONORABLE MAYOR AND MEMBERS OF THE CITY COUNCIL
FROM:	Grace K. Leung, City Manager - 949-644-3001, gleung@newportbeachca.gov
PREPARED BY:	Barbara J. Salvini, Human Resources Director – 949-644-3259 bsalvini@newportbeachca.gov
TITLE:	City Hall and Limited Off-Site Holiday Closure from Tuesday, December 24, 2019 through Wednesday, January 1, 2020

ABSTRACT:

The City proposes City Council approve a holiday closure from Tuesday, December 24, 2019 through Wednesday, January 1, 2020, with City Hall reopening Thursday, January 2, 2020.

Since 2009, City Hall and other off-site facilities have closed between Christmas Eve and New Year's Day, with the exception of 2012, when staff was preparing for the relocation of the new Civic Center complex. City Council is asked to consider a closure for the 2019/2020 holiday season.

RECOMMENDATION:

a) Determine that the action is exempt from the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(2) and 15060(c)(3) of the CEQA Guidelines because it will not result in a physical change to the environment, directly or indirectly; and

b) Approve closing the Civic Center and providing limited services at off-site facilities from Tuesday, December 24, 2019 through Wednesday, January 1, 2020. All facilities would reopen on Thursday, January 2, 2020. The proposed closure does not apply to public safety services or emergency on-call functions.

FUNDING REQUIREMENTS:

There is no funding requirement related to this item. The reduced operating hours over the entire holiday period will provide savings for utilities and fuel use, and will lower the City's liability for employee leave time.

DISCUSSION:

Historically, there has been a low service demand the week between Christmas and New Year's Day. Since 2009 (2012 exception), the City Council has authorized the closure of the Civic Center complex and other off-site facilities during this off peak period. However, in order to meet the community's needs, the police, fire/emergency medical, lifeguard, utilities, facilities maintenance, and library services have remained available and open.

Since employees will need to use their accrued or earned leave time for a portion of the closure, the City's paid-leave liability will be reduced. Additionally, the closure provides an opportunity for maintenance and repairs to the Civic Center, without noise and disruption to the patrons. This year, there are plans to steam clean the Civic Center parking structure; inside City Hall there are plans to repair carpet, apply touch up paint and conduct other specific repairs as needed. The closure provides time for the work to be done before foot traffic resumes.

If the proposed closure is not approved, the Civic Center complex and other facilities would be closed in observance of the holidays as follows:

- Tuesday, December 24, 2019 (close at 12 p.m. in observance of Christmas Eve)
- Wednesday, December 25, 2019 (all day in observance of Christmas Day)
- Tuesday, December 31, 2019 (close at 12 p.m. in observance of New Year's Eve)
- Wednesday, January 1, 2020 (all day in observance of New Year's Day)

Under the proposed closure, the Civic Center complex and other City facilities would be closed:

- Tuesday, December 24, 2019 (all day) through Wednesday, January 1, 2020 (all day)

Attached is a list of the proposed hours of operation for each department (Attachment A). Employees serving in positions which require them to work during the proposed closure, such as harbor operations and building inspections, will have appropriate security and accountability measures in place.

City staff has discussed the possible closure with all bargaining unit representatives, and all have indicated their agreement with the proposed closure. It is understood that employees will be required to use their own leave time for the days not covered by paid holidays.

If approved by the City Council, communication regarding the holiday closure will be coordinated by the Deputy City Manager and the City Clerk's Office, including which services will remain open and which will close. The community will receive notice of the closure through signage at the impacted facilities, press releases, NBTV, social media and the City's website.

ENVIRONMENTAL REVIEW:

Staff recommends the City Council find this action 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, Chapter 3, because it has no potential for resulting in physical change to the environment, directly or indirectly.

NOTICING:

The agenda item has been noticed according to the Brown Act (72 hours in advance of the meeting at which the City Council considers the item).

ATTACHMENT:

Attachment A – Proposed Hours of Operation for City Facilities

ATTACHMENT A

DEPARTMENT HOURS OF OPERATION FOR CIVIC CENTER AND CITY FACILITIES

Closure: Tuesday, December 24, 2019 through Wednesday, January 1, 2020

DEPARTMENT	HOURS OF OPERATION DURING PROPOSED CLOSURE
City Manager's Office	Closed to the public
City Attorney's Office	Closed to the public
City Clerk's Office	Closed to the public
Community Development	Closed to the public; inspections on a limited basis; Code Enforcement on-call
Finance	Closed to the public
Fire	Open - all fire services and command staff; Administrative Office closed
Harbor	Tues, December 24, open 8 a.m. – 12 p.m. Wed, December 25, closed Thurs, December 26 - Tues, December 31, open 8 a.m. - 5 p.m. Wed, January 1, 2020, closed
Human Res. & Risk Mgmt.	Closed to the public
Library Services (all branches)	Tues, December 24, open 9 a.m. - 1 p.m. Wed, December 25, closed Thurs, December 26 - Sat, December 28, open 9 a.m. - 6 p.m. Sun, December 29, open 12 p.m. - 5 p.m. (Balboa and CdM closed) Mon, December 30, open 9 a.m. - 6 p.m. Tues, December 31, open 9 a.m. – 1 p.m. Wed, January 1, 2020, closed
Police	Open - all services
Public Works (Civic Center)	Closed to the public; certain field inspectors available
Public Works (Municipal Ops)	Tues, December 24, open until 11 a.m. Wed, December 25, closed Thurs, December 26, and Fri, December 27, open regular schedule Sat, December 28, and Sun, December 29, closed (regular schedule) Mon, December 30, open regular schedule Tues, December 31, open until 11 a.m. Wed, January 1, 2020, closed *assigned staff on-call
Recreation & Sr. Services	Closed to the public; OASIS Fitness Center- limited hours; Park Patrol - regular hours
Utilities	Tues, December 24, open until 11 a.m. Wed, December 25, closed Thurs, December 26, regular hours Fri, December 27, closed Mon, December 30, regular hours Tues, December 31, open until 11 a.m. Wed, January 1, 2020, closed *assigned staff on-call

CITY OF

NEWPORT BEACH

City Council Staff Report

September 10, 2019
Agenda Item No. 19

TO:	HONORABLE MAYOR AND MEMBERS OF THE CITY COUNCIL
FROM:	David A. Webb, Public Works Director - 949-644-3311, dawebb@newportbeachca.gov
PREPARED BY:	Micah Martin, Deputy Public Works Director mmartin@newportbeachca.gov
PHONE:	949-644-3055
TITLE:	Recommendation of Parks, Beaches, and Recreation Commission with regard to Marine Avenue Tree Maintenance

ABSTRACT:

City Council held a Study Session on August 13, 2019, regarding the tree trimming & maintenance status of the City street trees along Marine Avenue on Balboa Island. At the conclusion of the study session, City Council requested that the Parks, Beaches, and Recreation Commission review the trees and report back to the City Council their recommendations.

RECOMMENDATION:

a) Find that the action is exempt from the California Environmental Quality Act ("CEQA") pursuant to Sections 15060(c)(2) and 15060(c)(3) of the CEQA Guidelines, Code of Regulations, Title 14, Chapter 3 because it will not result in a physical change to the environment, directly or indirectly; and

b) Receive and file the report.

FUNDING REQUIREMENTS:

The approved actions by the Parks, Beaches, and Recreation Commission will be implemented by a combination of City staff and a Contractor. The current adopted budget includes sufficient funding for these services. It will be expensed to the Contract Services account in the Public Works Department 0109032-811017.

DISCUSSION:

City Council held a Study Session on August 13, 2019, regarding the tree trimming and maintenance status of the City street trees along Marine Avenue on Balboa Island. As part of this tree maintenance discussion, the City Arborist advised that based on his review of the trees' condition and several recent consultant Arborist reports, he recommended removal and replacement of up to 10 trees. After consideration by the City Council, the Council directed staff to have the Parks, Beaches and Recreation Commission hear the matter at their September 3, 2019 meeting.

On September 3, 2019, staff presented this item to the Parks, Beaches and Recreation Commission (PB&R) with the following recommendations:

1) Determine this action is exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15304 of the CEQA Guidelines because the removal of a dead, damaged, and/or diseased tree is a minor alteration of the condition of land and/or vegetation and none of the exceptions to the use of a categorical exemption set forth in the Guidelines apply;

2) Approve the removal and replacement of four (4) Special City Eucalyptus Gum trees located at 210, 217, 224, and 315 Marine Avenue with a mix of new Eucalyptus Gum trees species, including Lemon-Scented Gum and Silver-Dollar Gum, as there is consensus by staff and consultant arborists on these four trees. The removal of these four trees would take place in September. Replacement of these four trees as well as the planting of the five current vacant tree wells would follow as soon as the affected sidewalk and curb reconstruction work is completed; and

3) Determine if Level III testing should be conducted prior to the removal of the of six (6) Special City Eucalyptus Gum trees located at 220, 300, 301, 312, 319, and 326 Marine Avenue. If determined necessary, staff would recommend the additional testing for these six trees be conducted in the next couple months. Upon further detailed review and evaluation of this additional testing information by the consulting Arborist and the City Arborist, the City Arborist will determine which of the six special trees, if any, can remain. The other trees (possibly up to all six) not approved to remain will be scheduled for removal and replacement (with a mix of new Eucalyptus Gum tree species, including Lemon-Scented Gum and Silver-Dollar Gum) this coming winter. Replanting of these trees would follow as soon as the affected sidewalk and curb repair work is completed.

The PB&R Commission reviewed staff's presentation, and also had the opportunity to review a presentation from Ms. Jodi Bole, representative of the Balboa Island Preservation Association (BIPA), their various Consulting Arborists and other individuals on behalf of the BIPA. After a thorough discussion and additional input from public comments, the PB&R Commission approved the above recommendations with the following modification and additional direction:

- Remove the existing three "Alternative Trees" (Ginko Biolba, African Tulip, and Water Gum) located at 326, 316, and 213 Marine Ave and replant with 24" Lemon Scented Gum Eucalyptus trees.

- All tree replacements shall consist of 24-inch box "Lemon Scented Gum Eucalyptus trees and will be selected and approved in partnership with the BIPA.

- Install tree grates on all tree wells containing the newly planted trees.

- Explore feasible alternatives for more sustainable watering (Install irrigation systems, volunteer watering from neighboring merchants, etc.).

- Conduct Level III Risk Assessment Testing of the other six trees of concern by a third party, independent Urban Forester as selected and mutually agreed upon in partnership with the City Arborist and the BIPA.

- Keep an open line of communication with the BIPA with regards to City's schedule of annual as-needed trimming/pruning and inspections when scheduled.

- Report back to PB&R within 6 months to provide status update and results of Level III Risk Assessment Testing.

ENVIRONMENTAL REVIEW:

Staff recommends the City Council find this project exempt from the California Environmental Quality Act ("CEQA") pursuant 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.

NOTICING:

The agenda item has been noticed according to the Brown Act (72 hours in advance of the meeting at which the City Council considers the item).

ATTACHMENT:

Attachment A – September 3, 2019 PB&R Staff Report

ATTACHMENT A

CITY OF

NEWPORT BEACH

PB&R Commission Staff Report

Agenda Item **V-B**
September 3, 2019

TO: Parks, Beaches & Recreation Commission

FROM: Micah Martin, Deputy Public Works Director
Public Works Department - Municipal Operations Division
949 644-3055, mmartin@newportbeachca.gov

TITLE: Special Tree Replacement Request – Marine Avenue

RECOMMENDATION:

1) Determine this action is exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15304 of the CEQA Guidelines because the removal of a dead, damaged, and/or diseased tree is a minor alteration of the condition of land and/or vegetation and none of the exceptions to the use of a categorical exemption set forth in the Guidelines apply; and

2) Approve the removal and replacement of four (4) Special City Eucalyptus Gum trees located at 210, 217, 224, and 315 Marine Avenue with a mix of new Eucalyptus Gum trees species, including Lemon-Scented Gum and Silver-Dollar Gum, as there is consensus by staff and consultant arborists on these four trees. The removal of these four trees would take place in September. Replacement of these four trees as well as the planting of the five current vacant tree wells would follow as soon as sidewalk and curb reconstruction work is completed.

3) Determine if Level III testing should be conducted prior to the removal of the of six (6) Special City Eucalyptus Gum trees located at 220, 300, 301, 312, 319, and 326 Marine Avenue. If determined necessary, staff would recommend the additional testing for these six trees be conducted in the next couple months. Upon further detailed review and evaluation of this additional testing information by the consulting Arborist and the City Arborist, the City Arborist will determine which of the six special trees, if any, can remain. The other trees (possibly up to all six) not approved to remain will be scheduled for removal and replacement (with a mix of new Eucalyptus Gum tree species, including Lemon-Scented Gum and Silver-Dollar Gum) this coming winter. Replanting of these trees would follow as soon as sidewalk and curb repair work is completed.

DISCUSSION:

In prior years, Landscape Superintendent Dan Sereno and the City's Arborist at the time, John Conway, recommended removal of many of the eucalyptus trees on Marine Avenue. Specifically, this recommendation was brought to the attention of the PB&R Commission in October of 2011. In part, City staff recommended removal of these trees due to the effect of prior pruning practices that occurred through the mid-80's. As a result of these prior maintenance practices, root loss, root and trunk decay, and defects in the tree canopies was identified and the health of the trees became a concern. After a large amount of public debate in 2011, the removal of the trees was deferred to

subsequent years, and various mitigation measures were implemented in an effort to further stabilize the trees and prolong their life. These measures included:

- Minor root pruning and shaving to accommodate hardscape repairs.
- Ramping with asphalt patches.
- Grinding of lifted sidewalks.
- Deferred hardscape replacement and maintenance.
- Corrective pruning on our annual inspection/trimming cycle.
- Review by Consulting Arborists (every four years).
- Implementation of treatments for diseases and insects (Lerp Psyllid and Tortoise Beetle).
- Supplemental irrigation and nutrition via water truck.

Between the years of 2012 and 2017, seven trees were removed as a result of decay, major trunk defects, or other various concerns as identified through various tree risk assessments. Two of these locations have been replanted with two different species of trees (Ginko tree and African Tulip tree) in an effort to pilot some diversity amongst these neighborhood trees with something more sustainable at the location. Five tree sites were replanted with the Water Gum (Tristania laurina) trees, which have died in the past couple of years and remain vacant.

Earlier this year, the City received an unsolicited Street Tree Evaluation Report from consulting arborist Greg Applegate dated December 20, 2018, regarding the forty-two (42) Eucalyptus Gum (Gum) trees on Marine Avenue. The Evaluation Report was funded by a group known as the Balboa Island Preservation Association. The report's conclusions recommended the replacement of three (3) trees and for a follow-up of a tree hazard analysis by a tree risk assessment professional.

On May 10, 2019, the City received a requested Tree Risk Assessment of the forty-two (42) Gum trees located on Marine Avenue prepared by Walt Warriner, the City's contracted consulting arborist. The Assessment concluded that twenty-seven (27) of the Gum trees were rated as "High-Risk" due to visible and suspected deformities in the trees' canopies, trunks and root systems. The conclusions recommended the replacement of the 27 "High-Risk" trees and a follow-up assessment of the "Moderate-Risk" trees.

The City Arborist, Kevin Pekar, reviewed the Greg Applegate and Walt Warriner Reports and inspected the Gum trees on Marine Avenue on June 11, 2019. As a result of the two referenced independent arborist reports and a recent tree risk assessment conducted by the City Arborist, our City Arborist is recommending that ten (10) of the "High-Risk" Gum trees should to be replaced due to significant deformities or overall health issues, as further mitigation is impractical and will not reasonably improve the condition of these trees. One of these ten (10) trees located at 315 Marine Avenue has already gone before the PB&R Commission for removal as an emergency due to the tree being dead. Emergency tree removals do not require prior approval from the PB&R Commission, however Staff has added this tree to this report since it has not yet been removed.

Furthermore, the City Arborist recommends seventeen (17) "High-Risk" Gum trees be monitored and evaluated over the next three years, which may include additional treatment/mitigation and Tree Risk Assessments potentially leading to recommendations for their removal and replacement.

The City plans to replace these 10 trees recommended for removal, along with five other vacant tree wells, with a mix of Gum species, including Lemon-Scented Gum and Silver-Dollar Gum. The City will procure replacements with 24-inch or possibly 36-inch box sized trees, as the inventory is made available and selective specimens can be identified. It should also be noted that the smaller box-sized trees will better acclimate to their new coastal environment and high salt water table, making for longer lasting trees.

A "Tree Action Plan" map identifying the ten (10) trees proposed for removal, the additional seventeen (17) high risk trees for monitoring, and the five (5) tree vacancies for replanting, with their corresponding addresses has been attached for reference.

Per request of the City Council, a Marine Avenue Tree Maintenance presentation was given on August 13, 2019 at a Council Study Session wherein this information was presented to Council and public along with a review of our tree maintenance program related to these trees. During this study session, Council recommended a level III risk assessment be performed and the related testing associated to this level of assessment be conducted as part of the decision making process in identifying any of these trees for removal. Council expressed a willingness to fund this additional testing in an effort to validate the assumptions being made with regards to the suspected risk of these trees, and to remove/replace as few trees as possible. It was also requested that City Staff work with the BIPA in selecting a third party Arborist to conduct the additional testing and perform further risk assessments as needed. Council was advised that as part of the G-1 Policy, the decision regarding the removal and replacement of these trees was to be presented to the PB&R Commission for consideration with a follow-up Staff Report to be presented to Council advising them of the outcome.

NOTICING:

The Balboa Island Improvement Assostoation, the Little Island Association, the Marine Avenue Merchants Association, the Balboa Island Preservation Association and Balboa Island property owners with 500 feet have received a copy of this report. Additionally, surrounding property owners, map attached, were notified via postcard of the Commission Meeting related to this Special tree replacement request. Each tree was posted with the attached poster regarding the removal request.

ATTACHMENTS:

A. Tree Removal Review and Tree Inspection Reports
B. Tree Map
C. Noticing Map

CITY OF

NEWPORT BEACH

City Council Staff Report

September 10, 2019
Agenda Item No. 20

TO:	HONORABLE MAYOR AND MEMBERS OF THE CITY COUNCIL
FROM:	Seimone Jurjis, Community Development Director - 949-644-3232, sjurjis@newportbeachca.gov
PREPARED BY: **PHONE:**	Jaime Murillo, Principal Planner, jmurillo@newportbeachca.gov 949-644-3209
TITLE:	Resolution No. 2019-80: Appeal of Reed Residential Variance for 1113 Kings Road (PA2019-060)

ABSTRACT:

An appeal of the Planning Commission's May 23, 2019, decision to approve Variance No. VA2019-002 related to the the construction of a new 10,803-square-foot, single-family residence and a 1,508-square-foot, four-car garage located at 1113 Kings Road was filed. The variance authorized portions of the upper level roof and deck, and portions of an office and covered patio on the main level of the proposed home to exceed the allowed height limit due to the steep topography of site. The appeal was filed by Stop Polluting Our Newport (SPON). For City Council's consideration is to either deny the variance or uphold Planning Commission's approval of the variance.

RECOMMENDATION:

a) Conduct a de novo public hearing;

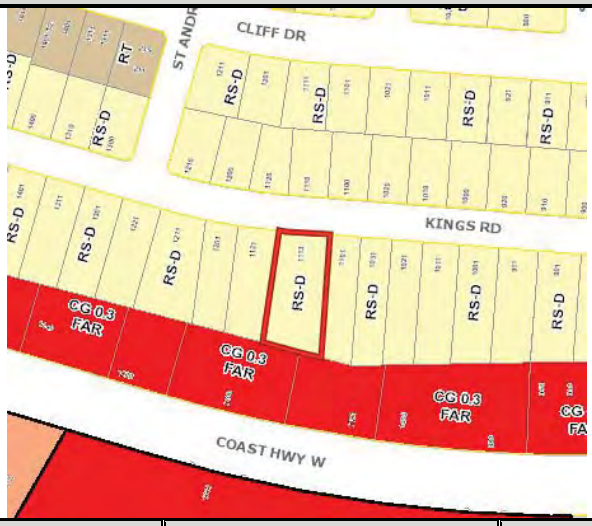
b) Find this project categorically exempt under Section 15303, of the California Environmental Quality Act ("CEQA") Guidelines - Class 3 (New Construction or Conversion of Small Structures), California Code of Regulations, Title 14, Division 6, Chapter 3, because it has no potential to have a significant effect on the environment; and

c) Adopt Resolution No. 2019-20, *A Resolution of the City Council of Newport Beach, California, Upholding and Affirming the Planning Commission's Approval of Variance No. VA2019-002 to Allow Portions of a New Single-Family Residence to Exceed the Maximum Height Limit for Property Located at 1113 Kings Road (PA2019-060).*

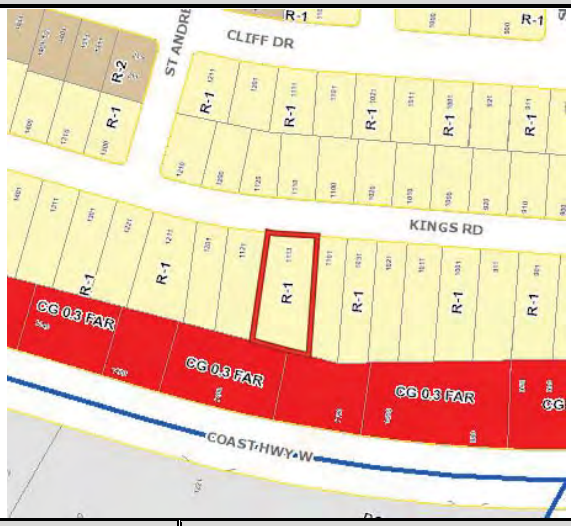
VICINITY MAP



GENERAL PLAN



ZONING



LOCATION	GENERAL PLAN	ZONING	CURRENT USE
ON-SITE	Single-Unit Residential Detached (RS-D)	Single-Unit Residential (R-1)	Single-family residence
NORTH	RS-D	R-1	Single-family residences
SOUTH	General Commercial (CG)	Commercial General (CG)	Car wash and auto sales facility
EAST	RS-D	R-1	Single-family residences
WEST	RS-D	R-1	Single-family residences

FUNDING REQUIREMENTS:

There is no fiscal or budget impact related to this item.

DISCUSSION:

Project Setting

The subject property is a hillside lot located along the south side of Kings Road in the single-family residential neighborhood of Cliff Haven above and visible from Coast Highway. Surrounding properties include single-family residences to the west, north, and east. Commercial properties are located down slope south of the parcel in the Mariners' Mile commercial corridor along West Coast Highway. Similar to other residences on the south side of Kings Road, the property is developed with the front yard facing Kings Road and the rear of the property abutting the commercial lots down slope.

Project Description / Variance Request

The applicant desires to demolish the existing structure and construct a new 10,803-square-foot, single-family residence and 1,508-square-foot, four-car garage parking. The residence would consist of three levels: a 4,177-square-foot partially below-grade lower level, a 3,361-square-foot main level, and a 3,265-square-foot upper level. From the Kings Road street frontage, the residence would appear as two stories. The daylighting basement level would generally only be visible from the property to the east and from West Coast Highway to the south due to the topography of the site and adjacent lots.

The upper levels of the residence have been designed to step down to maintain a structure height that follows the natural slope of the lot. However, due to the topographical constraint of a gully feature (See Figure 1 below), the applicant is requesting a variance to allow portions of the roof to exceed the 29-foot height limit for sloped roofs and a portion of a deck and associated railing to exceed the 24-foot height limit applicable to decks and flat roofs. The gully feature is located at the northeastern corner of the lot that extends to the south generally along the eastern property line, and affects the siting and design of the proposed construction. The deviations from height limits for the various components of the structure are as follows:

- *Upper level roof eaves:* 1.13 feet, 1.29 feet, and 1.85 feet above 29-foot sloped roof height limit
- *Upper level deck and rails:* 4.47 feet and 2.32 feet above 24-foot flat roof height limit
- *Main level office eave:* 1.74 feet above 29-foot sloped height limit
- *Main level covered patio eave:* 3.07 feet above 29-foot sloped roof height limit

Figure 1 – Topographical Constraint of the Gully Feature



Figure 2 on the next page highlights the portions of roof and deck that exceed allowed height limits.

Figure 3 includes three-dimensional renderings of the proposed residence illustrating the portions of the structure that exceed the 29-foot height limit plane.

The project plans (Attachment F) provide additional information on the site topography as well as the location, height, and layout of the proposed structure.

Planning Commission Meeting

On May 23, 2019, the Planning Commission conducted a noticed public hearing and, following receipt of public comments and deliberation, voted 5-0 (2 abstentions) to adopt Resolution No. PC2019-015 approving the project, which includes the written findings for the action (Attachment B).

The May 23, 2019, Planning Commission staff report is included as Attachment C and includes a detailed analysis of the request. The staff report includes written correspondence submitted both in support and opposition, including a petition.

A total of 27 public comments were made at the hearing; 10 comments in support and 17 comments in opposition. Comments in support generally concluded that the design of the project was compatible with the neighborhood, the lot is constrained, and the request is reasonable given the constraint. Comments in opposition were generally related to the loss of private views, lack of community outreach, large size of home, and method of height measurement. The meeting minutes are included as Attachment D.

At the conclusion of the meeting, the Planning Commissioners in support of the project concluded that the subject property was atypical with highly unusual conditions in topography, and that the variance findings could be supported. The portion of the residence subject to the variance is not visible from Kings Road and the detriment due to private views being blocked expressed by neighbors is not created by the variance itself, but rather the height-compliant two-story elements located closer to Kings Road.

Figure 2 – Roof Plan and Section Exhibit - Height Exceedances

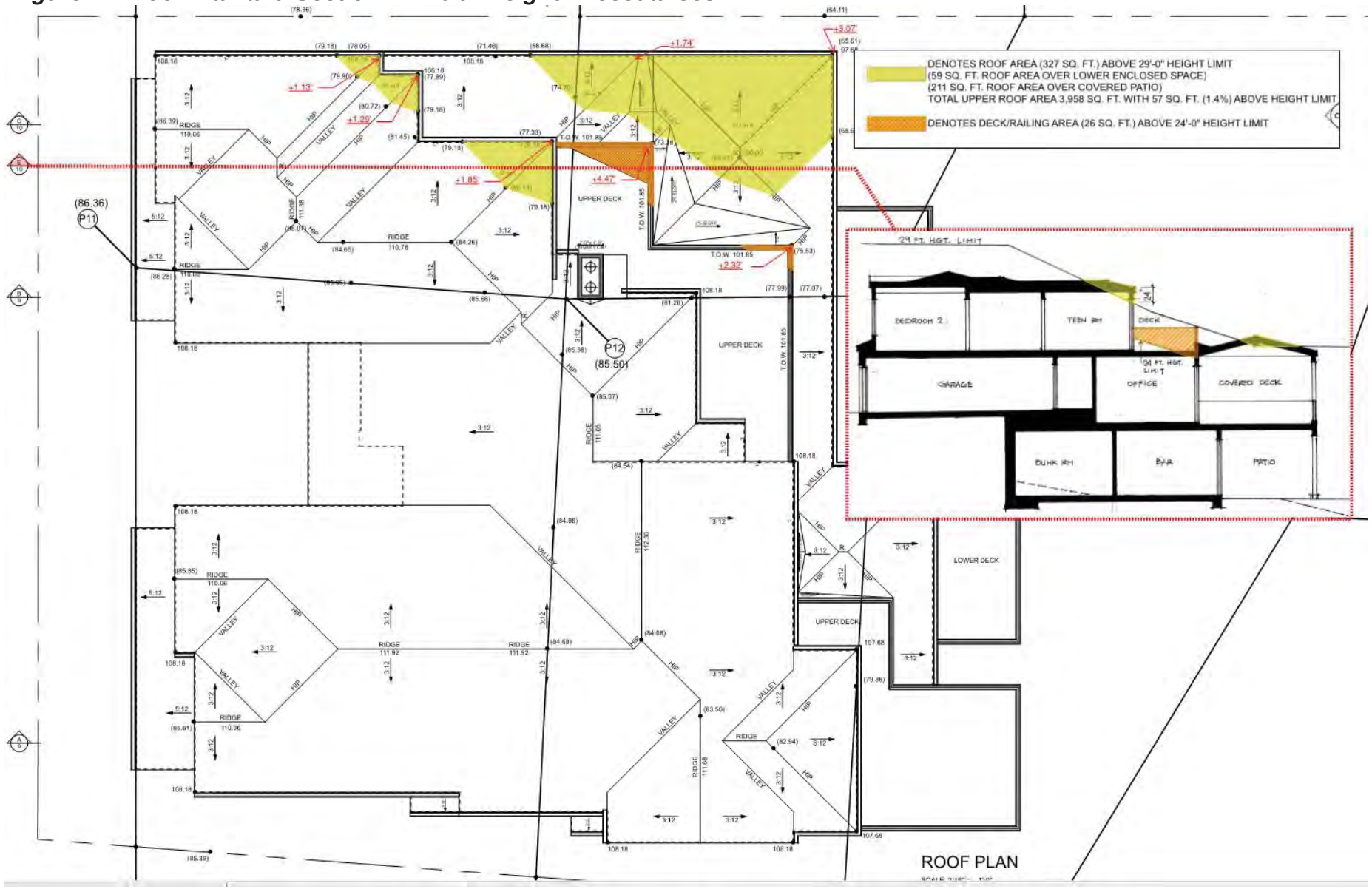


Figure 3 – 3D Rendering Illustration of Height Exceedances (Yellow Plane Represents 29-Foot Height Limit)



Rear Elevation



Front Elevation (Kings Rd)



Right Side Elevation



Left Side Elevation



Left Side Elevation
(Looking Down)



Left/Front Elevation

Appeal

On June 5, 2019, an appeal was filed by Stop Polluting Our Newport (SPON) stating five concerns: 1) opposition by neighboring homeowner associations; 2) inconsistency with the General Plan; 3) cumulative environmental effects; 4) findings for approval not defensible; and 5) alternatives rejected. The complete appeal application is attached as Attachment E.

Pursuant to NBMC Section 20.64.030(C)(3) (Conduct of Hearing), a public hearing on an appeal is conducted "de novo," meaning that it is a new hearing and the prior decision of the Planning Commission to approve the application has no force or effect. The City Council is not bound by the Planning Commission's prior decision or limited to the issues raised by the appeal.

Staff Reponses to Appeal

A summary of the appellant's primary concerns and staff responses are discussed below:

1) *Representatives of two neighboring Homeowner Associations stated their opposition at the hearing and their offers to conduct community meetings were ignored despite the increasing desire by the City Council in preparing for the General Plan Update to seek maximum public outreach.*

   Staff Response: The subject property is not located within a mandatory homeowners association. The variance was processed in accordance with Chapter 20.62 of the Newport Beach Municipal Code (NBMC), which includes public noticing requirements and public hearing procedures. Staff encouraged the applicant to seek input from neighbors and the community as a private matter and there is no requirement that the applicant hold a separate meeting with the community. Outreach related to the General Plan update process will occur over an extended period of time and the City must act upon applications received in accordance with the Permit Streamlining Act.

2) *The granting of the variance is inconsistent with the General Plan. Cumulative issues in terms of heights and bluffs were not considered and the Natural Resources Element of the General Plan was not discussed. The variance will encourage construction over the ravine on the coastal bluff, where the Natural Resources Element of the General Plan includes policies related to preservation of coastal bluffs and minimizing alteration of the site's natural topography and preservation of such features as a visual resource.*

   Staff Response: Goal NR 23 of the Natural Resources Element includes a number of policies intended to preserve natural visual resources such as coastal bluffs and canyons. Most of these policies specifically apply to coastal bluffs subject to marine erosion and coastal canyons, and therefore not applicable to this project site. The following two policies would be applicable to this site:

NR23.1 Maintenance of Natural Topography

Preserve cliffs, canyons, bluffs, significant outcroppings, and site buildings to minimize alteration of the site's natural topography and preserve the features as a visual resource.

NR 23.7 New Development Design and Sitting

Design and site new development to minimize the removal of native vegetation, preserve rock outcroppings, and protect coastal resources.

The Zoning Code implements Goal NR 23 of the Natural Resources Element through Section 20.28.040 (Bluff Overlay District), which establishes additional development standards regulating the placement and location of structures on certain bluff lots in the City to protect the natural aesthetics of the bluffs. However, this particular segment of bluff above West Coast Highway is not located within the Bluff Overlay District. Although the project site was historically a coastal bluff, the hillside has been significantly altered throughout the years with the development of West Coast Highway and commercial developments below, and residential developments along the top of slopes. The lots are no longer subject to marine erosion and void of any significant rock outcroppings. The Zoning Code allows by-right, development down the entire slope of these lots, provided compliance with development standards are met, such as setbacks and height. In this case, the applicant proposes to develop a residence on the upper half of the lot, similar to other homes along the hillside. A portion of the lower half of the lot would be improved with a terraced retaining wall design and the lowest 25% of the lot will remain undeveloped.

3) *The project should not be categorically exempt under Section 15303 of California Environmental Quality Act (CEQA) Guidelines because it has the potential to have a significant effect on the environment.*

Staff Response: The appeal does not provide reasons to support the statement. The Planning Commission determined the project was exempt from CEQA for the reasons explained in the *Environmental Review* section of this report. Staff believes finding the project exempt is appropriate unless substantial evidence of a significant environmental effect were to be introduced. As of the drafting of this report, no such evidence exists.

4) *The variance findings cannot be made and are not defensible.*

Staff Response: The appeal does not provide reasons to support the statement. Detailed facts in support of each required variance finding are included in both the adopted Planning Commission Resolution No. PC2019-015 (Attachment No. B) and the Draft Resolution of Approval included as Attachment A of this staff report.

5) *Alternatives to variance and options to minimize variance request presented in Planning Commission staff report rejected.*

Staff Response: Alternatives included in the Planning Commission staff report were included to illustrate the changes in design needed to further minimize or eliminate the need for the requested variance. However, these alternatives would not have the effect of changing the appearance of residence as viewed from Kings Road, West Coast Highway, or improve private views from nearby lots. Denial of the variance would significantly impact the functionality of the home design. To avoid the topographic constraint associated with the gully, the proposed teen room, decks, and covered patio features of the proposed residence would need to be setback approximately an additional 15 feet from the easterly side setback line (19 feet from easterly property line). This modification to the design would effectively reduce the buildable width from approximately 90 percent of the lot width to 72 percent of the lot width at those locations. As noted, the resolution recommending denial of the appeal and upholding the Planning Commission's decision to approve the project includes facts in support of each required finding.

Alternatives

Should the City Council determine that there are insufficient facts to support the findings for approval, staff recommends a continuance to allow staff to prepare a resolution reflecting the Council's stated reasons for denial.

ENVIRONMENTAL REVIEW:

This project is exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15303, Class 3 (New Construction or Conversion of Small Structures) of the State CEQA Guidelines because it has no potential to have a significant effect on the environment. This exemption covers the construction of new small facilities or structures including up to three new single-family residences in urbanized areas. The proposed project is the construction of a new single-family residence, consistent with this exemption.

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.

NOTICING:

Notice of this hearing was published in the Daily Pilot, mailed to all owners of property within 300 feet of the boundaries of the site (excluding intervening rights-of-way and waterways) including the applicant and posted on the subject property at least 10 days before the scheduled meeting, consistent with the provisions of the Municipal Code. Additionally, the item appeared on the agenda for this meeting, which was posted at City Hall and on the City website.

ATTACHMENTS:

Attachment A – Resolution No. 2019-80
Attachment B – Planning Commission Resolution No. PC2019-015
Attachment C – May 23, 2019, Planning Commission Staff Report
Attachment D – May 23, 2019, Planning Commission Meeting Minutes
Attachment E – Appeal Application
Attachment F – Project Plans
Attachment G – Correspondence

ATTACHMENT A

RESOLUTION NO. 2019- 80

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF NEWPORT BEACH, CALIFORNIA, UPHOLDING AND AFFIRMING THE PLANNING COMMISSION'S APPROVAL OF VARIANCE NO. VA2019-002 TO ALLOW PORTIONS OF A NEW SINGLE-FAMILY RESIDENCE TO EXCEED THE MAXIMUM HEIGHT LIMIT FOR PROPERTY LOCATED AT 1113 KINGS ROAD (PA2019-060)

WHEREAS, an application was filed by Carolyn Reed ("Applicant"), with respect to property located at 1113 Kings Road, and legally described as Lot 31, Block, E, of Tract 1219 in the City of Newport Beach, County of Orange, State of California, as shown on a map therof recorded in Book 38, Pages 26 and 27 of Miscellaneous Maps, in the Office of the County Recorder of said county ("Property") requesting approval of a variance from Newport Beach Municipal Code ("NBMC") Section 20.30.060 to allow portions of the upper level roof deck, and portions of the office and covered patio on the main level of a new single-family residence to exceed the maximum height limit ("Project");

WHEREAS, the Property is designated Single-Unit Residential Detached (RS-D) by the General Plan Land Use Element and is located within the Single-Unit Residential (R-1) Zoning District;

WHEREAS, the Property is not located within the coastal zone;

WHEREAS, a public hearing was held by the Planning Commission on May 23, 2019, in the City Council Chambers located at 100 Civic Center Drive, Newport Beach. 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 Chapter 20.62 of the NBMC. Evidence, both written and oral, was presented to, and considered by, the Planning Commission at this public hearing. At the conclusion of the public hearing, the Planning Commission voted 5 ayes and 2 nays to adopt Resolution No. PC2019-015, approving the Project;

WHEREAS, on June 5, 2019, Stop Polluting Our Newport ("SPON") filed an appeal of the Planning Commission's decision to approve the Project to the City Council;

WHEREAS, a public hearing was held on August 13, 2019, in the City Council Chambers located at 100 Civic Center Drive, Newport Beach. A notice of time, place and purpose of the hearing was given in accordance with the Ralph M. Brown Act and Chapter 20.62 of the NBMC. Evidence, both written and oral, was presented to, and considered by, the City Council at this public hearing; and

WHEREAS, pursuant to Chapter 20.64 (Appeals) of the NBMC, the City Council public hearing was conducted "de novo," meaning that the City Council considered all evidence and testimony anew.

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

Section 1: The City Council does hereby uphold the Planning Commission's approval of Variance No. VA2019-002 subject to the conditions of approval attached as Exhibit "A," and incorporated herein by reference. The City Council's decision is made in accordance with Section 20.52.090(F) (Variance – Findings and Decision) of the NBMC, and is supported by the following findings and facts:

Finding:

A. *There are special or unique circumstances or conditions applicable to the subject property (e.g., location, shape, size, surroundings, topography, or other physical features) that do not apply generally to other properties in the vicinity under an identical zoning classification.*

Facts in Support of Finding:

1. The Property is a bluff top residential property that slopes north to south generally consistent with other properties located along the south side of Kings Road; however, this particular Property is unique in that a deep gully severely constrains the northeastern corner of the lot. This gully is an unusual Property feature that burdens the Property with multiple sloping angles and directions that does not generally apply to the other properties along Kings Road.

2. The rear portion of the proposed residence measures approximately 100 feet back from the front property line along Kings Road. The slope differential and change in grade is significant along the western boundary line of the residence as compared to the eastern property line where the gully feature is located. The change in existing grade along the western boundary line is approximately five (5) feet (five percent slope) along the proposed length of the residence, whereas the change in existing grade along the eastern boundary line is approximately 25.5 feet (25.5 percent slope) due to the gully feature.

3. The most significant change in grade along the eastern boundary actually occurs within the first 67 feet of the lot as measured from the front property line, where the

gully at its deepest point (62.85 feet North American Vertical Datum of 1988 [NAVD 88]) is 26.5 feet below the elevation of the front property line (89.3 feet NAVD 88), resulting in a steep slope of 40 percent.

4. The lot also slopes in various directions from east to west. At the front setback line, the difference in grade between the east property line and west property line is approximately 0.8 feet with a 1 percent slope up from west to east. However, at the extreme depth of the gully on the easterly property line (62.85 feet NAVD 88), the corresponding grade measurement on the westerly property line is 20 feet higher (82.94 feet NAVD 88). At this location the lot slopes down 22 percent from west to east.

5. This variation in topography is a result of the gully in the northeastern corner of the lot and presents a unique circumstance in comparison to other properties in its vicinity that warrant the requested variance.

Finding:

B. Strict compliance with Zoning Code requirements would deprive the subject property of privileges enjoyed by other properties in the vicinity and under an identical zoning classification.

Facts in Support of Finding:

1. Due to physical conditions of the Property including multiple slope grades and angles, strict compliance with Title 20 of the NBMC ("Zoning Code") requirements would deprive the homeowner privileges of a residence burdened by the cost, inconvenience, and loss of functionality enjoyed by other properties in the vicinity under the identical zoning classification.

2. The Zoning Code requires the height of structures to be measured from a grade plane based on an approximation of the existing grade using several grade points. On sloping lots, the height limit is intended to follow the slope of the established grade plane. It is typical for properties on sloping lots to be designed with terracing foundations and a roof that typically maintain a two-level appearance within the allowed height envelope. Due to the topographical constraint that the gully creates on this lot, including multiple slopes in differing directions, strict compliance with the Zoning Code development standards precludes the Property owners from

enjoying this same privilege of designing a two-level terraced design across the buildable width of the lot.

3. The topography featuring multiples slope angles and a gully at a portion of the northeastern property corner, combined with a residence that spans the buildable width of the lot, presents a unique challenge. Strict compliance with the Zoning Code would deprive the Applicant the privilege of building a residence of uniform height across the subject Property which is a privilege enjoyed by other properties in the vicinity and under an identical zoning classification.

4. The entire front of the residence facing the street could be built to 29 feet in height with sloping roofs without a variance. However, the front of the residence is designed to a maximum height of 23.78 feet from existing grade at the front elevation and is the tallest observed height as viewed from Kings Road. Due to the sloped nature of the lot and corresponding maximum height envelope, the first point of height exceedance occurs down-slope away from Kings Road and 22 feet back from the front setback line (33 feet from the curb). The height encroachments are not visually higher than any portion of the residence as viewed from Kings Road because they are behind the complying roof elements at the front of the building.

5. Modifying the proposed design to eliminate the height variance for the enclosed living area would require eliminating an office on the main level, located behind a compliant garage, and eliminating or significantly reducing the size of an upper level closet, bathroom, and teen room. Modifying the design to eliminate the height variance for the outdoor living areas would require eliminating the roof cover over the deck behind the garage and office on the main level and reducing the size of the upper level deck. The appearance of the structure as viewed from Kings Road would not change, but the functionality of the home design would be impacted.

6. The granting of a variance provides relief from Zoning Code height calculations to allow the residence to maintain comparable height across both the east and west sides of the residence to improve and maintain functionality of the house design. It is not intended nor does it in any way permit features or height increases beyond what can be built by right elsewhere on the Property where physical hardships due to topography are not present.

7. The adjacent single-family residence to the east (1101 Kings Rd.), which is also impacted by the topographic gully feature, has been granted two variances in the

past (VA1034 in 1973 and VA1150 in 1989). It provided relief from the topographic constraint allowing the home to be constructed. As viewed from Kings Road, the neighboring residence (100.72 foot ridge elevation) is 11 feet lower in overall roof elevation than the proposed residence (111.92 foot ridge elevation) due to the difference in existing grade from which these residences are measured from. However, the neighboring property is more severely impacted by the gully and the variances authorized a maximum structure height of 45 feet 6 inches and deck height of 36 feet 6 inches as measured from existing grade. These height limit exceedances are approximately 13.5 feet higher for the living area and 12 feet higher for the deck than the proposed variance request.

Finding:

C. *Granting of the variance is necessary for the preservation and enjoyment of substantial property rights of the applicant.*

Facts in Support of Finding:

1. The granting of a variance for the preservation of the applicant's rights to enjoy a residence similar in style and character to the surrounding residences is necessary due to the physical conditions of the Property including varying topography with multiple slope grades in differing directions and the steepness of the grade.

2. The eastern side of the proposed residence is considerably smaller than the western side of the residence and the design extends a smaller distance away from Kings Road on the western side of the residence due to the constraining topographical features. However, the granting of the variance due to the property slopes is necessary to maintain functionality of the house design and by allowing the height increase for approximately 116 square feet of roof area over enclosed living areas and 211 square feet of roof area over a covered patio area to exceed the 29 foot height limit. It would also allow 26 square feet of deck and railing area to exceed the 24 foot flat roof height limit. Strict compliance with the Zoning Code would deprive the applicant the substantial property right of building a residence of uniform height across the Property, a design that is enjoyed by other properties in the vicinity of the variance request. The variance is intended to permit only what can be built by right elsewhere on the Property where physical hardships due to topography of the gully feature are not present.

3. To avoid the topographic constraint associated with the gully, the teen room, decks, and covered patio features of the proposed residence would need to be setback approximately an additional 15 feet from the easterly side setback line (19 feet from easterly property line) to eliminate the need for the variance. This modification to the design would effectively reduce the buildable width from approximately 90 percent of the lot width to 72 percent of the lot width at those locations

4. The over-height areas of the residence are located over a gully feature that slopes significantly in both a north-south direction, as well as east-west direction that creates a challenge to design a residence that is functional and architecturally pleasing. The granting of this variance allows the applicant to preserve and benefit from the development of a residence that utilizes the entire buildable width of the lot similar in style, size, and character of surrounding homes.

5. See Facts in Support of Finding B above, which are also in support of Finding C.

Finding:

D. Granting of the variance will not constitute a grant of special privilege inconsistent with the limitations on other properties in the vicinity and in the same zoning district.

Facts in Support of Finding:

1. Each segment of Kings Road presents various differing degrees of slope topography and properties are developed with homes and yards reflecting their specific topographic constraints. It is appropriate to evaluate each residence in the immediate vicinity on a case-by-case basis. In this case, the Property is more severely impacted than most other sloping lots on the south side of Kings Road due to the unique gully feature that affects this lot with more drastic changes in topography in multiple directions. Therefore, approval of the variance does not constitute a grant of special privilege in this case.

2. The variance allows the Applicant to develop a single-family residence that effectively utilizes the buildable width of the lot comparable to and compatible with developments on other lots in the vicinity that are identically zoned. Other sloping lots in the vicinity under the same zoning classification along the south side of Kings Road are able to be developed with two-story structures and daylighting basements across the entire width of their lots. The proposed height limit exception

does not result in a special privilege as the variance allows the Applicant to construct a residence that meets their needs while maintaining parity with surrounding development.

3. The Applicant will not achieve additional height beyond what would be permissible on a typical slope that is more representative of the slope on other properties along Kings Road, which are not impacted by a gully feature. Furthermore, when viewed from the street elevation, the residence will provide articulation and will be approximately 5 feet lower than the 29 foot height limit as viewed from the Kings Road and maintain heights consistent with other two-story homes constructed in the vicinity.

4. The adjacent properties across Kings Road benefit from a naturally raised pad, which results in structures that appear taller from the street elevation. The proposed exception from the height limit will not result in a development that is out of character with the neighborhood.

Finding:

E. Granting of the variance will not be detrimental to the harmonious and orderly growth of the City, nor endanger, jeopardize, or otherwise constitute a hazard to the public convenience, health, interest, safety, or general welfare of persons residing or working in the neighborhood.

Facts in Support of Finding:

1. The granting of the variance will allow for an increase in the roof area of approximately 353 square feet, which equates to approximately 5.7 percent of the total roof area (6,199 square feet). The remaining roof area will be located under the 24 foot flat roof and 29 foot sloping roof height limit

2. The design of the structure includes adequate articulation, modulation, and open volume area consistent with the requirements of the Zoning Code.

3. The granting of the variance will not create a visual impact to the community or impact public or private views. Currently there are no public views from Kings Road to the south due to the existing residence and garages. The over-height features will not be visible from Kings Road or residence across the street since they would

be located behind height-compliant portions of the structure as viewed from the street. Additionally, the over-height features would not be readily noticeable as viewed from West Coast Highway below due to the distance from the highway and the limited size and height of the features proposed that would exceed the height limit. Therefore, the variance will not create a visual impact on surrounding areas or roadways.

4. Although the City does not have private view protection policies, the proposed residence will not negatively impact the private views of the residences on the north side of Kings Road or the public as a result of granting the variance. The Zoning Code allows the residence to be built to the 29 foot height limit across the entire front of the property along Kings Road, but the proposed structure is approximately five feet lower than the allowed 29 foot height limit as viewed from the street. The small portions of roofs requiring the variance will not be visible from the street elevation of Kings Road and will not impact private views from the northerly side of Kings Road any more than a conforming design.

5. The portions of the structure that exceed the height limit would be most visible from the property to the east that is also impacted by the gully feature. To minimize the bulk and mass of the structure as viewed from the neighboring property, the roof planes have been designed to pitch down towards the easterly neighbor. Furthermore, the portion of the upper level bathroom that appears as a third level as viewed from the neighbor to the east has been setback an additional two feet beyond the four-foot side setback to further minimize the bulk and mass of the visibly tallest portion of the residence where the grades are lowest. The over-height covered patio on the main level is open on the side, increasing building modulation and further reducing the visual mass of the structure.

6. There are no public views over or adjacent to the Property.

Finding:

F. Granting of the variance will not be in conflict with the intent and purpose of this section, this Zoning Code, the General Plan, or any applicable specific plan.

Facts in Support of Finding:

1. The Zoning Code provides the flexibility in application of land use and development regulations through the variance review process. The variance procedure is

intended to resolve practical physical hardships resulting from the unique topography and lot configurations that exist in the City and on this Property. Due to the topography of the lot, height and design of buildings on neighboring properties, the height limit exception can be approved by the City Council through this variance request.

2. The Property is designated for single-unit residential use and the granting of the variance does not increase the density or floor area beyond what is planned for the area, and will not result in additional traffic, parking, or demand for other services.

3. The Property is not located within a specific plan area.

Section 2: The recitals provided in this resolution are true and correct and are incorporated into the operative part of this resolution.

Section 3: 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 4: The City Council finds the adoption of this resolution is exempt from environmental review under the California Environmental Quality Act ("CEQA") pursuant to Section 15303 under Class 3 (New Construction or Conversion of Small Structures) of the CEQA Guidelines, California Code of Regulations, Title 14, Division 6, Chapter 3, because it has no potential to have a significant effect on the environment. Class 3 exempts the construction of new small facilities or structures including up to three new single-family residences in urbanized areas. The Project is the construction of one new single-family residence. 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 5: 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 10th day of September 2019.

Diane B. Dixon
Mayor

ATTEST:

Leilani I. Brown
City Clerk

APPROVED AS TO FORM:
CITY ATTORNEY'S OFFICE

Aaron C. Harp
City Attorney

Attachment: Exhibit A – Conditions of Approval

EXHIBIT "A"

CONDITIONS OF APPROVAL

1. The Development shall be in substantial conformance with the approved site plan, floor plans and building elevations stamped and dated with the date of this approval, except as modified by applicable conditions of 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 Applicant 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 Variance.

4. This Variance may be modified or revoked by the Planning Commission should they determine that the proposed use or conditions under which it is being constructed or maintained is detrimental to the public health, welfare or materially injurious to property or improvements in the vicinity or if the property is constructed or maintained so as to constitute a public nuisance.

5. A copy of the Resolution, including conditions of approval (Exhibit "A") shall be incorporated into the Building Division and field sets of plans prior to issuance of the building permits.

6. Prior to the issuance of a building permit, the Applicant shall pay any unpaid administrative costs associated with the processing of this application to the Planning Division.

7. Should the Property be sold or otherwise come under different ownership, any future owners or assignees shall be notified of the conditions of this approval by either the current business owner, property owner or the leasing agent.

8. Construction activities shall comply with Section 10.28.040 of the Newport Beach Municipal Code, which restricts hours of noise-generating construction activities that produce noise to between the hours of 7:00 a.m. and 6:30 p.m., Monday through Friday and 8:00 a.m. and 6:00 p.m. on Saturday. Noise-generating construction activities are not allowed on Sundays or Holidays.

9. This approval shall expire and become void unless exercised within twenty-four (24) months from the actual date of review authority approval, except where an extension of time is approved in compliance with the provisions of NBMC Title 20 (Planning and Zoning).

10. To the fullest extent permitted by law, applicant shall indemnify, defend and hold harmless 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 Reed Residential Variance (PA2019-060) including, but not limited to, Variance No. VA2019-002. 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 Applicant, City, and/or the parties initiating or bringing such proceeding. The Applicant 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 Applicant shall pay to the City upon demand any amount owed to the City pursuant to the indemnification requirements prescribed in this condition.

Attachment B

Planning Commission Resolution No.
PC2019-015

RESOLUTION NO. PC2019-015

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF NEWPORT BEACH, CALIFORNIA, APPROVING VARIANCE NO. VA2019-002 TO ALLOW PORTIONS OF A NEW SINGLE-FAMILY RESIDENCE TO EXCEED THE MAXIMUM HEIGHT LIMIT FOR PROPERTY LOCATED AT 1113 KINGS ROAD (PA2019-060)

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

SECTION 1. STATEMENT OF FACTS.

1. An application was filed by Carolyn Reed ("Applicant"), with respect to property located at 1113 Kings Road, and legally described as Lot 31, Block, E, of Tract 1219 ("Property") requesting approval of a variance.

2. The Applicant requests a variance to waive or modify Newport Beach Municipal Code ("NBMC") Section 20.30.060 and allow portions of a new single-family residence to exceed the maximum height limit ("Project").

3. The Property is designated Single-Unit Residential Detached (RS-D) by the General Plan Land Use Element and is located within the Single-Unit Residential (R-1) Zoning District.

4. The Property is not located within the coastal zone.

5. A public hearing was held on May 23, 2019, in the City Council Chambers at 100 Civic Center Drive, Newport Beach. A notice of time, place and purpose of the hearing was given in accordance with the Newport Beach Municipal Code ("NBMC"). 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 under Section 15303, of the California Environmental Quality Act ("CEQA") Guidelines - Class 3 (New Construction or Conversion of Small Structures), California Code of Regulations, Title 14, Division 6, Chapter 3, because it has no potential to have a significant effect on the environment.

2. Class 3 exempts the construction of new small facilities or structures including up to three new single-family residences in urbanized areas. The proposed project is the construction of one new single-family residence.

3. 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 NBMC Section 20.52.090(F) (Variances – Findings and Decision), the following findings and facts in support of such findings are set forth:

Finding:

A. *There are special or unique circumstances or conditions applicable to the subject property (e.g., location, shape, size, surroundings, topography, or other physical features) that do not apply generally to other properties in the vicinity under an identical zoning classification.*

Facts in Support of Finding:

1. The Property is a bluff top residential property that slopes north to south generally consistent with other properties located along the south side of Kings Road; however, this particular Property is unique in that a deep gully severely constrains the northeastern corner of the lot. This gully is an unusual Property feature that burdens the Property with multiple sloping angles and directions that does not generally apply to the other properties along Kings Road.

2. The rear portion of the proposed residence measures approximately 100 feet back from the front property line along Kings Road. The slope differential and change in grade is significant along the western boundary line of the residence as compared to the eastern property line where the gully feature is located. The change in existing grade along the western boundary line is approximately five feet (five percent slope) along the proposed length of the residence, whereas the change in existing grade along the eastern boundary line is approximately 25.5 feet (25.5 percent slope) due to the gully feature.

3. The most significant change in grade along the eastern boundary actually occurs within the first 67 feet of the lot as measured from the front property line, where the gully at its deepest point (62.85 feet North American Vertical Datum of 1988 [NAVD 88]) is 26.5 feet below the elevation of the front property line (89.3 feet NAVD 88), resulting in a steep slope of 40 percent.

4. The lot also slopes in various directions from east to west. At the front setback line, the difference in grade between the east property line and west property line is approximately 0.8 feet with a 1 percent slope up from west to east. However, at the extreme depth of the gully on the easterly property line (62.85 feet NAVD 88), the corresponding grade measurement on the westerly property line is 20 feet higher (82.94 feet NAVD 88). At this location the lot slopes down 22 percent from west to east.

5. This variation in topography is a result of the gully in the northeastern corner of the lot and presents a unique circumstance in comparison to other properties in its vicinity that warrant the requested variance.

Finding:

B. Strict compliance with Zoning Code requirements would deprive the subject property of privileges enjoyed by other properties in the vicinity and under an identical zoning classification.

Facts in Support of Finding:

1. Due to physical conditions of the Property including multiple slope grades and angles, strict compliance with the Zoning Code requirements would deprive the homeowner privileges of a residence burdened by the cost, inconvenience, and loss of functionality enjoyed by other properties in the vicinity under identical zoning classification.

2. The Zoning Code requires the height of structures to be measured from a grade plane based on an approximation of the existing grade using several grade points. On sloping lots, the height limit is intended to follow the slope of the established grade plane. It is typical for properties on sloping lots to be designed with terracing foundations and roof that typically maintain a two-level appearance within the allowed height envelope. Due to the topographical constraint that the gully creates on this lot, including multiple slopes in differing directions, strict compliance with the Zoning Code development standards precludes the Property owners from enjoying this same privilege of designing a two-level terraced design across the buildable width of the lot.

3. The topography featuring multiples slope angles and a gully at a portion of the northeastern property corner, combined with a residence that spans the buildable width of the lot, presents a unique challenge. Strict compliance with the Zoning Code would deprive the Applicant the privilege of building a residence of uniform height across the subject Property which is a privilege enjoyed by other properties in the vicinity and under an identical zoning classification.

4. The entire front of the residence facing the street could be built to 29 feet in height with sloping roofs without a variance. However, the front of the residence is designed to a maximum height of 23.78 feet from existing grade at the front elevation and is the tallest observed height as viewed from Kings Road. Due to the sloped nature of the lot and corresponding maximum height envelope, the first point of height exceedance occurs down-slope away from Kings Road and 22 feet back from the front setback line (33 feet from the curb). The height encroachments are not visually higher than any portion of the residence as viewed from Kings Road because they are behind the complying roof elements at the front of the building.

5. Modifying the proposed design to eliminate the height variance for the enclosed living area would require eliminating an office on the main level, located behind a compliant garage, and eliminating or significantly reducing the size of an upper level closet, bathroom, and teen room. Modifying the design to eliminate the height variance for the

outdoor living areas would require eliminating the roof cover over the deck behind the garage and office on the main level and reducing the size of the upper level deck. The appearance of structure as viewed from Kings Road would not change, but the functionality of the home design would be impacted.

6. The granting of a variance provides relief from Zoning Code height calculations to allow the residence to maintain comparable height across the both the east and west sides of the residence to improve and maintain functionality of the house design. It is not intended nor does it in any way permit features or height increases beyond what can be built by right elsewhere on the Property where physical hardships due to topography are not present.

7. The adjacent single-family residence to the east (1101 Kings Rd.), which is also impacted by the topographic gully feature, has been granted two variances in the past (VA1034 in 1973 and VA1150 in 1989). It provided relief from the topographic constraint allowing the home to be constructed. As viewed from Kings Road, the neighboring residence (100.72-foot ridge elevation) is 11 feet lower in overall roof elevation than the proposed residence (111.92-foot ridge elevation) due to the difference in existing grade from which these residences are measured from. However, the neighboring property is more severely impacted by the gully and the variances authorized a maximum structure height of 45 feet 6 inches and deck height of 36 feet 6 inches as measured from existing grade. These height limit exceedances are approximately 13.5 feet higher for the living area and 12 feet higher for the deck than the proposed variance request.

Finding:

C. *Granting of the variance is necessary for the preservation and enjoyment of substantial property rights of the applicant.*

Facts in Support of Finding:

1. The granting of a variance for the preservation of the applicant's rights to enjoy a residence similar in style and character to the surrounding residences is necessary due to the physical conditions of the Property including varying topography with multiple slope grades in differing directions and the steepness of the grade.

2. The eastern side of the proposed residence is considerably smaller than the western side of the residence and the design extends a smaller distance away from Kings Road on that the western side of the residence due to the constraining topographical features. However, the granting of the variance due to the property slopes is necessary to maintain functionality of the house design and by allowing the height increase for approximately 116 square feet of roof area over enclosed living areas and 211 square feet of roof area over a covered patio area to exceed the 29-foot height limit. It would also allow 26 square feet of deck and railing area to exceed the 24-foot flat roof height limit. Strict compliance with the Zoning Code would deprive the applicant the substantial property right of building a residence of uniform height across the Property, a design that is enjoyed by other properties in the vicinity of the variance request. The variance

is intended to permit only what can be built by right elsewhere on the Property where physical hardships due to topography of the gully feature are not present.

3. To avoid the topographic constraint associated with the gully, the teen room, decks, and covered patio features of the proposed residence would need to be setback approximately an additional 15 feet from the easterly side setback line (19 feet from easterly property line) to eliminate the need for the variance. This modification to the design would effectively reduce the buildable width from approximately 90 percent of the lot width to 72 percent of the lot width at those locations

4. The over-height areas of the residence are located over a gully feature that slopes significantly in both a north-south direction, as well as east-west direction that creates a challenge to design a residence that is functional and architecturally pleasing. The granting of this variance allows the applicant to preserve and benefit from the development of a residence that utilizes the entire buildable width of the lot similar in style, size, and character of surrounding homes.

5. See Facts in Support of Finding B above, which are also in support of Finding C.

Finding:

D. Granting of the variance will not constitute a grant of special privilege inconsistent with the limitations on other properties in the vicinity and in the same zoning district.

Facts in Support of Finding:

1. Each segment of Kings Road presents various differing degrees of slope topography and properties are developed with homes and yards reflecting their specific topographic constraints. It is appropriate to evaluate each residence in the immediate vicinity on a case-by-case basis. In this case, the subject lot is more severely impacted than most other sloping lots on the south side of Kings Road due to the unique gully feature that affects this lot with more drastic changes in topography in multiple directions. Therefore, approval of the variance does not constitute a grant of special privilege in this case.

2. The variance allows the Applicant to develop a single-family residence that effectively utilizes the buildable width of the lot comparable to and compatible with developments on other lots in the vicinity that are identically zoned. Other sloping lots in the vicinity under the same zoning classification along the south side of Kings Road are able to be developed with two-story structures and daylighting basements across the entire width of their lots. The proposed height limit exception does not result in a special privilege as the variance allows the Applicant to construct a residence that meets their needs while maintaining parity with surrounding development.

3. The Applicant will not achieve additional height beyond what would be permissible on a typical slope that is more representative of the slope on other properties along Kings Road, which are not impacted by a gully feature. Furthermore, when viewed from the street elevation, the residence will provide articulation and will be approximately 5 feet

lower than the 29-foot height limit as viewed from the Kings Road and maintain heights consistent with other two-story homes constructed in the vicinity.

4. The adjacent properties across Kings Road benefit from a naturally raised pad, which results in structures that appear taller from the street elevation. The proposed exception from the height limit will not result in a development that is out of character with the neighborhood.

Finding:

E. Granting of the variance will not be detrimental to the harmonious and orderly growth of the City, nor endanger, jeopardize, or otherwise constitute a hazard to the public convenience, health, interest, safety, or general welfare of persons residing or working in the neighborhood.

Facts in Support of Finding:

1. The granting of the variance will allow for a height increase of approximately 353 square feet, which equates to approximately 5.7 percent of the total roof area (6,199 square feet). The remaining roof area will be located under the 24-foot flat roof and 29-foot sloping roof height limit

2. The design of the structure includes adequate articulation, modulation, and open volume area consistent with the requirements of the Zoning Code.

3. The granting of the variance will not create a visual impact to the community or impact public or private views. Currently there are no public views from Kings Road to the south due to the existing residence and garages. The over-height features will not be visible from Kings Road or residence across the street since they would be located behind height-compliant portions of the structure as viewed from the street. Additionally, the over-height features would not be readily noticeable as viewed from West Coast Highway below due to the distance from the highway and the limited size and height of the features proposed that would exceed the height limit. Therefore, the variance will not create a visual impact on surrounding areas or roadways.

4. Although the City does not have private view protection policies, the proposed residence will not negatively impact the private views of the residences on the north side of Kings Road or the public as a result of granting the variance. The Zoning Code allows the residence to be built to the 29-foot height limit across the entire front of the property along Kings Road, but the proposed structure is approximately five feet lower than the allowed 29-foot height limit as viewed from the street. The small portions of roofs requiring the variance will not be visible from the street elevation of Kings Road and will not impact private views from the northerly side of Kings Road any more than a conforming design.

5. The portions of the structure that exceed the height limit would be most visible from the property to the east that is also impacted by the gully feature. To minimize the bulk and

mass of the structure as viewed from the neighboring property, the roof planes have been designed to pitch down towards the easterly neighbor. Furthermore, the portion of the upper level bathroom that appears as a third level as viewed from the neighbor to the east has been setback an additional two feet beyond the four-foot side setback to further minimize the bulk and mass of the visibly tallest portion of the residence where the grades are lowest. The over-height covered patio on the main level is open on the side, increasing building modulation and further reducing the visual mass of the structure.

6. There are no public views over or adjacent to the Property.

Finding:

F. Granting of the variance will not be in conflict with the intent and purpose of this section, this Zoning Code, the General Plan, or any applicable specific plan.

Facts in Support of Finding:

1. The Zoning Code provides the flexibility in application of land use and development regulations through the variance review process. The variance procedure is intended to resolve practical physical hardships resulting from the unique topography and lot configurations that exist in the City and on this Property. Due to the topography of the lot, height and design of buildings on neighboring properties, the height limit exception can be approved by the Planning Commission through this variance request.

2. The Property is designated for single-unit residential use and the granting of the variance does not increase the density or floor area beyond what is planned for the area, and will not result in additional traffic, parking, or demand for other services.

3. The Property is not located within a specific plan area.

SECTION 4. DECISION.

NOW, THEREFORE, BE IT RESOLVED:

1. The Planning Commission of the City of Newport Beach hereby approves Variance No. VA2019-002, subject to the conditions set forth in Exhibit "A," which is attached hereto and incorporated by reference.

2. This action shall become final and effective 14 days following the date this Resolution was adopted unless within such time an appeal is filed with the City Clerk in accordance with the provisions of Title 20 Planning and Zoning, of the Newport Beach Municipal Code.

3. This resolution supersedes Variance No. VA1053, as approved by the City Council on September 27, 1976, which upon vesting of the rights authorized by this Variance No. VA2019-002, shall become null and void.

PASSED, APPROVED, AND ADOPTED THIS 23RD DAY OF MAY, 2019.

AYES: Ellmore, Kleiman, Koetting, Kramer, and Zak

NOES:

ABSTAIN: Lowrey and Weigand

ABSENT:

BY: _____
Peter Zak, Chairman

BY: _____
Lee Lowrey, Secretary

EXHIBIT "A"

CONDITIONS OF APPROVAL

1. The Development shall be in substantial conformance with the approved site plan, floor plans and building elevations stamped and dated with the date of this approval, except as modified by applicable conditions of 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 Applicant 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 Variance.

4. This Variance may be modified or revoked by the Planning Commission should they determine that the proposed use or conditions under which it is being constructed or maintained is detrimental to the public health, welfare or materially injurious to property or improvements in the vicinity or if the property is constructed or maintained so as to constitute a public nuisance.

5. A copy of the Resolution, including conditions of approval (Exhibit "A") shall be incorporated into the Building Division and field sets of plans prior to issuance of the building permits.

6. Prior to the issuance of a building permit, the Applicant shall pay any unpaid administrative costs associated with the processing of this application to the Planning Division.

7. Should the Property be sold or otherwise come under different ownership, any future owners or assignees shall be notified of the conditions of this approval by either the current business owner, property owner or the leasing agent.

8. Construction activities shall comply with Section 10.28.040 of the Newport Beach Municipal Code, which restricts hours of noise-generating construction activities that produce noise to between the hours of 7:00 a.m. and 6:30 p.m., Monday through Friday and 8:00 a.m. and 6:00 p.m. on Saturday. Noise-generating construction activities are not allowed on Sundays or Holidays.

9. This approval shall expire and become void unless exercised within twenty-four (24) months from the actual date of review authority approval, except where an extension of time is approved in compliance with the provisions of NBMC Title 20 (Planning and Zoning).

10. To the fullest extent permitted by law, applicant shall indemnify, defend and hold harmless 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 Reed Residential Variance (PA2019-060) including, but not limited to, Variance No. VA2019-002. 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 applicant, City, and/or the parties initiating or bringing such proceeding. The applicant 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 applicant shall pay to the City upon demand any amount owed to the City pursuant to the indemnification requirements prescribed in this condition.

Attachment C

May 23, 2019, Planning Commission
Staff Report

CITY OF NEWPORT BEACH
PLANNING COMMISSION STAFF REPORT

May 23, 2019
Agenda Item No. 4

SUBJECT:	Reed Residential Variance (PA2019-060) ▪ Variance No. VA2019-002
SITE LOCATION:	1113 Kings Road
APPLICANT:	Carolyn Reed
OWNER:	Carolyn Reed
PLANNER:	Jaime Murillo, Senior Planner 949-644-3209, jmurillo@newportbeachca.gov

PROJECT SUMMARY

Demolition of an existing single-family residence and the construction of a new 10,803-square-foot, single-family residence and a 1,508-square-foot, four-car garage. The applicant is requesting a variance to allow portions of the upper level roof and deck, and portions of a an office and covered patio on the main level of the proposed home to exceed the allowed height limit due to the steep topography of site.

RECOMMENDATION

1) Conduct a public hearing;

2) Find this project categorically exempt under Section 15303, of the California Environmental Quality Act ("CEQA") Guidelines - Class 3 (New Construction or Conversion of Small Structures), California Code of Regulations, Title 14, Division 6, Chapter 3, because it has no potential to have a significant effect on the environment; and

3) Adopt Resolution No. PC2019-015 approving Variance No. VA2019-002 (Attachment No. PC 1).

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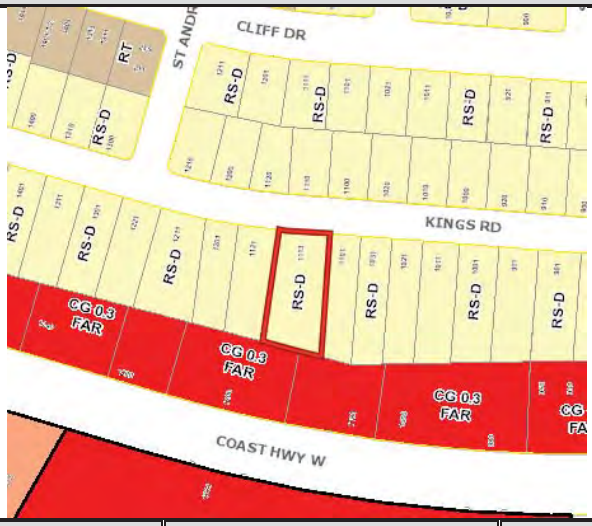
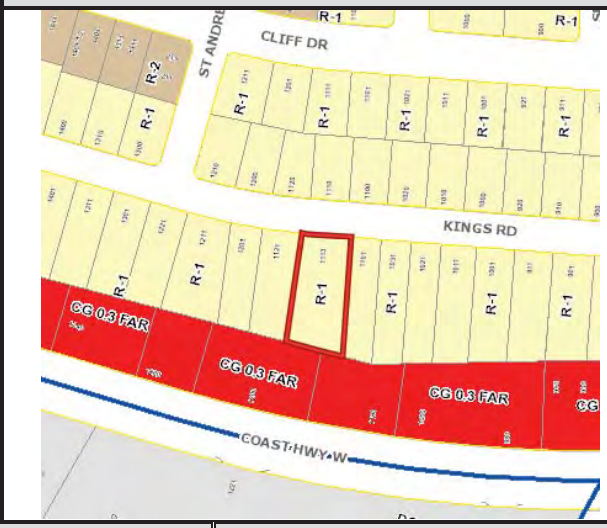
VICINITY MAP



GENERAL PLAN



ZONING



LOCATION	GENERAL PLAN	ZONING	CURRENT USE
ON-SITE	Single-Unit Residential Detached (RS-D)	Single-Unit Residential (R-1)	Single-family residence
NORTH	RS-D	R-1	Single-family residences
SOUTH	General Commercial (CG)	Commercial General (CG)	Car wash and auto sales facility
EAST	RS-D	R-1	Single-family residences
WEST	RS-D	R-1	Single-family residences

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INTRODUCTION

Project Setting and Background

The subject property is a hillside lot located along the south side of Kings Road in the single-family residential neighborhood of Cliff Haven above and visible from Coast Highway. Surrounding properties include single-family residences to the west, north, and east. Commercial properties are located down slope south of the parcel in the Mariners' Mile commercial corridor along West Coast Highway. Similar to other residences on the south side of Kings Road, the property is developed with the front yard facing Kings Road and the rear of the property abutting the commercial lots down slope.

The property is currently developed with a two-level, 3,000-square-foot, single-family residence with attached, 1285-square-foot, four-car garage parking. The residence and a two-car garage were originally constructed in 1954. The structure is one story above Kings Road and one level below the street. A second two-car garage for recreational-vehicle (RV) storage was constructed in 1976 and it received the approval of a variance (Variance No. 1053) from the Planning Commission authorizing portions of the garage to exceed the 24-foot flat roof height limit. At the location of the RV garage, a gully exists within the lot that slopes significantly from north to south and from east to west. The garage appears as an approximately 13-foot-high, one-story structure from Kings Road, however, due to the slope of the gully under the garage, the garage measures approximately 31.5 feet from existing grade at the southeast corner of the garage.

The adjacent single-family residence to the east at 1101 Kings Road is also topographically impacted by the gully feature and has been granted two variances in the past (VA1034 in 1973 and VA1150 in 1989). The variances authorized a maximum structure height of 45 feet 6 inches and deck height of 36 feet 6 inches as measured from the existing grade at the rear of the structures.

Project Description / Variance Request

The applicant desires to demolish the existing structure and construct a new 10,803-square-foot, single-family residence and 1,508-square-foot, four-car garage parking. The residence would consist of three levels: a 4,177-square-foot daylighting basement level, a 3,361-square-foot main level, and a 3,265-square-foot upper level. From the Kings Road street frontage, the residence would appear as two stories. The daylighting basement level would generally only be visible from the property to the east and from West Coast Highway to the south.

The residence has been designed with multiple step backs at the upper levels to maintain a structure height that follows the natural slope of the lot. However, due to the topographical constraint of the gully feature at the northeastern corner of the lot that

extends to the south generally along the eastern property line that affects the siting and design of the proposed construction, the applicant is requesting a variance to allow portions of the roof to exceed the 29-foot height limit for sloped roofs and a portion of a deck and associated railing to exceed the 24-foot height limit for decks and flat roofs. The differences in height limits for the various components of the structure are as follows:

- *Upper level roof eaves:* 1.13 feet, 1.29 feet, and 1.85 feet above 29-foot sloped roof height limit
- *Upper level deck and rails:* 4.47 feet and 2.32 feet above 24-foot flat roof height limit
- *Main level office eave:* 1.74 feet above 29-foot sloped height limit
- *Main level covered patio eave:* 3.07 feet above 29-foot sloped roof height limit

Figure 1 below highlights the portions of roof and deck that exceed allowed height limits. Figure 2 includes three-dimensional renderings of the proposed residence illustrating the portions of the structure that exceed the 29-foot height limit plane.

The applicant's project description and justification is included as Attachment No. PC 3. The project plans (Attachment No. PC 4) provide additional information on the site topography as well as the location, height, and layout of the proposed structure.

DISCUSSION

Analysis

General Plan and Zoning Code

The Land Use Element of the General Plan designates the site as Single-Unit Residential Detached (RS-D) and the Zoning Code designates the site as Single-Unit Residential (R-1), which are intended to provide for areas appropriate for single-family residential dwelling units on a single lot. The proposed development is consistent with these designations and use of the property would not change. With the exception of the requested variance for height, the proposed residence complies with all other applicable development standards of the R-1 Zoning Districts as illustrated in Table 1 below:

Figure 1 – Roof Plan and Section Exhibit - Height Exceedances

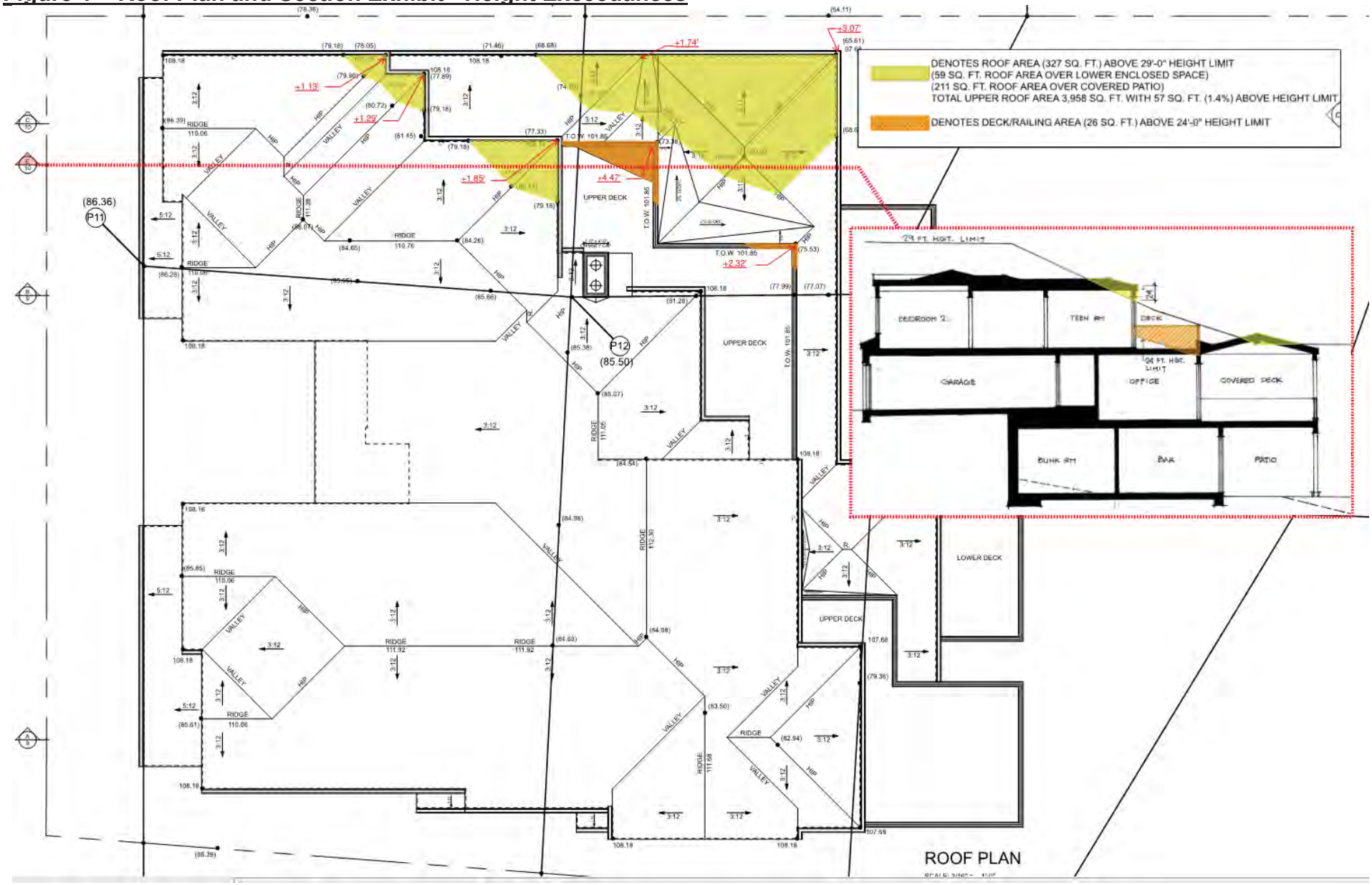


Figure 2 – 3D Rendering Illustration of Height Exceedances (Yellow Plane Represents 29-Foot Height Limit)



Rear Elevation



Front Elevation (Kings Rd)



Right Side Elevation



Left Side Elevation



Left Side Elevation
(Looking Down)



Left/Front Elevation

Table 1: Zoning Development Standards			
Development Standard	**Required**	**Existing**	**Proposed**
Setbacks (min.)			
Front	10’	11’	10’
Rear	10’	98’	85.5’
Left Side (West)	4’	5’	5’
Right Side (East)	4’	4’	4’
Height (max.)			
Flat	24’	31.5’ (Variance 1053)	28.47’ (deck rail) (1)
Sloped	29’	29’	32.07’ (2)
Open Space (min.)	2,177 sq. ft.	Exceeded	18,130 sq. ft.
3rd Floor Area (max.)	2,177 sq. ft.	No 3rd Floor	411 sq. ft.(3)
Floor Area Limit (max.)	29,024 sq. ft.	4,285 sq. ft.	12,311 sq. ft.
Parking (min.)	3 garage spaces	4 garage spaces	4 garage spaces

(1) Variance requested to allow 26 sq. ft. of deck and deck rail to exceed the 24-foot flat roof height limit.
(2) Variance requested to allow 327 sq. ft. of sloping roofs to exceed the 29-foot height limit.
(3) Per NBMC Section 20.48.180.A.3.a, on sloping lots the Director shall determine which story is the third floor for implementing third floor limits. The upper level functions primarily as a two-story element as viewed from Kings Road and the property to the west; however, where located above the gully feature, portions of the upper level bathrooms and teen room function and appear as a third level to the property to the east and are calculated as such. These areas have also been designed to comply with third floor step back of two additional feet from side setback.

Grade Establishment and Building Height

Pursuant to Newport Beach Municipal Code (NBMC) Section 20.30.050 (Grade Establishment), the building height on a lot that slopes more than five percent is measured from a plane established by determining the elevation of the lot at five evenly spaced points along each of the two side property lines and connecting each of the points along a side property line with the corresponding point on the opposite side property line, as shown in Figure 3. On lots that slope an average of twenty percent or greater, or on irregularly shaped or sloping lots, the Director may require that additional points of elevation be provided. Due to the significant slope variations of the lot due to the gully feature of the lot, five additional points were added in locations to more closely follow the existing grade profile of the hillside. Figure 4 below illustrates the established grade plane from the site topographic survey provided in Sheets 2 and 3 of Attachment PC 4. These additional points were included because the use of the Code described method does not reflect the existing topographic profile of the site and further restricted the ability to design a structure.

Figure 3 - Grade Establishment Example

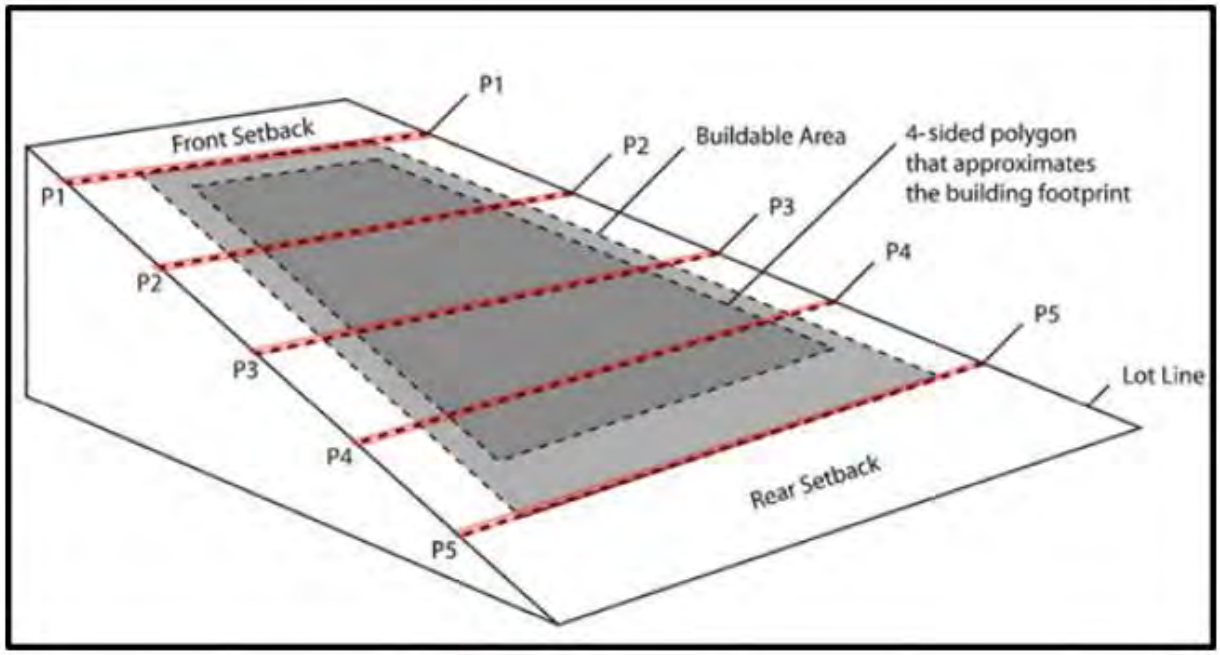
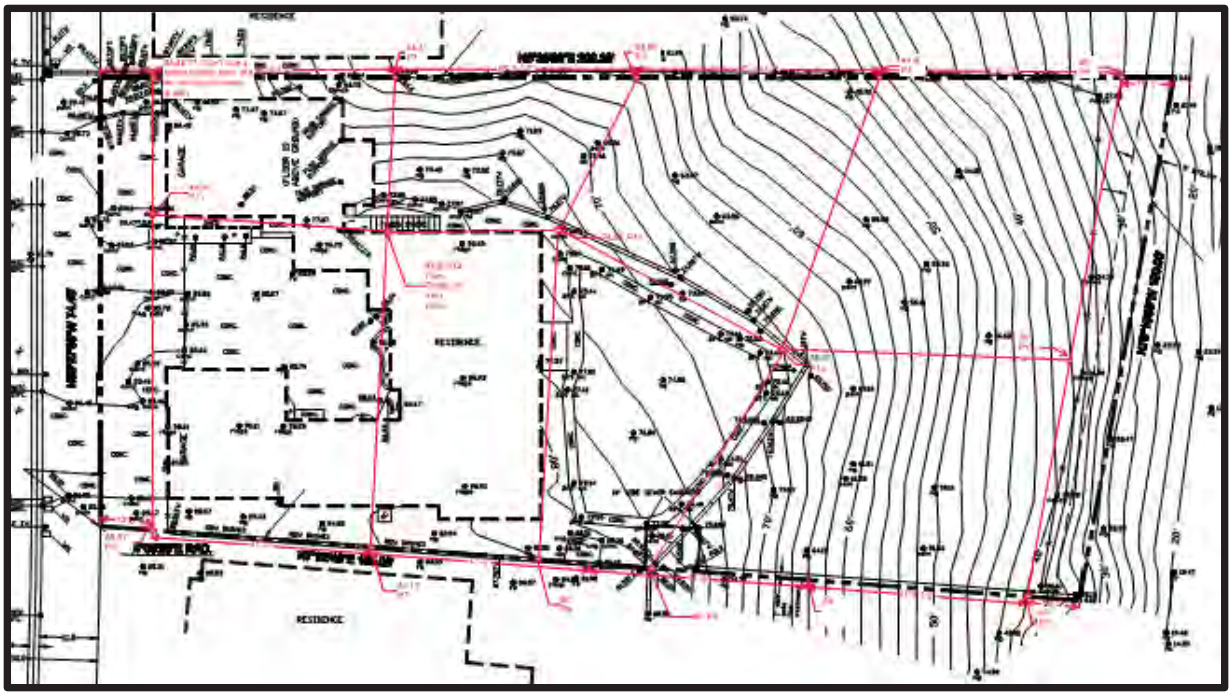


Figure 4 - Grade Establishment for Subject Property



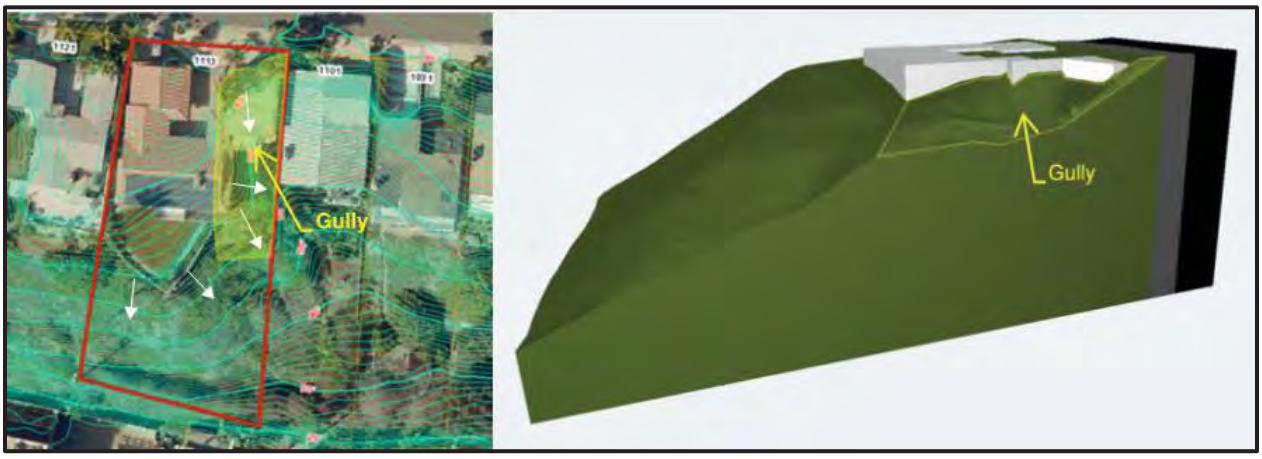
Required Variance Findings

A variance is a request to waive or modify certain standards when, because of special circumstances applicable to the property, including location, shape, size, surroundings, topography, or other physical features, the strict application of the development standards otherwise applicable to the property denies the property owner privileges enjoyed by other property owners in the vicinity and in the same zoning district. A variance can only be granted to maintain parity between the variance site and nearby properties in the same zoning district to avoid the granting of special privileges to one property.

Pursuant to NBMC Section 20.52.090(F) (Variances – Findings and Decision), the Planning Commission must make certain findings in order to approve a variance. Staff believes sufficient facts exist to support the variance requests and they are set forth in the draft resolution for project approval (Attachment No. PC 1). Below is a summary of facts in support of the required findings:

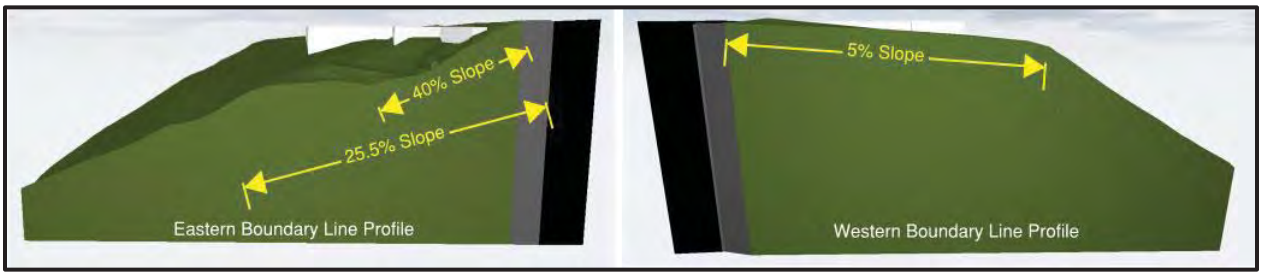
1. *There are special or unique circumstances or conditions applicable to the subject property (e.g., location, shape, size, surroundings, topography, or other physical features) that do not apply generally to other properties in the vicinity under an identical zoning classification;*

The site is bluff top residential property that slopes north to south generally consistent with other properties located along the south side of Kings Road; however, this particular site is unique in that a deep gully severely constrains the northeastern corner of the lot. This gully is an unusual site feature that burdens the property with multiple sloping angles and directions that does not generally apply to the other properties along Kings Road.



The rear portion of the proposed residence measures approximately 100 feet back from the front property line along Kings Road. The slope differential and change in grade is significant along the western boundary line of the residence as compared to the eastern

property line where the gully feature is located. The change in existing grade along the western boundary line is approximately five feet (five percent slope) along the proposed length of the residence, whereas the change in existing grade along the eastern boundary line is approximately 25.5 feet (25.5 percent slope) due to the gully feature.



The most significant change in grade along the eastern boundary actually occurs within the first 67 feet of the lot as measured from the front property line, where the gully at its deepest point (62.85 feet North American Vertical Datum of 1988 [NAVD 88]) is 26.5 feet below the elevation of the front property line (89.3 feet NAVD 88), resulting in a steep slope of 40 percent.

The lot also slopes in various directions from east to west. At the front setback line, the difference in grade between the east property line and west property line is approximately 0.8 feet with a 1 percent slope up from west to east. However, at the extreme depth of the gully on the easterly property line (62.85 feet NAVD 88), the corresponding grade measurement on the westerly property line is 20 feet higher (82.94 feet NAVD 88). At this location the lots slopes down 22 percent from west to east.

This variation in topography of the lot presents a unique circumstance in comparison to other properties in its vicinity that warrant the requested variance.

2. *Strict compliance with Zoning Code requirements would deprive the subject property of privileges enjoyed by other properties in the vicinity and under an identical zoning classification;*

The Zoning Code requires the height of structures to be measured from a grade plane based on an approximation of the existing grade using several grade points. On sloping lots, the height limit is intended to follow the slope of the established grade plane. It is typical for properties on sloping lots to be designed with terracing foundations and roof that typically maintain a two-level appearance within the allowed height envelope. Due to the topographical constraint that the gully creates on this lot, including multiple slopes in differing directions, strict compliance with the Zoning Code development standards precludes the property owners from enjoying this same privilege of designing a two-level terraced design across the buildable width of the lot.

The entire front of the residence facing the street could be built to 29 feet in height with sloping roofs without a variance. However, the front of the residence is designed to a maximum height of 23.78 feet from existing grade at the front elevation and is the tallest observed height as viewed from Kings Road. Due to the sloped nature of the lot and corresponding maximum height envelope, the first point of height exceedance occurs down-slope away from Kings Road and 22 feet back from the front setback line (33 feet from the curb). The height encroachments are not visually higher than any portion of the residence as viewed from Kings Road because they are behind the complying roof elements at the front of the building.

Modifying the proposed design to eliminate the height variance for enclosed living area would require eliminating an office on the main level, located behind a compliant garage, and eliminating or significantly reducing the size of an upper level closet, bathroom, and teen room. Modifying the design to eliminate the height variance for the outdoor living areas would require eliminating the roof cover over the deck behind the garage and office on the main level and reducing the size of the upper level deck. The appearance of structure as viewed from Kings Road would not change, but the functionality of the home design would be impacted.

The granting of a variance provides relief from Zoning Code height calculations to allow the residence to maintain comparable height across both the east and west sides of the residence to improve and maintain functionality of the house design. It is not intended nor does it in any way permit features or height increases beyond what can be built by right elsewhere on the subject site where physical hardships due to topography are not present.

The adjacent single-family residence to the east (1101 Kings Rd.), which is also impacted by the topographic gully feature, has been granted two variances in the past (VA1034 in 1973 and VA1150 in 1989). It provided relief from the topographic constraint allowing the home to be constructed. As viewed from Kings Road, the neighboring residence (100.72-foot ridge elevation) is 11 feet lower in overall roof elevation than the proposed residence (111.92-foot ridge elevation) due to the difference in existing grade from which these residences are measured from. However, the neighboring property is more severely impacted by the gully and the variances authorized a maximum structure height of 45 feet 6 inches and deck height of 36 feet 6 inches as measured from existing grade. These height limit exceedances are approximately 13.5 feet higher for the living area and 12 feet higher for the deck than the proposed variance request.

3. *Granting of the variance is necessary for the preservation and enjoyment of substantial property rights of the applicant;*

The granting of a variance for the preservation of the applicant's rights to enjoy a residence similar in style and character to the surrounding residences is necessary due to the physical conditions of the subject property including varying topography with

multiple slope grades in differing directions and the steepness of the grade. The eastern side of the proposed residence extends a smaller distance away from Kings Road than the western side of the residence due to of the constraining topographical features. However, the granting of the variance due to the property slopes is necessary to maintain functionality of the house design and by allowing the height increase for approximately 116 square feet of roof area over enclosed living areas and 211 square feet of roof area over a covered patio area to exceed the 29-foot height limit. It would also allow 26 square feet of deck and railing area to exceed the 24-foot flat roof height limit. Strict compliance with the Zoning Code would deprive the applicant of the substantial property right of building a residence of uniform height across the subject site, a design that is enjoyed by other properties in the vicinity of the subject property. The variance is intended to permit only what can be built by right elsewhere on the subject site where physical hardships due to topography of the gully feature are not present.

To avoid the topographic constraint associated with the gully, the teen room, decks, and covered patio features of the proposed residence would need to be setback approximately an additional 15 feet from the easterly side setback line (19 feet from easterly property line) to eliminate the need for the variance. This modification to the design would effectively reduce the buildable width from approximately 90 percent of the lot width to 72 percent of the lot width at those locations.

The over-height areas of the residence are located over a gully feature that slopes significantly in both a north-south direction, as well as east-west direction that creates a challenge to design a residence that is functional and architecturally pleasing. The granting of this variance allows the applicant to preserve and benefit from the development of a residence that utilizes the entire buildable width of the lot similar in style, size, and character of surrounding multi-level homes in the vicinity.

4. *Granting of the variance will not constitute a grant of special privilege inconsistent with the limitations on other properties in the vicinity and in the same zoning district;*

Each segment of Kings Road presents various differing degrees of slope topography, and most properties are developed with homes and yards reflecting their specific topographic constraints. It is appropriate to evaluate each residence in the immediate vicinity on a case-by-case basis. In this case, the subject lot is more severely impacted than most other sloping lots on the south side of Kings Road due to the unique gully feature that impacts this lot with more drastic changes in topography in multiple directions. Therefore, approval of the variance does not constitute a grant of special privilege in this case.

The variance allows the property owner to develop a single-family residence that effectively utilizes the buildable width of the lot comparable to and compatible with developments on other lots in the vicinity that are identically zoned. Other sloping lots in the vicinity under the same zoning classification along the south side of Kings Road are

able to be developed with two-story structures and daylighting basements across the entire width of their lots. The proposed height limit exception does not result in a special privilege as the variance allows the property owners to construct a residence that meets their needs while maintaining parity with surrounding development.

The property owners will not achieve additional height or floor area beyond what would be permissible on a typical slope that is more representative of the slope on other properties along Kings Road that are not impacted by a gully feature. Furthermore, when viewed from the street elevation, the residence will provide articulation and will be approximately 5 feet lower than the 29-foot height limit as viewed from Kings Road and maintain heights consistent with other two-story homes constructed in the vicinity.

5. *Granting of the variance will not be detrimental to the harmonious and orderly growth of the City, nor endanger, jeopardize, or otherwise constitute a hazard to the public convenience, health, interest, safety, or general welfare of persons residing or working in the neighborhood; and*

The granting of the variance will not create a visual impact to the community or impact public or private views. Currently there are no public views from Kings Road to the south due to the existing residence and garages. The over-height features will not be visible from Kings Road or residence across the street since they would be located behind height-compliant portions of the structure as viewed from the street. Additionally, the over-height features would not be readily noticeable as viewed from West Coast Highway below due to the distance from the highway and the limited size and height of the features proposed that would exceed the height limit. Therefore, the variance will not create a visual impact on surrounding areas or roadways.

Although the City does not have private view protection policies, the proposed residence will not negatively impact the private views of the residences on the north side of Kings Road or the public as a result of granting the variance. The Zoning Code allows the residence to be built to the 29-foot height limit across the entire front of the property along Kings Road, but the proposed structure is approximately 5 feet lower than the allowed 29-foot height limit as viewed from the street. The small portions of roofs requiring the variance will not be visible from the street elevation of Kings Road and will not impact private views from the northerly side of Kings Road any more than a conforming design.

The portions of the structure that exceed the height limit would be most visible from the property to the east that is also impacted by the gully feature. To minimize the bulk and mass of the structure as viewed from the neighboring property, the roof planes have been designed to pitch down towards the easterly neighbor. Furthermore, the portion of the upper level bathroom that appears as a third level as viewed from the neighbor to the east has been set back an additional 2 feet beyond the 4-foot side setback to further minimize the bulk and mass of the visibly tallest portion of the residence where the grades are

lowest. The over-height covered patio on the main level is open on the side, increasing building modulation and further reducing the visual mass of the structure.

6. *Granting of the variance will not be in conflict with the intent and purpose of this section, this Zoning Code, the General Plan, or any applicable specific plan.*

The Zoning Code provides the flexibility in application of land use and development regulations through the variance review process. The variance procedure is intended to resolve practical physical hardships resulting from the unique topography and lot configurations that exist in the City and on this property. Due to the topography of the lot, height and design of buildings on neighboring properties, the height limit exception can be approved by the Planning Commission through this variance request.

The subject property is designated for single-unit residential use and the granting of the variance does not increase the density or floor area beyond what is planned for the area, and will not result in additional traffic, parking, or demand for other services.

Summary

Staff believes sufficient facts exist to support the Variance request as demonstrated in the draft Resolution. The topographical constraint that the gully creates on the property, with multiple slopes and angles, restricts the potential development on the site and makes it difficult to design a structure that effectively utilizes the buildable width of the lot. The proposed structure is approximately 5 feet lower than allowed 29-foot height limit as viewed from the street. The limited portions of roofs requiring the variance will not be visible from the street elevation of Kings Road since they are located behind height-compliant portions of the structure as viewed from the street. The project has been designed such that it will be compatible with other properties in the vicinity, and will not appear out of scale or character for the existing and allowed development in the surrounding area.

Alternatives

Staff recommends approval based on the required findings for approval of a variance; however, the following alternative actions are available for the Commission:

1. Should the Planning Commission determine that there are insufficient facts to support one or more of the findings for approval, the Planning Commission must deny the application and provide facts in support of denial to be included in the attached draft resolution for denial (Attachment No. PC 2).

2. The Planning Commission may suggest specific changes to the project design that are necessary to alleviate concerns. If any requested changes are substantial, the item should be continued to a future meeting to allow a redesign or additional

analysis. Should the Planning Commission choose to do so, staff would return with a revised resolution incorporating new findings and/or conditions.

Although staff worked with the applicant to minimize the variance requests, alternative design options to further avoid or minimize the variance could include, but are not limited to:

a. Eliminating the roof above the main level patio. Without the roof, the patio could remain uncovered and would comply with the 24-foot flat roof height limit for that aspect of the request; however, the patio would be exposed to a southerly solar direction.

b. Reducing the depth of the garage in front of the office by 8.5 feet would maintain a code-compliant parking depth of 20 feet and allow for the office on the main level to be moved closer to the front of the lot where the existing grades are higher. Relocating the office would significantly reduce and possibly eliminate the need for a height variance for that design feature.

c. Reducing the area of upper level deck above the gully feature to reduce or eliminate the need for a variance for that component.

d. Reducing the size of the teen room or eliminating it altogether to accommodate a redesign of Bedroom 2's bathroom and closet away from the gully feature and within the 29-foot building height envelope.

Environmental Review

This project is exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15303, Class 3 (New Construction or Conversion of Small Structures) of the State CEQA Guidelines because it has no potential to have a significant effect on the environment. This exemption covers the construction of new small facilities or structures including up to three new single-family residences in urbanized areas. The proposed project is the construction of a new single-family residence.

Public Notice

Notice of this hearing was published in the Daily Pilot, mailed to all owners of property within 300 feet of the boundaries of the site (excluding intervening rights-of-way and waterways) including the applicant and posted on the subject property at least 10 days before the scheduled meeting, consistent with the provisions of the Municipal Code. Additionally, the item appeared on the agenda for this meeting, which was posted at City Hall and on the City website.

Prepared by:

Jaime Murillo, Senior Planner

Submitted by:

Jim Campbell
Deputy Community Development Director

ATTACHMENTS

PC 1 Draft Resolution of Approval
PC 2 Draft Resolution of Denial
PC 3 Applicant's Project Description and Justification
PC 4 Project Plans
PC 5 Correspondence Received

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Attachment No. PC 1

Draft Resolution of Approval

Attachment No. PC 2

Draft Resolution of Denial

Attachment No. PC 3

Applicant's Project Description and Justification

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CAA PLANNING

April 9, 2019 [Updated May 13, 2019]

Mr. Jaime Murillo
Senior Planner
City of Newport Beach
100 Civic Center Drive
Newport Beach, CA 92660

Subject: Variance Application, 1113 Kings Road

Dear Mr. Murillo:

On behalf of Carolyn and Greg Reed, the owners of the residence located at 1113 Kings Road, CAA Planning, Inc. (CAA) submits the enclosed Variance application for the proposed residential project. The existing residence is located in a row of homes fronting the bluffs along Kings Road in the Newport Heights Community of Newport Beach. The lot slopes both from west to east, and also more notably, from north to south as a large canyon feature is located along the easterly property line.

Background

The residence was previously issued variance VA 1053 due to severe site topography. In 1973, the Planning Commission granted a variance finding "[t]hat there are exceptional or extraordinary circumstances applying to the land, building or use referred to in the application, which circumstances or conditions do not apply generally to land, building and/or uses in the same district." Planning Staff further noted, "[i]t is the feeling of the staff that there are unusual circumstances which apply to this site which do not generally apply to other building sites in this area."

The historical variance was necessary for the construction of the existing RV garage located on the easterly side of the property due to the sloping of the property from west to east as well as the obvious and more easily discernable north to south slope constraints. The circumstances and conditions that caused the Planning Commission and City Staff to make the determination to issue what today amounts to a historical variance, have not changed by any standard of measure. The canyon along the easterly side of the property continues to preclude the development of the site in a manner that does not generally occur.

Project Description

The proposed project would replace an existing single-family residence with a new single family residence on a 17,745 square foot lot. The building coverage, including the eaves and decks, is 6,199 square foot, or 34.9% of the lot. The home would include a basement level, a main level and an upper level with a total floor area of 10,803 square feet. The design is characterized by

several outdoor patios and covered decks, consistent with the type of outdoor living that is possible in Newport Beach. The proposed residence is of appropriate size and scale given the lot site and as compared to the existing homes located in the surrounding neighborhood.

The City's Zoning Code specifies a height limit of 29 feet for sloped roofs. The proposed building heights are 22'- 9" and 25'-8" as dimensioned above the existing front property line profile. Careful consideration was paid to ensure that the building height was not "maxed out" at the front of the property.

Variance

While Kings Road presents bluff top topography generally sloping in a north to south orientation towards Pacific Coast Highway, the lot at 1113 Kings Road includes an added feature making development significantly more challenging. There is a deep canyon which severely constrains the site. The unique topography of 1113 Kings Road residences presents challenges to development including:

Northerly Boundary: Kings Road (front) property line climbs from west to east by 3.28 feet (4% slope). Although the property climbs as viewed from the street, the proposed Grade Establishment along the existing westerly property grade profile would be applied at a level elevation across the width of the lot.

Westerly Boundary: The property line shared with 1121 Kings Road falls from north to south by 45.67 feet (27.7% slope). The proposed grade establishment requests to follow this existing property grade profile and apply the existing grades at a level elevation across the width of the lot

Easterly Boundary: The property line shared with 1101 Kings Road line falls from north to south by 66.09 feet (36.2% slope). Within the first 30 feet of the front setback, the existing grade falls by approximately 20 feet.

Deviations are allowed through the Zoning Code with the processing of a Variance (Section 20.52.090). The City's Zoning Code states:

> *A variance provides a process for City consideration of requests to waive or modify certain standards of this Zoning Code when, because of special circumstances applicable to the property, including location, shape, size, surroundings, topography, or other physical features, the strict application of the development standards otherwise applicable to the property denies the property owner privileges enjoyed by other property owners in the vicinity and in the same zoning district.* (Section 20.52.090)

Justification

- Original variance – The requested variance would serve as a replacement for the existing variance, as the areas considered as over-height for the proposed residence are the same areas that required the issuance of a variance VA 1053 for the construction of the existing RV garage. While the existing RV garage would be removed and replaced with the new residence, the new residence requires the same issuance of a variance for the over-height area as the RV garage did.
- The variance is required to permit a limited height increase representing a small percentage of the total residence. The requested height increase is approximately 327 square feet (5.3%) of roof area to exceed the 29-foot height limit and 150 square feet (2.4%) of deck with railing to exceed the 24-foot height limit.
- The over height areas are limited to the portion of the residence affected by the canyon area. While most bluff-top homes along Kings Road is presented with challenges, each segment of Kings Road presents with differing degrees of slope topography and most residences are in varying stages of home, backyard and/or slope stability improvements. It is appropriate to evaluate each residence in the immediately vicinity on a case by case basis.
- The over-height features will not be visible from the street and will not, themselves, cause interference with the coastal views of adjacent or neighboring properties. Although the over-height features are calculated as such based on the City's zoning code, the observed heights will not be noticeably taller than other area of the residence.

  The proposed two-story residence will replace an existing one-story residence. The portion of the residence that may cause limitations to coastal views for the across the street neighbor would be the portion of the residence location on the Kings Road frontage. This portion of the residence is within the 29-foot height limit.
- While certain lots along Kings Road are subject to private deed restrictions related to view protection, there is no such deed restriction on 1113 Kings Road. In addition, there are no view corridors within the project vicinity that would be impacted by the proposed project.

Conclusion

As you are aware, the project applicants have made sizeable revisions to the project plans to reduce the encroachments above the height limit. The variance is only requested along the easterly property line where the canyon inordinately skews the calculation of grade and results in very minor encroachments above the established height limit. As detailed above, 327square feet of the roof area, or 5.3% of the total roof, would exceed the height limit. Furthermore, the area of

roof which encroaches into the height limit cannot be seen from the street as it is located at a lower elevation and blocked by the roof line at the northern elevation.

Findings in support of the variance are attached. If you have questions or concerns, please do not hesitate to contact me or Pua Whitford at (949) 581-2888.

Sincerely,

CAA PLANNING, INC.

Shawna L. Schaffner

Shawna L. Schaffner
Chief Executive Officer

Attachments: Findings of Fact

cc: Ms. Carolyn Reed

Attachment No. PC 4

Project Plans

Attachment No. PC 5

Correspondence Received

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From: Lee, Amanda
Sent: Tuesday, May 14, 2019 3:15 PM
To: Murillo, Jaime
Subject: FW: 1113 Kings Road Height Variance

-----Original Message-----
From: Kathe Choate <choateoncliff@gmail.com>
Sent: Tuesday, May 14, 2019 3:10 PM
To: Planning Commissioners <PlanningCommissioners@newportbeachca.gov>
Subject: 1113 Kings Road Height Variance

I strongly oppose the request for a height variance at the above mentioned address. EVERYONE should abide by the well establish Newport Beach building codes which have been successfully adhered to for years. Having built two homes, one on Lido and one in Newport Heights, we realized the importance of respecting our neighbors and their properties. THERE SHOULD BE NO EXCEPTIONS.
Thank you,
Katherine Choate

Sent from my iPhone

From: Lee, Amanda
Sent: Tuesday, May 14, 2019 4:00 PM
To: Murillo, Jaime
Subject: FW: 1113 Kings Road

-----Original Message-----
From: James & Nancy Turner <noturner@gmail.com>
Sent: Tuesday, May 14, 2019 3:59 PM
To: Planning Commissioners <PlanningCommissioners@newportbeachca.gov>
Subject: 1113 Kings Road

I think the 1113 home should obey the existing height and set back laws ..No wavers for the 1113 home..Thank you Nancy Turner

From: Jeff Frum
To: Planning Commissioners
Subject: 1113 Kings Road Variance Request
Date: Tuesday, May 14, 2019 7:15:43 PM

Dear Planning Commissioners:

My name is Jeff Frum and reside at 1400 Kings Road, NB CA 92663.
I hope that you will not grant the variance request for the proposed project at 1113 Kings Road. I feel that the existing rules that we have lived by for years should continue to protect our views and that the applicant should adapt their plans to the topography and build down the slope.

Respectfully,

Jeff Frum

From: Carrie Slayback
To: Planning Commissioners
Subject: Height Variance, King"s Road
Date: Tuesday, May 14, 2019 8:46:42 PM

Honorable Planning Commission Chairman and Commissioners,

Please do not allow the height variance 1113 Kings Road.

The new owner purchased the lot under the conditions of Newport's building code.

Please continue to enforce existing code regulations.

Do not signal owners that they can change our codes to suit their wishes.

Best,

Carrie Luger Slayback

From: Janet Stemler
To: Planning Commissioners
Subject: 1113 Kings Road
Date: Tuesday, May 14, 2019 8:48:32 PM

Commissioners
We strongly oppose granting any height variance in our neighborhood.
Thank you
Janet Stemler
212 Kings Place
Newport Beach, Ca. 92663
9496401623

Sent from my iPad

From: brucru@sbcglobal.net
To: Planning Commissioners
Subject: Height variance request 1113 Kings rd
Date: Wednesday, May 15, 2019 8:58:35 AM

This request strongly urges a denial for the height variance at 1113 Kings rd.
The owners need to stay within the same guidelines as all the neighbors. The tremendous size of the lot will certainly accommodate a lovely home!!!
Please don't let these people ruin the quality of the neighbors' homes and views.
Sincerely,
Gary and Carolyn Brubaker
1710 Kings Rd.
Newport Beach

Sent from my iPhone

May 15, 2019

RECEIVED BY
COMMUNITY
DEVELOPMENT
MAY 16 2019
CITY OF
NEWPORT BEACH

The City of Newport Beach
Community Development Department
Planning Division, 100 Civic Center Drive
P.O. Box 1768
Newport Beach, California 92658-8915

CC: Doug Smith, Esq.
Re: 1113 Kings Road Height Variation Request

To: Jaime Murillo

I am writing to you in response to the height variation request submitted for the property located at 1113 Kings Road, Newport Beach, California 92663. As a resident of Kings Road, I would like to express my opposition to this request. The height limit exists to prevent the entire cliff side of the street from obstructing the ocean view of those located on the opposite side of the street. For granting the homeowner's permission to exceed the allowed height limit would establish a new standard. This new standard is problematic for a couple reasons: current and future residents with similar wishes will expect the same treatment, and the controversial nature surrounding this matter will likely lead to hostility among neighbors.

As one of the largest lots on the street, the 18,000 square feet of land should be utilized to build in other directions other than upward. Please accept this letter as an official statement of my opposition to the height variation request submitted for the property located at 1113 Kings Road, Newport Beach.

Sincerely,

Michael Alexander
1001 Kings Road
Newport Beach, California 92663

From: John Carlos Rowe
To: Planning Commissioners
Subject: 1113 Kings Rd variance
Date: Friday, May 17, 2019 2:44:14 PM

We live at 700 Kings Rd and are out of the US at the time of the meeting to request 2 height variances for the proposed construction at 1113 Kings Rd. We are totally opposed to this requested variance. The slope of the property does not justify the request. Larger and larger homes on Kings Rd are lowering the quality of life for all of the residents and serve no reasonable purpose. Preserving views and reasonable open space should be a priority of the City. A new home at 1113 Kings Rd can be easily built without the height variances requested.

John and Kristin Rowe
700 Kings Rd
Sent from my iPhone

From: Peggy Palmer
To: Planning Commissioners
Cc: Murillo, Jaime; Campbell, Jim
Subject: 1113 Kings Road - Height Variance Request / PA2019-060 / Activity VA2019-002
Date: Saturday, May 18, 2019 3:22:19 PM

Dear Honorable Planning Commissioners,

Recently the applicant for the property located at 1113 Kings Road applied for a height variance. The variance is to allow for an increase in the height, due to the steep topography; however, the applicant's architectural renderings illustrate that they are already building up to the 29 foot height level in this so called "steep topography". The height exception is for a patio-roof, which would equate to an additional 3.07 feet for a total of 32 feet - seven inches, this is not a "hardship variance", this is a luxury variance that should be **denied**.

Please note the following policy according to California State Law and the Newport Beach Municipal Code:
"The Staff Report demonstrates the absence of substantial hardship on the part of the property owners and instead shows their desire to maximize the scale and value of their proposed project. Thus, granting the above variance would constitute a grant of special privileges in violation of state law and the Newport Beach Municipal Code."

According to Jamie Murillo, Senior Planner, the proposed 12,303 foot home, including the four car garage, will also have a 100 foot projection from the structure to the bluff to include a 29 foot height and a four foot set-back on each side, a height variance should not even be considered; yet, the City Staff is recommending approval?
Mr. Murillo also stated that the City Staff recommended several options to the applicant, but apparently the Reed's will not deviate from this unnecessary height variance.

At this time, I am asking that the Planning Commissioners recommend an extension of the project, in order to allow the applicant, the community and the City to review these different options, (as suggested by City Staff). This will achieve a community consensus.

The owner of the property fully understood the nature of the topography when they purchased this lot in 2018. The parcel located at 1113 currently has expansive views of the harbor, turning basin and ocean; allowing *this particular variance* in addition to the proposed 100 foot projection and the 29 foot height would be reckless disregard to the residents of Cliff Haven.

I am requesting that the Planning Commissioners deny this variance. This variance is not a hardship for the applicant, but it will be a hardship inherited by the surrounding residents, if approved.

In closing, we need to all play by the rules and be respectful of our neighbors, now and in the future.

Thank you for your consideration,

Peggy V. Palmer
Cliff Haven Community Association
Board Member
1701 Kings Road
Newport Beach, CA 92663

From: Lynn Lorenz <lynnierlo@aol.com>
Sent: Sunday, May 19, 2019 2:31 PM
To: Planning Commissioners
Subject: 2019-060-ActivityVA2019-002

(Please forgive me if you have received multiple copies of this email. My old Mac kept wanting to add @aol to the end of the email addresses, particularly the copy to Jaime Murillo, which I finally sent to your email address, to his attention. I think all of the others came back to me)

Honorable Planning Commissioners

It has been brought to my attention from numerous sources that there is a piece of property that was recently purchased on 1113 King's Road whose owners are asking for a considerable height variance from the City. If granted, this variance will result in the construction of a house that will interfere with the views of neighbors who generally speaking, have lived on King's Road for years.

I cannot imagine making additions to my house that would interfere with my neighbors' views/rights even if I didn't need a variance to do so. I don't think that individuals should expect favoritism from the city whether a house is 2,000 square feet or 10,000 square feet.

Rules and codes were established for a reason and each time they are broken, it becomes easier to justify this unfair behavior the next time. Also, when favoritism is shown to some at the expense of others, respect is lost for the agency granting the favor. ALL of us in Newport Beach must work together and play by the rules to maintain the beauty and collegial life style that we now enjoy.

Lynn Lorenz
434 Redlands Avenue
Newport Beach, 92663
949 646 2054

From: Bobbi Robinson <bobiroboc@gmail.com>
Sent: Sunday, May 19, 2019 6:40 PM
To: Planning Commissioners
Subject: 1113 NO to height variance!

From: TJ Williams
To: Planning Commissioners
Subject: 1113 Kings Rd: Petitions 1-5 Opposing the Height Variance and New Construction
Date: Monday, May 20, 2019 9:17:35 PM
Attachments: Petitions 1-5.pdf

TJ Williams
1110 Kings Rd

Petition Opposing the Height Variance and New Construction at 1113 Kings Road

To the Newport Beach Planning Commission and City Council

First and Last Name: MIKE ALEXANDER

Street Address: 1001 KINGS RUN

Signature: [signature]

Comments: DO NOT APPROVE

Thank you for your support protecting the future of our neighborhood

Petition Opposing the Height Variance and New Construction at 1113 Kings Road

To the Newport Beach Planning Commission and City Council

First and Last Name: Betty Otte

Street Address: 521 Kings Rd. NB 92663

Signature: Betty Otte

Comments: No Variance

Thank you for your support protecting the future of our neighborhood

Petition Opposing the Height Variance and New Construction at 1113 Kings Road

To the Newport Beach Planning Commission and City Council

First and Last Name: George Barfield

Street Address: 2001 Kings Rd

Signature: [signature]

Comments: No Variance whatsoever

I have lived on Kings since 1988 and there use to be a height restriction starting at medium grade not an arbitrary calculation

Thank you for your support protecting the future of our neighborhood

Petition Opposing the Height Variance and New Construction at 1113 Kings Road

To the Newport Beach Planning Commission and City Council

First and Last Name: Michael Palmer

Street Address: 1701 Kings Road - NPB CA 92663

Signature: Michael Palmer

Comments: maintain the quality of community - no variance

Thank you for your support protecting the future of our neighborhood

Petition Opposing the Height Variance and New Construction at 1113 Kings Road

To the Newport Beach Planning Commission and City Council

First and Last Name: Gordon Adams

Street Address: 1800 Kings Rd

Signature: Gordon Adams

Comments: This is totally unneeded & will negatively affect at least 8-10 homeowners & the value of their homes.

Thank you for your support protecting the future of our neighborhood

Petition Opposing the Height Variance and New Construction at 1113 Kings Road

To the Newport Beach Planning Commission and City Council

First and Last Name: ROGER GATE

Street Address: 921 KINGS RD

Signature: [signature]

Comments: ENOUGH IS ENOUGH

Thank you for your support protecting the future of our neighborhood

Petition Opposing the Height Variance and New Construction at 1113 Kings Road

To the Newport Beach Planning Commission and City Council

First and Last Name: Peggy Palmer

Street Address: 1701 Kings Rd. NPB, CA 92663

Signature: [signature]

Comments: This is not a hardship variance - its a luxury and sets a precedence

NO VARIATION

Thank you for your support protecting the future of our neighborhood

Petition Opposing the Height Variance and New Construction at 1113 Kings Road

To the Newport Beach Planning Commission and City Council

First and Last Name: Amy Williams

Street Address: 1110 Kings Road

Signature: Amy Williams

Comments: Too Big. Too Tall.

Please return to the mailbox of 1110 Kings Rd by 11am on Tuesday, May 21st.

Thank you for your support protecting the future of our neighborhood

Petition Opposing the Height Variance and New Construction at 1113 Kings Road

To the Newport Beach Planning Commission and City Council

First and Last Name: Anne Adams

Street Address: Anne Adams

Signature: 1800 Kings Rd

Comments: Why would you do this for one house. It will tell all future homes to ask for similar bad requests.

Thank you for your support protecting the future of our neighborhood

Petition Opposing the Height Variance and New Construction at 1113 Kings Road

To the Newport Beach Planning Commission and City Council

First and Last Name: LUKE W. DRU

Street Address: 420 KINGS RD, Newport Beach, 92663

Signature: [signature]

Comments: NO WAY

Thank you for your support protecting the future of our neighborhood

Petition Opposing the Height Variance and New Construction at 1113 Kings Road

To the Newport Beach Planning Commission and City Council

First and Last Name: Catherine Scruggs

Street Address: 307 Snug Harbor Road

Signature: Catherine Scruggs

Comments: We have building restrictions for a reason. To protect ~~eye~~ everyones views. The lots were designed so that both sides of the street could have the view.

Thank you for your support protecting the future of our neighborhood

Petition Opposing the Height Variance and New Construction at 1113 Kings Road

To the Newport Beach Planning Commission and City Council

First and Last Name: Kathleen Kralick

Street Address: 1031 Kings Rd. Newport Bch

Signature: Kath Kralick

Comments: too big & Tall

Thank you for your support protecting the future of our neighborhood

Petition Opposing the Height Variance and New Construction at 1113 Kings Road

To the Newport Beach Planning Commission and City Council

First and Last Name: Kristi DeCinces

Street Address: 402 Kings Road

Signature: [signature]

Comments: Absolutly NO!!

Please return to the mailbox of 1110 Kings Rd by 11am on Tuesday, May 21st.

Thank you for your support protecting the future of our neighborhood

Petition Opposing the Height Variance and New Construction at 1113 Kings Road

To the Newport Beach Planning Commission and City Council

First and Last Name: Nancy Barfield

Street Address: 2001 Kings Rd

Signature: Nancy Barfield

Comments: Unnecessary height Variance. the owners knew what they were buying & now they want more livspace

Thank you for your support protecting the future of our neighborhood

Petition Opposing the Height Variance and New Construction at 1113 Kings Road

To the Newport Beach Planning Commission and City Council

First and Last Name: Carolyn Brubaker

Street Address: 1710 Kings Rd.

Signature: Carolyn Brubaker

Comments: Enough is enough!

Thank you for your support protecting the future of our neighborhood

Petition Opposing the Height Variance and New Construction at 1113 Kings Road

To the Newport Beach Planning Commission and City Council

First and Last Name: HENRY HASTINGS

Street Address: 910 KINGS ROAD

Signature: [signature]

Comments: THIS VARIANCE WILL NEGATIVELY IMPACT MY VIEW OF THE OCEAN

Thank you for your support protecting the future of our neighborhood

Petition Opposing the Height Variance and New Construction at 1113 Kings Road

To the Newport Beach Planning Commission and City Council

First and Last Name: ROBERT MATICH

Street Address: 1411 KINGS RD

Signature: [signature]

Comments: RULES ARE RULES.
DESIGN WITHIN THE RULES
TO BEGIN WITH. THEN YOU DONT
NEED TO ASK TO BREAK RULES.

Thank you for your support protecting the future of our neighborhood

Petition Opposing the Height Variance and New Construction at 1113 Kings Road

To the Newport Beach Planning Commission and City Council

First and Last Name: TJ Williams

Street Address: 1110 Kings Road

Signature: T. Williams

Comments: The proposed new construction will severely impact 8 to 10 homes on our street. No Variance!!!

Please return to the mailbox of 1110 Kings Rd by 11am on Tuesday, May 21st.

Thank you for your support protecting the future of our neighborhood

Petition Opposing the Height Variance and New Construction at 1113 Kings Road

To the Newport Beach Planning Commission and City Council

First and Last Name: Stephanie Stedfield.

Street Address: 1130 Kings Rd. NB.

Signature: [signature]

Comments: out of population -

Thank you for your support protecting the future of our neighborhood

Petition Opposing the Height Variance and New Construction at 1113 Kings Road

To the Newport Beach Planning Commission and City Council

First and Last Name: Karen Bottmon

Street Address: 204 Kings Road

Signature: [signature]

Comments: No Variance!

Thank you for your support protecting the future of our neighborhood

Petition Opposing the Height Variance and New Construction at 1113 Kings Road

To the Newport Beach Planning Commission and City Council

First and Last Name: Martha G Earlabaugh

Street Address: 1621 Kings Road

Signature: Martha G Earlabaugh

Comments: I oppose the Height Variance for a variety of reasons

1. Need to show courtesy to the surrounding neighbors.

Thank you for your support protecting the future of our neighborhood

2. A height variance is not necessary for more than a 12,000 square foot home.

3. The applicant should articulate a portion of the structure providing a view corridor for surrounding neighbors

4. The proposed project is adding unnecessary concern & tension to the entire neighborhood

Petition Opposing the Height Variance and New Construction at 1113 Kings Road

To the Newport Beach Planning Commission and City Council

First and Last Name: GARY SOKOLICH

Street Address: 801 KINGS ROAD

Signature: W. Gary Sokolich

Comments: Letter to be sent to Planning Commission

Please return to the mailbox of 1110 Kings Rd by 11am on Tuesday, May 21st.

Thank you for your support protecting the future of our neighborhood

Petition Opposing the Height Variance and New Construction at 1113 Kings Road

To the Newport Beach Planning Commission and City Council

First and Last Name: Doug DeCinces

Street Address: 402 Kings Rd

Signature: [signature]

Comments: NO HEIGHT VARIENCE!

Thank you for your support protecting the future of our neighborhood

Petition Opposing the Height Variance and New Construction at 1113 Kings Road

To the Newport Beach Planning Commission and City Council

First and Last Name: Carol Anne Dru

Street Address: 420 Kings Road, Newport Beach, CA

Signature: Carol Anne Dru

Comments: There are Rules for a reason).

Thank you for your support protecting the future of our neighborhood

Petition Opposing the Height Variance and New Construction at 1113 Kings Road

To the Newport Beach Planning Commission and City Council

First and Last Name: Ann Matich

Street Address: 1411 Kings Rd.

Signature: AMatich

Comments: _____

Thank you for your support protecting the future of our neighborhood

Petition Opposing the Height Variance and New Construction at 1113 Kings Road

To the Newport Beach Planning Commission and City Council

First and Last Name: CHRIS KRALICK

Street Address: 1031 KINGS RD NB 92663

Signature: Chris Kralick

Comments: _____

Thank you for your support protecting the future of our neighborhood

Petition Opposing the Height Variance and New Construction at 1113 Kings Road

To the Newport Beach Planning Commission and City Council

First and Last Name: GARY BRUBAKER

Street Address: 1710 KINGS ROAD

Signature: Gary Brubaker

Thank you for your support protecting the future of our neighborhood

Petition Opposing the Height Variance and New Construction at 1113 Kings Road

To the Newport Beach Planning Commission and City Council

First and Last Name: Jay Lichman & Hennie Sondel

Street Address: 1110 Kings Rd.

Signature: Hennie Sondel, Jay Lichman

Comments: _____

Please return to the mailbox of 1110 Kings Rd by 11am on Tuesday, May 21st.

Thank you for your support protecting the future of our neighborhood

Petition Opposing the Height Variance and New Construction at 1113 Kings Road

To the Newport Beach Planning Commission and City Council

First and Last Name: ASTRID CARLSON

Street Address: 2300 CLIFF DR.

Signature: [signature]

Comments: _____

Thank you for your support protecting the future of our neighborhood

Petition Opposing the Height Variance and New Construction at 1113 Kings Road

To the Newport Beach Planning Commission and City Council

First and Last Name: JAMES CARLSON

Street Address: 2300 CLIFF DRIVE NEWPORT BEACH, CA 92663

Signature:

Comments:

Thank you for your support protecting the future of our neighborhood

Petition Opposing the Height Variance and New Construction at 1113 Kings Road

To the Newport Beach Planning Commission and City Council

First and Last Name: BRUCE CHOATE

Street Address: 2924 CLIFF DRIVE

Signature: [signature]

Comments: REGULATIONS ARE REGULATIONS! THEY ARE MEANT TO BE COMPLIED WITH, OTHERWISE, WHY HAVE THEM? WE WANT NEWPORT BEACH TO REMAIN NEWPORT BEACH

Thank you for your support protecting the future of our neighborhood

Petition Opposing the Height Variance and New Construction at 1113 Kings Road

To the Newport Beach Planning Commission and City Council

First and Last Name: Judy Weightman

Street Address: 2001 Cliff Dr

Signature: Judy W

Comments: _____

Thank you for your support protecting the future of our neighborhood

Petition Opposing the Height Variance and New Construction at 1113 Kings Road

To the Newport Beach Planning Commission and City Council

First and Last Name: Cathy Pinkert

Street Address: 711 Cliff Dr, NB 92663

Signature: Cathy Pinkert

Comments: No height variance

Thank you for your support protecting the future of our neighborhood

Petition Opposing the Height Variance and New Construction at 1113 Kings Road

To the Newport Beach Planning Commission and City Council

First and Last Name: RICK KENNEY

Street Address: 1705 CLIFF DRIVE

Signature: [signature]

Comments: _____

Thank you for your support protecting the future of our neighborhood

Petition Opposing the Height Variance and New Construction at 1113 Kings Road

To the Newport Beach Planning Commission and City Council

First and Last Name: Tim Pinkert

Street Address: 711 Cliff Dr, NB 92663

Signature: Tim Pinkert

Comments: No mansions

Thank you for your support protecting the future of our neighborhood

Petition Opposing the Height Variance and New Construction at 1113 Kings Road

To the Newport Beach Planning Commission and City Council

First and Last Name: KATHERINE CHOATE

Street Address: 2924 CLIFF DRIVE

Signature: [signature]

Comments: 29 FEET IS HIGH ENOUGH. THE PLANS FOR THIS HOUSE ARE TOTALLY OUT OF SCALE. THIS MUST BE STOPPED!

Thank you for your support protecting the future of our neighborhood

Petition Opposing the Height Variance and New Construction at 1113 Kings Road

To the Newport Beach Planning Commission and City Council

First and Last Name: Monica Mazur

Street Address: 510 signal road newport

Signature: Monica Mazur

Comments: Too BIG!

Thank you for your support protecting the future of our neighborhood

Petition Opposing the Height Variance and New Construction at 1113 Kings Road

To the Newport Beach Planning Commission and City Council

First and Last Name: MIKE TALBOT

Street Address: 324 SIGNAL ROAD

Signature: Mike D. Talbot

Comments: _____

Thank you for your support protecting the future of our neighborhood

Petition Opposing the Height Variance and New Construction at 1113 Kings Road

To the Newport Beach Planning Commission and City Council

First and Last Name: Patrick McCann

Street Address: 729 St. James Rd.

Signature: Patrick McC

Comments: _____

Please return to the mailbox of 1110 Kings Rd by 11am on Tuesday, May 21st.

Thank you for your support protecting the future of our neighborhood

Petition Opposing the Height Variance and New Construction at 1113 Kings Road

To the Newport Beach Planning Commission and City Council

First and Last Name: John Snelgrove

Street Address: 408 San Bernardino 92662

Signature: John E Snelgrove

Comments: _____

Thank you for your support protecting the future of our neighborhood

Petition Opposing the Height Variance and New Construction at 1113 Kings Road

To the Newport Beach Planning Commission and City Council

First and Last Name: Nancy O. Turner

Street Address: 435 Irvine Ave.

Signature: Nancy O. Turner

Comments: Oppose construction variance

Thank you for your support protecting the future of our neighborhood

Petition Opposing the Height Variance and New Construction at 1113 Kings Road

To the Newport Beach Planning Commission and City Council

First and Last Name: Joanne Snelgrove

Street Address: 408 San Bernardino Ave. N.B. 92663

Signature: Joanne Snelgrove

Comments: _____

Thank you for your support protecting the future of our neighborhood

Petition Opposing the Height Variance and New Construction at 1113 Kings Road

To the Newport Beach Planning Commission and City Council

First and Last Name: Janet Marshall

Street Address: 1000 Buckingham Dr.

Signature: [signature]

Comments: _____

Thank you for your support protecting the future of our neighborhood

Petition Opposing the Height Variance and New Construction at 1113 Kings Road

To the Newport Beach Planning Commission and City Council

First and Last Name: Bruce Bartram

Street Address: 2 Seaside Circle Newport Beach CA 92663

Signature: Bruce Bartram

Comments: _____

Thank you for your support protecting the future of our neighborhood

Petition Opposing the Height Variance and New Construction at 1113 Kings Road

To the Newport Beach Planning Commission and City Council

First and Last Name: Lee James Turner

Street Address: 433 Irvine Ave

Signature: [signature]

Comments: _____

Thank you for your support protecting the future of our neighborhood

Petition Opposing the Height Variance and New Construction at 1113 Kings Road

To the Newport Beach Planning Commission and City Council

First and Last Name: GEORGE DRAYTON

Street Address: 502 KINGS RD

Signature: George Drayton

Comments: Ocean Side of Kings Rd ~~must~~ must stay within current building codes.

Please return to the mailbox of 1110 Kings Rd by 11am on Tuesday, May 21st.

Thank you for your support protecting the future of our neighborhood

Petition Opposing the Height Variance and New Construction at 1113 Kings Road

To the Newport Beach Planning Commission and City Council

First and Last Name: BRUCE TROTTER

Street Address: 800 KINGS RD. NEWPORT BEACH, CA 92663

Signature: Bruce Trotter

Comments: This increase in height would be unfair to the neighbors because it would reduce the views of the ocean + surrounding area. Each homeowner should be considerate of their neighbors and not devalue their neighbors property value by blocking views with a height variance. Kings Road is unique in this regard ~~is it is~~ I'm sure a wonderful house could be built on that sloping lot in conformance with the height limitations.

Thank you for your support protecting the future of our neighborhood

Please return to the mailbox of 1110 Kings Road by 11am on Tuesday, May 21st

Petition Opposing the Height Variance and New Construction at 1113 Kings Road

To the Newport Beach Planning Commission and City Council

First and Last Name: Jack + Nancy Geerlings

Street Address: 411 Kings Rd, Newport Beach

Signature: N Geerlings / N. Geerlings

Comments: Keep the same height limits!

Please return to the mailbox of 1110 Kings Rd by 11am on Tuesday, May 21st.

Thank you for your support protecting the future of our neighborhood

Petition Opposing the Height Variance and New Construction at 1113 Kings Road

To the Newport Beach Planning Commission and City Council

First and Last Name: Setsuko Krickl

Street Address: 520 Kings Road

Signature: Setsuko Krickl

Comments: See attached

Please return to the mailbox of 1110 Kings Rd by 11am on Tuesday, May 21st.

Thank you for your support protecting the future of our neighborhood

Petition Opposing the Height Variance and New Construction at 1113 Kings Road

To the Newport Beach Planning Commission and City Council

First and Last Name: Robert Edmonds

Street Address: 602 Kings Lane

Signature: Robert F Edmonds

Comments: _____

Please return to the mailbox of 1110 Kings Rd by 11am on Tuesday, May 21st.

Thank you for your support protecting the future of our neighborhood

Petition Opposing the Height Variance and New Construction at 1113 Kings Road

To the Newport Beach Planning Commission and City Council

First and Last Name: Barbara Edmonds

Street Address: 602 Kings Road Newport Beach 92663

Signature: Barbara L Edmonds

Comments: My own view is blocked by a house built with a height variance. This should not continue to happen

Please return to the mailbox of 1110 Kings Rd by 11am on Tuesday, May 21st.

Thank you for your support protecting the future of our neighborhood

Petition Opposing the Height Variance and New Construction at 1113 Kings Road

To the Newport Beach Planning Commission and City Council

First and Last Name: Alois KRICKL

Street Address: 520 Kings Rd

Signature: [signature]

Comments: _____

Please return to the mailbox of 1110 Kings Rd by 11am on Tuesday, May 21st.

Thank you for your support protecting the future of our neighborhood

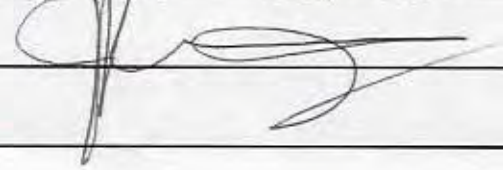
Petition Opposing the Height Variance and New Construction at 1113 Kings Road

To the Newport Beach Planning Commission and City Council

First and Last Name: Jim Miller

Street Address: 619 St James Rd

Signature: [signature]



Comments:

Please return to the mailbox of 1110 Kings Rd by 11am on Tuesday, May 21st.

Thank you for your support protecting the future of our neighborhood

Petition Opposing the Height Variance and New Construction at 1113 Kings Road

To the Newport Beach Planning Commission and City Council

First and Last Name: Valerie Miller

Street Address: 619 St James Rd

Signature: Valerie K Miller

Comments: _____

Please return to the mailbox of 1110 Kings Rd by 11am on Tuesday, May 21st.

Thank you for your support protecting the future of our neighborhood

Petition Opposing the Height Variance and New Construction at 1113 Kings Road

To the Newport Beach Planning Commission and City Council

First and Last Name: _____David Sherbeck_____ Street Address: _____1210 West Oceanfront, Newport Beach CA 92661_____ Signature: _____David E. Sherbeck_____

Comments: _____Height variances to residential projects have been abused by developers and granted without public approval or reason by the City staff, Planning Commission and Council. Variances are not intended to be used for purpose other than neccessity.The proposed height and scale of this and other developments is not consistent with the residential community or the General Plan.

_____Thank you._____

Thank you for your support protecting the future of our neighborhood

Petition Opposing the Height Variance and New Construction at 1113 Kings Road

To the Newport Beach Planning Commission and City Council

First and Last Name: CHRISTINE CARR

Street Address: 2717 CLIFF DR NEWPORT BEACH CA.

Signature: [signature]

Comments: Thank you for caring!

Please return to the mailbox of 1110 Kings Rd by 11am on Tuesday, May 21st.

Thank you for your support protecting the future of our neighborhood

Petition Opposing the Height Variance and New Construction at 1113 Kings Road

To the Newport Beach Planning Commission and City Council

First and Last Name: Betty Cecil Demmer

Street Address: 2812 Cliff Drive

Signature: Betty A. Demmer

Comments: _____

Please return to the mailbox of 1110 Kings Rd by 11am on Tuesday, May 21st.

Thank you for your support protecting the future of our neighborhood

Petition Opposing the Height Variance and New Construction at 1113 Kings Road

To the Newport Beach Planning Commission and City Council

First and Last Name: PORTIA WEISS

Street Address: 421 San Bernardino Ave 92663

Signature: Portia Weiss

Comments: Adherence to building codes builds stronger community bonds.

Please return to the mailbox of 1110 Kings Rd by 11am on Tuesday, May 21st.

Thank you for your support protecting the future of our neighborhood

Petition Opposing the Height Variance and New Construction at 1113 Kings Road

To the Newport Beach Planning Commission and City Council

First and Last Name: Daniel Clark

Street Address: 415 San Bernardino Ave

Signature: Daniel Clark

Comments: Keep to present established heights

Please return to the mailbox of 1110 Kings Rd by 11am on Tuesday, May 21st.

Thank you for your support protecting the future of our neighborhood

Petition Opposing the Height Variance and New Construction at 1113 Kings Road

To the Newport Beach Planning Commission and City Council

First and Last Name: Jean G. Clark (Peggy)

Street Address: 415 San Bernardino Ave.

Signature: Jean Clark

Comments: Keep to present limits - please!

Please return to the mailbox of 1110 Kings Rd by 11am on Tuesday, May 21st.

Thank you for your support protecting the future of our neighborhood

Petition Opposing the Height Variance and New Construction at 1113 Kings Road

To the Newport Beach Planning Commission and City Council

First and Last Name: Richard Weiss

Street Address: 421 San Bernardino Ave

Signature: R Weiss

Comments: _____

Please return to the mailbox of 1110 Kings Rd by 11am on Tuesday, May 21st.

Thank you for your support protecting the future of our neighborhood

Petition Opposing the Height Variance and New Construction at 1113 Kings Road

To the Newport Beach Planning Commission and City Council

First and Last Name: Remington Weiss

Street Address: 421 San Bernardino Avenue

Signature: Remy Weiss

Comments: _____

Please return to the mailbox of 1110 Kings Rd by 11am on Tuesday, May 21st.

Thank you for your support protecting the future of our neighborhood

Petition Opposing the Height Variance and New Construction at 1113 Kings Road

To the Newport Beach Planning Commission and City Council

First and Last Name: VICKI RONALDSON

Street Address: 506 SAN BERNARDINO AVE, NB

Signature: Vicki M Ronaldson

Comments: PLZ MAINTAIN HEIGHT LIMITS.

Please return to the mailbox of 1110 Kings Rd by 11am on Tuesday, May 21st.

Thank you for your support protecting the future of our neighborhood

Petition Opposing the Height Variance and New Construction at 1113 Kings Road

To the Newport Beach Planning Commission and City Council

First and Last Name: DON BRONALDSON

Street Address: 506 SAN BERNARDINO AVE NB

Signature: [signature]

Comments: _____

Please return to the mailbox of 1110 Kings Rd by 11am on Tuesday, May 21st.

Thank you for your support protecting the future of our neighborhood

Petition Opposing the Height Variance and New Construction at 1113 Kings Road

To the Newport Beach Planning Commission and City Council

First and Last Name: Barbara Lyon

Street Address: 427 San Bernardino Avenue

Signature: Barbara Lyon

Comments: _____

Please return to the mailbox of 1110 Kings Rd by 11am on Tuesday, May 21st.

Thank you for your support protecting the future of our neighborhood

Petition Opposing the Height Variance and New Construction at 1113 Kings Road

To the Newport Beach Planning Commission and City Council

First and Last Name: EDWARD LYON

Street Address: 427 SAN BERNARDINO AVENUE. NB

Signature: [signature]

Comments: _____

Please return to the mailbox of 1110 Kings Rd by 11am on Tuesday, May 21st.

Thank you for your support protecting the future of our neighborhood

Petition Opposing the Height Variance and New Construction at 1113 Kings Road

To the Newport Beach Planning Commission and City Council

First and Last Name: Lu Baker

Street Address: 413 Holmwood Dr NB

Signature: L Baker

Comments: _____

Please return to the mailbox of 1110 Kings Rd by 11am on Tuesday, May 21st.

Thank you for your support protecting the future of our neighborhood

Second Signature:

Thomas Baker
413 Holmwood Dr. NB
Thomas Baker

Petition Opposing the Height Variance and New Construction at 1113 Kings Road

To the Newport Beach Planning Commission and City Council

First and Last Name: Gail Moores

Street Address: 428 Santa Ana Ave.

Signature: [signature]

Comments: _____

Please return to the mailbox of 1110 Kings Rd by 11am on Tuesday, May 21st.

Thank you for your support protecting the future of our neighborhood

Petition Opposing the Height Variance and New Construction at 1113 Kings Road

To the Newport Beach Planning Commission and City Council

First and Last Name: Robert Moore

Street Address: 4220 Santa Ana NB

Signature: [signature]

Comments:

Please return to the mailbox of 1110 Kings Rd by 11am on Tuesday, May 21st.

Thank you for your support protecting the future of our neighborhood

Petition Opposing the Height Variance and New Construction at 1113 Kings Road

To the Newport Beach Planning Commission and City Council

First and Last Name: Erin Lavelle

Street Address: 321 Santa Ana Ave.

Signature: E. Lavelle

Comments: _____

Please return to the mailbox of 1110 Kings Rd by 11am on Tuesday, May 21st.

Thank you for your support protecting the future of our neighborhood

Petition Opposing the Height Variance and New Construction at 1113 Kings Road

To the Newport Beach Planning Commission and City Council

First and Last Name: Marjaneh Goodarzy

Street Address: 445 Santa Ana Ave.

Signature: [signature]

Comments: Please also put a stop to Black Roofs and developer designs that are repeated everywhere.

Please return to the mailbox of 1110 Kings Rd by 11am on Tuesday, May 21st.

Thank you for your support protecting the future of our neighborhood

Petition Opposing the Height Variance and New Construction at 1113 Kings Road

To the Newport Beach Planning Commission and City Council

First and Last Name: JAMES WARD

Street Address: 424 SANTA ANA AVE.

Signature: James Ward

Comments: Elizabeth C Ward.

next page address

me

Please return to the mailbox of ~~1110 Kings Rd by 11am~~ on Tuesday, May 21st.

Thank you for your support protecting the future of our neighborhood

Petition Opposing the Height Variance and New Construction at 1113 Kings Road

To the Newport Beach Planning Commission and City Council

First and Last Name: Elizabeth Ward

Street Address: 424 Santa Ana Avenue

Signature: on previous page

Comments: _____

Please return to the mailbox of 1110 Kings Rd by 11am on Tuesday, May 21st.

Thank you for your support protecting the future of our neighborhood

Petition Opposing the Height Variance and New Construction at 1113 Kings Road

To the Newport Beach Planning Commission and City Council

First and Last Name: KAYVON GOODARZY 92663

Street Address: 445 Santa Ana Av. Newport Beach, CA

Signature: [signature]

Comments: I hereby oppose the height variance on the above mentioned project.

Please return to the mailbox of 1110 Kings Rd by 11am on Tuesday, May 21st.

Thank you for your support protecting the future of our neighborhood

Talk to you later about this

Petition Opposing the Height Variance and New Construction at 1113 Kings Road

To the Newport Beach Planning Commission and City Council

First and Last Name: Joan McCauley

Street Address: 542 Santa Ana Ave N.B. 92663

Signature: Joan McCauley

Comments: _____

Please return to the mailbox of 1110 Kings Rd by 11am on Tuesday, May 21st.

Thank you for your support protecting the future of our neighborhood

Petition Opposing the Height Variance and New Construction at 1113 Kings Road

To the Newport Beach Planning Commission and City Council

First and Last Name: Jim Mosher

Street Address: 2210 Private Rd

Signature: [signature]

Comments: _____

Please return to the mailbox of 1110 Kings Rd by 11am on Tuesday, May 21st.

Thank you for your support protecting the future of our neighborhood

Petition Opposing the Height Variance and New Construction at 1113 Kings Road

To the Newport Beach Planning Commission and City Council

First and Last Name: Lynn Lorenz

Street Address: 434 Redlands Avenue

Signature: Lynn Lorenz

Comments: _____

Please return to the mailbox of 1110 Kings Rd by 11am on Tuesday, May 21st.

Thank you for your support protecting the future of our neighborhood

Petition Opposing the Height Variance and New Construction at 1113 Kings Road

To the Newport Beach Planning Commission and City Council

First and Last Name: Tammy Schmidt

Street Address: 2909 BROAD ST.

Signature: [signature]

Comments: _____

Please return to the mailbox of 1110 Kings Rd by 11am on Tuesday, May 21st.

Thank you for your support protecting the future of our neighborhood

Petition Opposing the Height Variance and New Construction at 1113 Kings Road

To the Newport Beach Planning Commission and City Council

First and Last Name: Gary Ranes

Street Address: 2805 Broad St.

Signature: G. Ranes

Comments: _____

Please return to the mailbox of 1110 Kings Rd by 11am on Tuesday, May 21st.

Thank you for your support protecting the future of our neighborhood

Petition Opposing the Height Variance and New Construction at 1113 Kings Road

To the Newport Beach Planning Commission and City Council

First and Last Name: Birute Ranes

Street Address: 2805 Broad Street N.B. 92663

Signature: Birute Ranes

Comments: _____

Please return to the mailbox of 1110 Kings Rd by 11am on Tuesday, May 21st.

Thank you for your support protecting the future of our neighborhood

From: Jerry Fink <jerryfink@earthlink.net>
Sent: Monday, May 20, 2019 10:19 PM
To: Planning Commissioners
Cc: 'Jerry Fink'
Subject: PA2019-060 Reed Residence Variance Request
Attachments: City of Newport Beach - Reed Residence - Jerome Fink letter 5-20-19.pdf

Chair Zak and Members of the Planning Commission,

Please see the attached letter in support of the above referenced to be built residence. I am a resident on Kings Road.

Sincerely,

Jerry

Jerome A. Fink
(714) 293-0888
jerryfink@earthlink.net

Please note new address:
1511 Kings Road
Newport Beach, CA 92663

May 20, 2019

City of Newport Beach
Planning Commission
100 Civic Center Drive
Newport Beach, CA 92660

Subject: PA2019-060 Reed Residence Variance Request

Chair Zak and Members of the Planning Commission,

I reside at 1511 Kings Road and am writing to voice my support for the requested height variance for the Reed residence. The staff report presented a great amount of information regarding the topographic constraints of the Reed's property including renderings showing the location of the gully which is the reason for the requested variance. The information provided in the staff report was helpful in understanding the uniqueness of the property and that the gully is an unusual site feature that burdens the property with multiple sloping angles and directions that does not generally apply to the other properties in the neighborhood. I think that each variance should be carefully considered by the City on a case by case basis, and this variance is appropriate.

The design of the home is tasteful and in character with our surrounding community. If the home were to be built on a flat lot, or if there were not a gully on the property, there wouldn't be an issue with height so it seems that the Reed's have adequately demonstrated that a variance is the appropriate discretionary action.

Sincerely,

Jerry Fink
1511 Kings Road
Newport Beach, CA 92663

From: Lee, Amanda
Sent: Tuesday, May 21, 2019 7:43 AM
To: Murillo, Jaime
Subject: FW: Support of Variance Request--Reed Residence
Attachments: Fullerton Ave.pdf

From: Evan Moore <evan@strattfordcapital.com>
Sent: Tuesday, May 21, 2019 7:41 AM
To: Planning Commissioners <PlanningCommissioners@newportbeachca.gov>
Subject: Support of Variance Request--Reed Residence

To Whom it May Concern-

Please see my attached letter in support of the variance request for the Reed Residence on King's Road in Newport Beach. I believe this to be Agenda Item #4.

Thank you for your consideration.

Evan Moore
Strattford Capital, LLC
18100 Von Karman Ave., Suite 850 • Irvine, CA 92612
T 949.381.3445 • C 650.380.3702
evan@strattfordcapital.com

May 21, 2019

VIA ELECTRONIC DELIVERY:
planningcommissioners@newportbeachca.gov

Peter Zak, Chair, Planning Commission
City of Newport Beach
100 Civic Center Drive
Newport Beach, CA 92660

Subject: Variance Request – Reed Residence – Agenda Item #4

Dear Chair Zak,

I support the homeowner's request for a variance. I have reviewed the plans and the City's Staff Report, and there is no doubt that the property has unique topographic challenges. Such challenges do not exist at the vast majority of lots on Kings Road and, more generally, within the entire City of Newport Beach. It appears from the exhibits provided in the report that a variance is warranted in this specific case, especially in light of the fact that that the city has previously approved variances for this property and the property adjacent to it.

For the homeowner to avoid an over-height determination due to the gully, he would have to build the house with a 19-foot setback from the eastern property line – such action would deprive them of property rights enjoyed by the surrounding neighborhood. With an approved variance, the homeowner would not be gaining any additional privileges, but instead will likely be building less square footage than he otherwise would have if he were able to fully maximize the use of the eastern side of the property, or if he were to step the property further down the slope towards Coast Highway.

The requested height increase is beyond reasonable given the slope of the gully. The variance will NOT provide any additional square footage for the homeowner, nor will it give the homeowner any additional building height, which provides benefit to residents on both sides of Kings Road. The proposed residence is of quality design, with articulation to relieve massing along Kings Road, and will be several feet lower than the 29-foot height limit.

Newport Beach does not protect private views. To do so in this case would be contrary to the City's own General Plan and Zoning regulations and would set bad precedent moving forward. I urge the Planning Commission to approve the requested height variance.

Sincerely,

Evan Moore
Fullerton Ave

CC Members of the Planning Commission
Jaime Murillo

From: Lee, Amanda

Sent: Tuesday, May 21, 2019 8:37 AM

To: Murillo, Jaime

Subject: FW: 1113 Kings Rd - Letter Opposing Height Variance and New Construction

Attachments: 1110 Kings Rd View.jpg

From: TJ Williams <twilliams@w-realtygroup.com>
Sent: Tuesday, May 21, 2019 8:32 AM
To: Planning Commissioners <PlanningCommissioners@newportbeachca.gov>
Subject: 1113 Kings Rd - Letter Opposing Height Variance and New Construction

Jaime Murillo,

Thank you for taking the time to read this letter. I'm the owner of 1110 Kings Rd. We are located directly across the street from the subject property, 1113 Kings Rd. The reason for my letter is to express my grave concerns for the proposed new construction sitting across our street. This new monstrosity of a property will not only affect my property but surrounding properties as well. The impact on our neighborhood will be addressed at the variance hearing on Thursday, May 23rd, therefore I would like to illustrate the direct impact on our property and the issues with the overall project.

When this property was purchased it came with a lot of tricky slope points. When standing on the street and looking at 1113 Kings Road the left (south) side garage is already at a maximum as approve by a previous height variance from previous owners. The house directly to the left demonstrates the true grade level. This a ravine (for lack of a better word) that drastically drops. This area is a little grey on the city's proposal plotting. We argue the "grade level" is not properly represented and have valid information to back that statement. We are arguing the proposed plans be taken off and reviewed based on the proper grade heights of the property.

The present owners of 1113 Kings Road are proposing to build a massive home just under 11,000 square feet. As it may be their right they are completely ignoring the neighbors and their concerns. They can build this size of home without obstructing and devaluing other neighbor's property by simply building down the slope (like most on Kings Road do) and not up high to block the ocean, sky and sunlight from multiple surrounding neighbors.

As you can see from the photo provided, we will lose our entire view directly in front of our property. The view will be so severely impacted that we won't even be able to see the blue sky from our lower level when calculating their proposed house height. The new construction will not only obstruct our views but this obstruction will have a financial impact on our property as

well. If the owners, of 1113 Kings Rd are allowed to proceed with their proposed plans, our neighborhood is in jeopardy of losing its charm and neighborly spirit, our view along with multiple other neighbor's views will be impacted, the value of our properties will be impacted and our privacy will be impacted. Our master bedroom is located in the front portion of our house on the second level. If approved, 1113 Kings Rd will have a direct sight line into my master bedroom impacting our privacy.

After meeting with staff and reviewing the plans, how staff came to decide on the five or six grade points used to determine the "natural grade" is not only confusing but doesn't seem to comply with the other sloping lots on our street. There doesn't seem to be a uniform formula determining the grade point but rather than the influence of their architect which is unfair to all our neighbors. There is a 20ft difference in sloping height from the north side of the lot to the south side but the owners of 1113 Kings Rd are still proposing over 29ft roof heights, hence this variance hearing. The impact to our property, their "neighbor" and the surrounding homes does not warrant approval and their current plans should be reconfigured to be more in compliance with the surrounding homes. I, along with many other neighbors, do not want this massive property to be built as proposed and would like to see the planning commission deny this request and make the owners of 1113 Kings Rd reconfigure their proposed plans to limit the impact this property will have not only on my property but my neighbors as well.

I appreciate you taking the time to read this letter and hope you will see all the negatively impacting factors this new construction will have on our neighborhood.

TJ Williams

1110 Kings Rd

1110 Kings Rd View.jpg



From: Cordoves, Giovanni <gcordoves@kbs.com>
Sent: Tuesday, May 21, 2019 8:52 AM
To: Planning Commissioners
Subject: Reed Residence (1113 Kings Road) Variance Application – Planning Commission Agenda Item 4, 5/23/2019
Attachments: REED Variance Letter 5-21-2019.pdf

To whom it may concern:

Please refer to the attached letter of support for the granting of the requested variance noted in the subject line above.

Regards,

Giovanni Cordoves

KBS
Giovanni Cordoves | SVP, Acquisitions/Co-Director, Asset Management
800 Newport Center Drive, Suite 700 | Newport Beach, CA 92660
Office: (949) 797-0324 | Website: www.kbs.com

KBS

May 21, 2019

VIA ELECTRONIC MAIL

City of Newport Beach
Planning Commission
100 Civic Center Drive
Newport Beach, CA 92660

Re: Reed Residence (1113 Kings Road) Variance Application – Agenda Item 4, 5/23/2019

Dear Chair Zak and Members of the Planning Commission:

The Reed residence design is compatible with the surrounding community and has my support for a height variance due to the unique and large gully on the property. I have reviewed the plans and the detailed explanations and conclusions within staff report and which clearly notes the variance in question to be for a very modest area. I further support the variance because the over-height features will not be visible from Kings Road or from the residences across the street as those portions of the Reed residence would be located behind the height-compliant portions of the home.

In my opinion, this is a reasonable request for what is an extremely slight variance to accommodate a uniquely burdened site and I urge the Planning Commission to approve the variance on May 23, 2019.

Sincerely,

Giovanni Cordoves
Senior Vice President, Acquisitions & Co-Director, Asset Management

KBS Realty Advisors
800 Newport Center Drive, Suite 700, Newport Beach, CA 92660 | **Tel** 949.417.6500 | **Fax** 949.417.6501

From: Evan Slavik <eslavik@markiv.com>
Sent: Tuesday, May 21, 2019 9:02 AM
To: Planning Commissioners
Subject: Reed Residence Residential Variance (PA2019-060)
Attachments: Reed Residence Residential Variance Support Letter - 721 St James Road.pdf

Chair Zak and Planning Commissioners,

Please find the attached letter in support of the Reed Residence Residential Variance (PA2019-060). If you have any questions related to my position on this matter, please don't hesitate to call.

Thank you,

Evan Slavik

President of Real Estate
Mark IV Capital, Inc.
4450 MacArthur Blvd. | 2nd Floor
Newport Beach, CA 92660
T 949.509.1444
F 949.509.1104
www.markiv.com

May 21, 2019

City of Newport Beach
Planning Commission
100 Civic Center Drive
Newport Beach, CA 92660

Subject: Reed Residence Residential Variance (PA2019-060)

Chair Zak and Planning Commissioners,

I reside that 721 St. James Road and I support the Reed residence application for a variance. I have read the staff report and understand that the issuance of a variance to be the correct course of action to preserve the homeowner's right to enjoy their property. If the variance were not granted a large portion of the property would be unbuildable, which would deprive the Reeds of a substantial property right.

The staff report describes, in great detail, the unique topographical constraint that the homeowner had to contend with when designing the home. It looks to me that much time and consideration has been given on all accounts by City staff and the homeowner to ensure that the height encroachments are truly a result of the gully and would not be visually higher than an portion of the residence as viewed from Kings Road because they are located behind the front of the structure, which does not need a variance.

It's clear that granting of the variance is necessary for the preservation and enjoyment of substantial property rights of the homeowner.

Sincerely,



Evan Slavik
721 St. James Rd.
Newport Beach, CA 92663

From: Gretchen Krebs <gretchen@promogiant.com>

Sent: Tuesday, May 21, 2019 9:42 AM

To: Planning Commissioners

Subject: 1113 Kings Road

Attachments: 245 Kings krebs .docx

Dear Planning Commission,

I hope this letter finds you well. I've attached a letter in support of the new build project at 1113 Kings Road.

Thank you,

Brian and Gretchen Krebs

May 20, 2019

City of Newport Beach
Planning Commission
100 Civic Center Drive
Newport Beach, CA 92660

Subject: Reed Residence Residential Variance Request (PA2019-060)

Dear Chair Zak:

I reside at 245 Kings and am in support a height variance for the residence at 1113 Kings Road. I was really surprised to read in the City's Staff Report that the homeowner, as a matter of right, could build the entire frontage of the home up to 29 feet and a maximum of 29,000 square feet. Instead, the home is being built to a maximum frontage height of 25.8 feet and is substantially less square footage, which is completely contrary to the idea that the homeowner is attempting to "max out" the coverage as it relates to building height or to square footage.

The homeowner's lot is large and topographically challenged with multiple sloping angles, plain and simple, and this shouldn't deprive them from the rights that every other homeowner enjoys. They are not requesting a variance for the setbacks or the square footage, and the height at the front of the house is respectful considering they could build to 29 feet. The illustrations provided on page 8 of the staff report presents a great visual for how minimal the areas of height encroachment are from Kings Road.

The homeowner rights should be upheld and a variance issued for the homeowner to be able to enjoy their property in the same capacity as everyone else in the area.

Sincerely,

Brian Krebs

From: Jeanne Fobes <jeannefobes@gmail.com>
Sent: Tuesday, May 21, 2019 10:06 AM
To: Planning Commissioners
Subject: Height Variance Request: Property located at 1113 Kings Road

I write to request that you deny the request for a height variance on the subject property. This is already one of the largest lots on Kings Road and its view of the harbor and the ocean is remarkable. Surely this is enough!!! The purchasers knew what type of parcel it was when they purchased 1113 Kings Road and should therefore, build to the current codes that apply and not deviate from them in any manner.

Please ensure that the plans for this home comply with the existing set-backs and heights in Cliff-Haven.

Thank you.

A constituent,
Jeanne Fobes (Newport Heights)

From: Elizabeth N. Gruber <dizzielizzie76@yahoo.com>
Sent: Tuesday, May 21, 2019 10:14 AM
To: Planning Commissioners
Subject: Fwd: Gruber 2.docx
Attachments: Gruber 2.docx

>

May 21, 2019

City of Newport Beach
Planning Commission
100 Civic Center Drive
Newport Beach, CA 92660

Re: Reed Residence Residential Variance Item #4

Chair Zak and Planning Commissioners,

I live in Newport Heights and I fully support the requested height variance for 1113 Kings Road due to the gully located on the property that slopes significantly in both a north-south direction, as well as east-west direction. There are very few lots that possess such challenging topography in Newport Beach, and the requested variance seems very reasonable.

The Reeds have designed a home that is compatible with our community despite the challenge created by the topography. It is my belief that the new home with add value to my home and the surrounding neighbors. I strongly urge you to support this variance.

Sincerely,

Liz Gruber

cc. James Campbell

From: TJ Williams <twilliams@w-realtygroup.com>
Sent: Tuesday, May 21, 2019 10:32 AM
To: Planning Commissioners
Subject: 1113 Kings Rd - Opposition Letter from Setsuko Krickl (520 Kings Rd)
Attachments: Krickl Opposition Letter.pdf

To whom it may concern:

Re: 1113 Kings Road height variation request

My husband and I have lived on 520 Kings Road since 1986 and have seen the many changes. When this street was developed early 50's, the houses were meant to be beach cottages and all the houses were one story. Unfortunately nobody at that time thought of having a home owner's association which would have kept the cliff side homes with one story high from the street level with allowance of going down the cliff to the maximus height, which would let the houses on the north side have as much view as the cliff side. Most of us on the north side have lost the view due to building of large homes on the cliff side.

The new owners of 1113 Kings were obviously aware of the topography of the property before their purchase. A 18,000 square feet lot is one of the largest on Kings Road. There are plenty of room to build a home within the current height limit. There are many homes in Emerald Bay, Laguna Niguel, Irvine Terrace in Corona del Mar that are built on very steep property, which are kept within 15 or 16 feet high from the street level

My husband and I OPPOSE the height variance at 1113 Kings Road

Sincerely,

Setsuko Krickl

Setsuko Krickl

520 Kings Road

From: Portia <portiaweiss@gmail.com>
Sent: Tuesday, May 21, 2019 12:24 PM
To: Planning Commissioners
Cc: jaimeMurillo@aol.com; CityofNewportPlanningDepartment@aol.com
Subject: PA2019/060, Activity VA2019-002 Variance Request for 1113 Kings Road

Honorable Planning Commissioners,

Please do not grant the significant height variance to the applicants of 1113 Kings Road. One variance leads to a chain of additional variances. Unnecessary variances break down the integrity of our neighborhoods and creates detrimental division in our community. Building codes are established to provide guidelines for all members of the community to follow and to maintain social and architecturally aesthetic harmony.

Appreciatively,

Portia Weiss

421 San Bernardino Avenue

May 17, 2019

The City of Newport Beach
Community Development Department
Planning Division, 100 Civic Center Drive
P.O. Box 1768
Newport Beach, California 92658-8915

RECEIVED BY
COMMUNITY
DEVELOPMENT
MAY 20 2019
CITY OF
NEWPORT BEACH

Re: 1113 Kings Road Height Variation Request

To: J. Murillo

As a longtime resident of Kings Road and business owner in Newport, I am opposed to this height variance request. With my home in very close proximity to 1113 Kings Road, my view to the South West would be diminished if this deviation were to be approved. This would not be fair to me or the other neighbors.

Please DO NOT approve this height variation request for 1113 Kings Road, Newport Beach. 92663.

Sincerely,

Jack Mau
1100 Kings Road
Newport Beach, California 92663

From: ghassem azadian <gazadian@gmail.com>
Sent: Tuesday, May 21, 2019 4:25 PM
To: Planning Commissioners
Subject: Reed Residence, Variance Request - Agenda Item #4
Attachments: 1121 Kings Road - Azadian and Reed.docx

Hello Chair Zak,

Attached please find my support letter for the variance request related to the Reed Residence.

Thank you

Gus Azadian
1121 Kings Road
Newport Beach, CA 92663

May 21, 2019

City of Newport Beach
Attention: Newport Beach Planning Commission
100 Civic Center Drive
Newport Beach, CA 92660

Subject: Reed Residence, Variance Request – Agenda Item #4

Dear Chair Zak,

The Reed residence has my full support. As our immediate next-door neighbor, the Reeds have been open and honest about their plans for their home. I have had the opportunity to see the architectural model and understand the complexity of the slopes that form the gully for which the variance is needed. I appreciate the outreach that the Reeds have done and I support their variance application.

I also understand that the area where the variance is requested will not be visible from the street and, in fact, the front of the home is being built to a height lower than the 29 feet maximum. I am a strong supporter of property rights and the facts supporting a variance are quite clear.

- There is an existing variance for the property.
- The height variance is only requested for small areas that directly correspond to the gully – and these areas are not visible from the street.
- The Reeds could build higher at the street level and have chosen to build several feet lower than the 29’ height limit out of respect for the neighbors.
- Even without the variance the house could be built to 29’ at the street.
- Without the variance the house would need to be setback 19’ from the easterly property line – a 19’ setback would be inconsistent with the pattern of existing development in the neighborhood.
- There is no deed restriction limiting the height of the residence and the City does not provide view protection for private views.

Please vote to approve the variance at your meeting on May 23, 2019. The Reed family should be granted the variance and the afforded the right to build their home.

Sincerely,

Gus Azadian
1121 Kings Road
Newport Beach, CA 92663

Capital One Public

From: Portia Weiss
To: Planning Commissioners
Subject: PA2019/060, Activity VA2019-002 Variance Request for 1113 Kings Road
Date: Tuesday, May 21, 2019 6:03:33 PM

Honorable Planning Commissioners,

Please do not grant the significant height variance to the applicant of 1113 Kings Road. One variance leads to a chain of additional variances. Unnecessary variances break down the integrity of our neighborhoods and creates detrimental division in our community. Building codes are established to provide guidelines for all members of the community to follow and to maintain social and architecturally aesthetic harmony.

Appreciatively,

Portia Weiss

421 San Bernardino Avenue

From: Jon Fosheim <jfosheim33@gmail.com>
Sent: Tuesday, May 21, 2019 8:27 PM
To: Planning Commissioners
Subject: Fwd:
Attachments: Foshiem.docx

Please see the attached letter below for my full support of the variance proposed at 1113 Kings Road.

May 22, 2019

City of Newport Beach
Planning Commission
100 Civic Center Drive
Newport Beach, CA 92660

Subject: Reed Residence Variance VA2019-002

Dear Chair Zak and Planning Commissioners:

Until recently my wife and I lived immediately next door to the Reeds at 1101 Kings Rd. We now own a house just down the street from them (1501 Kings Rd). We are in support of the requested height variance. The gully that is located between the two homes is incredibly steep. There are already variances for the two residences because of the gully.

As pointed out in the staff report, the portions of the home that exceed the height limit will not cause a visual impact for the homes located across Kings Road or in the greater community. These areas will not even be visible from Kings Road or from across the street. However, these
over height areas would visible from my prior residence and it's my opinion that the Reeds have done a good job to minimize the massing in this area. They have utilized additional setbacks at the upper level, down pitched the roof planes, minimized the development on the eastern side of the property, and created several patio areas which provide relief from a large structure.

The proposed home is designed on one of the biggest lots in the Newport Heights-Cliff Haven community and it could be substantially larger than what they are proposing. The new residence will be in character with the other homes in the community. We are sorry that we could not attend the meeting in person as we will be out of town. Please consider our strong support for the project and approve the requested variance at your meeting on May 23.

Sincerely,
Jon and Penny Foshiem
1501 Kings Road
Newport Beach, CA 92630

c. Jaime Murillo, Planner

From: Gary Sokolich <Gary_Sokolich@dslextreme.com>
Sent: Wednesday, May 22, 2019 10:35 AM
To: Planning Commissioners
Subject: 1113 Kings Road Variance VA2019-002

Honorable Planning Commissioners

As a resident of Newport Beach, who has lived at 801 Kings Road for the past thirty years, I am writing to ask you to deny the requested height variance VA2019-002 pertaining to the proposed construction of a 10800 sq ft residence at 1113 Kings Road.

There are may reasons why the requested variance should be denied. However, in this communication I want to address the handful of emphasized bullet points in the section of the Staff Report entitled "Required Variance Findings" .

1) The assertion by Staff that "*There are special or unique circumstances or conditions applicable to the subject property...that do not apply generally to other properties in the vicinity....."* is grossly misleading because it fails to paint a complete picture of the actual situation. Specifically, it fails to point out the fact that the lot is considerably wider than adjacent lots in order to compensate for the existence of the gully and to provide comparable buildable area. So when viewed in terms of buildable area, the circumstances of the subject property are not unique.

2) The assertion by Staff that "*Strict compliance with Zoning Code requirements would deprive the subject property of privileges enjoyed by other properties in the vicinity"* is preposterous, absurd and demonstrably false. Aside from the presence and location of the gully, which is compensated for by the extra width of the lot, the subject property has as much if not more buildable area as any of the adjacent properties.

3) The assertion by Staff that "*Granting of the variance is necessary for the preservation and enjoyment of substantial property rights of the applicant"* is the exact opposite of the reality of the situation. What is appropriate and necessary is the preservation and enjoyment of substantial property rights of the nearby neighbors, and the only way to do that is to deny the requested variance. .

4) The assertion by Staff that "*Granting of the variance will not constitute a grant of special privilege....."* could not be further from the truth. The fact of the matter is that granting the requested variance is a perfect example of what constitutes special privilege.

5) The assertion by Staff that "*Granting of the variance will not be detrimental to the harmonious and orderly growth of the City" is naive, short sighted and* denies the reality of the situation. The fact of the matter is that the requested variance is both unnecessary and inappropriate , and that approving it will set a very bad precedent that will have a detrimental impact involving all future constructions on the south side of Kings Road for decades to come.

In addition to the comments above, I would like to also express my displeasure with and concern about the blatant lack of objectivity that the Staff Report represents. The so-called "Findings" are not findings at all. In reality, they are nothing other than a compilation of unsubstantiated assertions and misrepresentations that reflect a clear bias in favor of the applicant and against the impact of the proposed construction on nearby neighbors. In that regard, the Staff Report is a disgrace, and those who prepared it and who approved it should be ashamed.

Lastly, whether the requested variance is granted or not, the construction of a new residence at 1113 Kings Road is going to have a detrimental impact on nearby neighbors. So the only choice before the Planning Commission at this time is how detrimental the inevitable impact is going to be.

W. Gary Sokolich, Ph.D.
Scientific & Technical Consultant
WGS & ASSOCIATES
801 Kings Road
Newport Beach CA 92663
,

From: Murillo, Jaime
Sent: Wednesday, May 22, 2019 12:29 PM
To: Lee, Amanda
Subject: FW: 1113 Kings Road | Reed Residential Variance (PA2019-060)

From: Josh Steinmann <josh.steinmann@gmail.com>
Sent: Wednesday, May 22, 2019 12:29 PM
To: Murillo, Jaime <JMurillo@newportbeachca.gov>
Subject: 1113 Kings Road | Reed Residential Variance (PA2019-060)

Mr. Murillo,
I own the property located at 910 Kings Road. I urge the Planning Commission to deny Resolution PC2019-015 rejecting Variance No. VA2019-002 (Attachment No. PC 1).

The City of Newport Beach Planning Commission Staff Report references two variances that the Planning Commission has granted (i.e., VA1034 in 1973 and VA1150 in 1989) in order to support the required findings to support the Reed Residential Variance (PA2019-060). Specifically, the Staff Report states that the prior granted variances support "2. Strict compliance with Zoning Code requirements would deprive the subject property of privileges enjoyed by other properties in the vicinity and under an identical zoning classification."

But, the prior variances do not support this finding for the proposed variance for 1113 Kings Road. In fact, the Staff Report states that the front of the residence is designed to a maximum height of 23.78 feet from existing grade at the front elevation. This design complies with the existing height requirement. As such, the applicant and subject property is not deprived of the privileges enjoyed by other properties in the vicinity and under an identical zoning classification.

Staff worked with the applicant to minimize the variance request. Those alternative options are included on page 15 of the Staff Report. Arguably, requiring the applicant to reduce the depth of the attached 1,295 square foot four-car garage, eliminate a main level patio roof and reduce the size of a teen room in a 3,000 square foot, single family residence does not constitute deprivation of the privileges enjoyed by other properties in the vicinity and under an identical zoning classification.

Further, the Staff Report states that these prior granted variances benefitting 1101 Kings Road permit a maximum structure height of 45 feet 6 inches and a deck height of 36 feet 6 inches as measured from existing grade. By granting the proposed variance, the Planning Commission would expand the number of variances along Kings Road and would create precedence for other properties to seek height variances (up to 45 feet 6 inches) in order to enjoy the privileges of other properties in the vicinity under an identical zoning classification.

We urge the Planning Commission to deny the requested variance and require the subject property to comply with the existing height restriction.

Best Regards,
Josh Steinmann
910 Kings Road
(415) 518-9004

From: Murillo, Jaime
Sent: Wednesday, May 22, 2019 1:55 PM
To: Lee, Amanda
Subject: FW: 1113 Kings Road
Attachments: Planning Commission Letter Re 1113 Kings Road 5-22-19.pdf

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From: Edward Selich <edselich@roadrunner.com>
Sent: Wednesday, May 22, 2019 1:34 PM
To: Zak, Peter <pzak@newportbeachca.gov>; Weigand, Erik <eweigand@newportbeachca.gov>; Lowrey, Lee <llowrey@newportbeachca.gov>; Ellmore, Curtis <CEllmore@newportbeachca.gov>; Kleiman, Lauren <lkleiman@newportbeachca.gov>; Koetting, Peter <pkoetting@newportbeachca.gov>; Kramer, Kory <kkramer@newportbeachca.gov>
Cc: Jurjis, Seimone <sjurjis@newportbeachca.gov>; Campbell, Jim <JCampbell@newportbeachca.gov>; Murillo, Jaime <JMurillo@newportbeachca.gov>
Subject: 1113 Kings Road

Dear Commissioners:

Please review the attached letter regarding 1113 Kings Road.

Edward Selich

Edward D Selich
627 Bayside Drive
Newport Beach Ca 92660

Planning Commission
City of Newport Beach
100 Civic Center Drive
Newport Beach Ca 92660

May 22, 2019

Re: 1113 Kings Road

Dear Commissioners:

As chair of the zoning code rewrite committee in 2010 I have been requested by the owners of 1113 Kings Road to elaborate on the intent of the establishment of grade procedures outlined in section 20.30.050 of the Newport Beach Municipal Code.

It was recognized during the 2010 code rewrite that establishment of grade on sloped lots would be difficult due to the numerous topographical configurations that could occur.

A basic procedure was developed for lots with slopes greater than 5%.

There was also a procedure for using additional points of elevation to establish grade on lots with slopes greater than 20%.

However, it was recognized that there would be lots with slopes in varying conditions where strict application of these procedures would not work.

Since it was impossible to predict all these future circumstances Section C, Establishment of Grade by the Director was added to the code to allow for establishment of grade for situations that neither of these techniques work:

"C. Establishment of Grade by Director. If the Director finds that the existing grade on the subject lot has been previously altered (e.g., contains retaining structures, property line walls, planters, or excavation/fill), or other conditions are present to the degree that the existing grade is not representative of the prevailing grades on adjoining lots and/or the general area and, therefore, is not appropriate for the purpose of establishing the grade of the subject lot, the Director may establish the grade that is reasonable and comparable with the grades of adjoining lots and that will not be detrimental or injurious to property and improvements on adjoining lots."

This particular lot falls into a gray area between the "Greater Than 20% Technique" and the "Establishment of Grade by Director".

Arguably either technique could be used. The staff has taken the conservative approach of using the "Greater than 20% Technique" along with a Variance which, in this situation, is entirely appropriate and what was intended in the Zoning Code rewrite.

This lot, with its unusual topography, is a textbook example of what this section of the zoning code was written for.

Edward D Selich

Cc: Jaime Murillo
Jim Campbell
Seimone Jurjis

From: Garciamay, Ruby

Sent: Wednesday, May 22, 2019 3:26 PM

To: Lee, Amanda; Juarez, Karla

Subject: FW: Project at 1113 Kings Road

From: luke@thedrufamily.com <luke@thedrufamily.com>
Sent: Wednesday, May 22, 2019 2:57 PM
To: Biddle, Jennifer <JBiddle@newportbeachca.gov>; Garciamay, Ruby <RGarciamay@newportbeachca.gov>; Mackinen, Traci <tmackinen@newportbeachca.gov>; Zak, Peter <pzak@newportbeachca.gov>; Weigand, Erik <eweigand@newportbeachca.gov>; Lowrey, Lee <llowrey@newportbeachca.gov>; Ellmore, Curtis <CEllmore@newportbeachca.gov>; Kleiman, Lauren <lkleiman@newportbeachca.gov>; Koetting, Peter <pkoetting@newportbeachca.gov>; Kramer, Kory <kkramer@newportbeachca.gov>
Cc: Campbell, Jim <JCampbell@newportbeachca.gov>
Subject: Project at 1113 Kings Road

I am opposed the variance for the house at 1113 Kings Road. They are asking for a variance because of the steep slope on the property. There are several reasons why this is now a valid reason for a variance;

1. All of the lots on the south side of Kings Road are on a similar slope
2. They had to know that there was a slope when they bought the Property.
3. There are many houses that are bigger that are under the height limit. They can go down to bet more space.

The real question here is, why does the city have zoning rules and a general plan, when almost every two weeks, there are projects before the planning commission for variances. Why do the residents of Newport Beach continually having to go before the city with objections to variances.

Regards

Luke Dru

Cliff Haven

From: Jason Finney <jasonsfinney@yahoo.com>
Sent: Wednesday, May 22, 2019 3:58 PM
To: Planning Commissioners
Subject: Reed Residence - Variance Application

May 22, 2019

City of Newport Beach

Planning Commission

100 Civic Center Drive

Newport Beach, CA 92660

Subject: Reed Residence Variance Application – Agenda Item 4

Dear Chair Zak and Members of the Planning Commission:

I support the granting of the requested variance for the Reed residence for the following reasons:

- There residence has been thoughtfully designed and fits the character of the newer homes that are being redeveloped in the community.

- The Reeds have been open and transparent with neighbors over the course of the design of the home.

- The gully hardship is the reason for the variance. If the home were being built on a flat lot or a consistent slope there would be no question that the design would be permitted by right.

- Depriving the Reeds of the ability to build their home to the width of their property in order to avoid building over the gully would be depriving them of their property rights.

- The portion of the roof that requires the variance is located in an area that will not be seen from Kings Road or from the houses across the street. It is also not the tallest part of the house so eliminating it won't make the home any smaller.

- Homes in that area on the bluffs of Kings Road have deed restrictions limiting development heights to one-story. The Reeds do not, and they should not be penalized for being a bluff top owner that can build up to two stories.

It's clear from reading the Staff Report and reviewing the plans that the Reeds' property possesses unique and challenging topography. The granting of a variance will ensure that they are able to continue to rightfully enjoy their property.

Sincerely,

Jason Finney

510 Kings Road

Newport Beach, CA 92663

From: Jim Mosher <jimmosher@yahoo.com>
Sent: Wednesday, May 22, 2019 5:00 PM
To: Planning Commissioners
Cc: Murillo, Jaime
Subject: Comment on PC Item 4 (Reed Residential Variance)
Attachments: 2019May23_PC_AgendaItem_4_Comments_JimMosher.pdf

Please find attached a brief comment on Item 4 on tomorrow's Planning Commission agenda (the Reed Residential Variance, PA2019-060) -- as much as I could complete by the 5:00 p.m. deadline.

Yours sincerely,

Jim Mosher

May 23, 2019, Planning Commission Item 4 Comments

These comments on a Newport Beach Planning Commission agenda item are submitted by:
Jim Mosher (jimmosher@yahoo.com), 2210 Private Road, Newport Beach 92660 (949-548-6229).

Item No. 4. REED RESIDENTIAL VARIANCE (PA2019-060)

I am concerned that this proposal is being considered without any meaningful simulations of what the completed project would look like from either Kings Road or Coast Highway.

In particular, Goal **NR 23** of our General Plan is that "*Development respects natural landforms such as coastal bluffs*," to which end Policy **NR 23.1** ("Maintenance of Natural Topography") was adopted to "*Preserve cliffs, canyons, bluffs, significant rock outcroppings, and* ***site buildings to minimize alteration of the site's natural topography and preserve the features as a visual resource***."

Nothing in the present proposal appears to further either that goal or its supporting policy.

As to whether the proposed development would actually be occurring on a coastal bluff, in addition to the reference to the property as "bluff top" in Section 3.A.1 of the proposed Resolution of Approval, it might be noted that the Land Use Element (see City Council Resolution No. 1988-100) previous to the present one noted on page 8: "*Natural coastal bluffs represent a significant scenic and environmental resource. As used in this Section, "coastal bluff' is any natural landform having an average slope of 26.6 degrees (50 %) or greater, with a vertical rise of 25 feet or greater*." And as to whether there is an inherent right to develop slope faces, it did not regard steeply sloping parts of lots as being developable at all: "***Buildable Lot Area****. The buildable lot area is the net parcel area* ***less any slope areas greater the Two to One*** *and less any submerged lot area*." (page 18)

Although it is an enduring mystery why Kings Road and the slopes below it are not in the Coastal Zone, our City's Coastal Land Use Plan (page 4-77) supports the notion they are indeed coastal bluffs, and therefore a visual resource worthy of protection under the Natural Resources Element our broader current General Plan:

"*Coastal bluffs are a prominent landform in Newport Beach. There are ocean facing coastal bluffs along the shoreline of Corona del Mar, Shorecliffs, and Cameo Shores. There are also coastal bluffs facing the wetlands of Upper Newport Bay, Semeniuk Slough, and the degraded wetlands of the Banning Ranch property. Finally,* ***there are coastal bluffs surrounding Lower Newport Bay. These can be seen along Coast Highway from the Semeniuk Slough to Dover Drive*** *and in Corona del Mar above the Harbor Entrance. These bluffs faced the open ocean before the Balboa Peninsula formed and are now generally separated from the shoreline. Coastal bluffs are considered significant scenic and environmental resources and are to be protected*."

In short, it is difficult to understand how the Planning Commission can be expected to evaluate this proposal without a clearer exposition of how it impacts significant resources protected by City policies not cited in the staff report.

From: TOMLU BAKER
To: Planning Commissioners; jaimeMurillo@aol.com; CityofNewportPlanningDepartment@aol.com
Cc: TOMLU BAKER
Subject: Variance---1113 Kings Road
Date: Thursday, May 23, 2019 12:26:02 AM

Planning Commissioners,
Please do not approve the variance of the project at 1113 Kings Road. The variance is not consistent or compatible with the Cliffhaven/Newport Heights neighborhood. The height variance will negatively impact the view from surrounding properties. It is difficult to imagine that the current proposed residential design (requiring variance) is the only design that this site will accommodate. My understanding is that the Staff has offered multiple options to the applicant who is not receptive and who persists on presenting the variance required design. The applicant should be asked to refine the design such as no variance is necessary. It is suggested that this project be continued so that variance eliminating design refinements may be accomplished by the applicant or the Planning Commission should deny at this time the current proposed project at 1113 Kings Road.

Thanks you,
Tom Baker
Newport Heights

From: TJ Williams <twilliams@w-realtygroup.com>
Sent: Thursday, May 23, 2019 10:49 AM
To: Planning Commissioners
Subject: 1113 Kings Rd: Petitions 81-85 Opposing the Height Variance and New Construction
Attachments: Petitions 81-85.pdf

TJ Williams
1110 Kings Rd

Petition Opposing the Height Variance and New Construction at 1113 Kings Road

To the Newport Beach Planning Commission and City Council

First and Last Name: Yuter Mau

Street Address: 1100 kings Road

Signature: [signature]

Comments: _____

Please return to the mailbox of 1110 Kings Rd by 11am on Tuesday, May 21st.

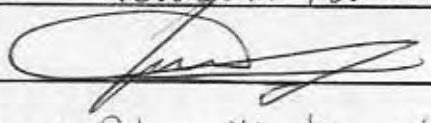
Thank you for your support protecting the future of our neighborhood

Petition Opposing the Height Variance and New Construction at 1113 Kings Road

To the Newport Beach Planning Commission and City Council

First and Last Name: Tom Carson

Street Address: 1810 Kings Road (Carson Family Home)

Signature: 

Comments: The Character of Kings Rd. will be changed and views obscured if heights are not kept as required. We know that variances set precedents as shown by 2 story homes on the cliff side which has ruined KingsRd.

Please return to the mailbox of 1110 Kings Rd by 11am on Tuesday, May 21st.

Thank you for your support protecting the future of our neighborhood

Petition Opposing the Height Variance and New Construction at 1113 Kings Road

To the Newport Beach Planning Commission and City Council

First and Last Name: Lorraine Carson

Street Address: 1810 Kings Rd.

Signature: [signature]

Comments: Height variances set precedentes that cause changes in the future which can change the character of the neighborhood. We are against any height changes.

Please return to the mailbox of 1110 Kings Rd by 11am on Tuesday, May 21st.

Thank you for your support protecting the future of our neighborhood

Petition Opposing the Height Variance and New Construction at 1113 Kings Road

To the Newport Beach Planning Commission and City Council

First and Last Name: Peter Carson

Street Address: 1810 Kings Rd.

Signature:

Comments: No height variances should be or never have been allowed. Our family home at 1810 King Rd. lost its beautiful view to the house across the street which should have been 1 story but because another's variance set a precedent so they were able to do the same. We are against height variances as unfair to neighbors.

Please return to the mailbox of 1110 Kings Rd by 11am on Tuesday, May 21st.

Thank you for your support protecting the future of our neighborhood

Petition Opposing the Height Variance and New Construction at 1113 Kings Road

To the Newport Beach Planning Commission and City Council

First and Last Name: Devin Merrill

Street Address: 1810 Kings Rd.

Signature: Devin Merrill

Comments: Our view from 1810 Kings Rd was obliterated by a two story house built across the road on the cliff, due to a height variance. This should never happen again. No height variances permitted

Please return to the mailbox of 1110 Kings Rd by 11am on Tuesday, May 21st.

Thank you for your support protecting the future of our neighborhood

Petition Opposing the Height Variance and New Construction at 1113 Kings Road

To the Newport Beach Planning Commission and City Council

First and Last Name: Valerie Carson

Street Address: 1810 Kings Rd.

Signature: Valerie J. Carson

Comments: No more variances should be granted! Especially on height. We lost our view due to a height variance on cliff side where the houses were to be kept at 1 story.

Please return to the mailbox of 1110 Kings Rd by 11am on Tuesday, May 21st.

Thank you for your support protecting the future of our neighborhood

Petition Opposing the Height Variance and New Construction at 1113 Kings Road

To the Newport Beach Planning Commission and City Council

First and Last Name: Jessamine Carson Merrill

Street Address: 1810 Kings Rd.

Signature: Jessamine Carson

Comments: Unfair to neighbors for one greedy person to change rules. The future can begin more and more variances if one is allowed. No height variances should be allowed.

Please return to the mailbox of 1110 Kings Rd by 11am on Tuesday, May 21st.

Thank you for your support protecting the future of our neighborhood

Petition Opposing the Height Variance and New Construction at 1113 Kings Road

To the Newport Beach Planning Commission and City Council

First and Last Name: John M Hogan

Street Address: 455 San Bernardino Ave

Signature:

Comments: One Variance leads to another variance

Please return to the mailbox of 1110 Kings Rd by 11am on Tuesday, May 21st.

Thank you for your support protecting the future of our neighborhood

Petition Opposing the Height Variance and New Construction at 1113 Kings Road

To the Newport Beach Planning Commission and City Council

First and Last Name: Gillian Hogan

Street Address: 455 San Bernardino Ave

Signature: Gillian Hogan

Comments: _____

Please return to the mailbox of 1110 Kings Rd by 11am on Tuesday, May 21st.

Thank you for your support protecting the future of our neighborhood

Petition Opposing the Height Variance and New Construction at 1113 Kings Road

To the Newport Beach Planning Commission and City Council

First and Last Name: Susan Hogan

Street Address: 455 San Bernardino Ave

Signature: Susan P Hog

Comments: _____

Please return to the mailbox of 1110 Kings Rd by 11am on Tuesday, May 21st.

Thank you for your support protecting the future of our neighborhood

From: Gordon A
To: Planning Commissioners
Date: Thursday, May 23, 2019 12:14:35 PM

ear Newport Beach City Planning Commission Members,

My name is Gordon Adams. I was born and raised in Newport Beach. My wife and I own 1800 Kings Rd. My mother and dad first moved to Kings Rd in 1977. My purpose in writing to you all of you today, quite simply, is to solicit your support to deny the variance exception being requested for 1113 Kings Rd. I'm not able to attend tonight's meeting to present these points in person so putting my thoughts in writing are the next best option.

Please consider the following points when making your decision. I'm sure some of the points will be one's you've heard before but I hope you'll strongly consider the much less obvious points that have very negative ramifications on our Kings Rd community and the city at large.

The obvious:

1. Why should one homeowner be granted a variance when it will negatively affects significantly more than one other homeowner. In this case the exception will impact the views of significantly more than just the homeowner across the street. So in this case one person gets the benefit and 6-8 homeowners will be permanently negatively affected...and possibly their home values with it.
2. The slippery slope: Once we grant one exception it just keeps opening the floodgates for more exceptions until eventually we don't have any controls. At the current pace, it won't be long before the entire cliff side wipes out the views from the street side. See the less so obvious impact of this below.
3. The homeowner requesting the variance has lived there for years so they had an obligation to know what they could and could not build without a variance. How big does a house need to be? I'm all for property owners being able to build their dream home but not where they need a variance that comes at the expense of others. The home we rebuilt did not have a single exception request.

The not so obvious:

1. These exceptions continue to pit neighbor against neighbor. In this case the family requesting the variance intentionally hid the request from his "so called" neighbor and tried to hide the notice for the meeting tonight in order to avoid the obvious concern it would cause. Just think how you would feel if your "neighbor" did the same thing to you. If we stop giving out these unnecessary variances people will stop asking for them and neighbors won't be hiding from each other. Just imagine how those neighbors are going to get along in the future. Obviously it's

going to permanently impact their relationship. Rather than building a community these exceptions turn neighbors against each other. You all have the authority and the responsibility to stop this from happening.
2. Why do Cameo Shores and Irvine Terrace have height restrictions that are maintained. Obviously they did not want one neighbor from being able to permanently negatively impact another neighbor and create the chaos that follows. That's the chaos we have on Kings Rd. As a result, there is nothing close to a neighborhood community on Kings Rd. We've been living here for two years and you can feel the tension between the two sides of the street. We moved here from Laguna Niguel and are amazed at how little community feel there is compared to other Newport Beach communities. I guarantee the home height and variance exception issue is a big reason. Every time a new homeowner tears down a home on the cliff side the homeowners on the street side are in a panic that their views and their home values are going take a hit.

Your job is to improve the lives of the people that live in Newport Beach. These sorts of variances don't accomplish that and, in fact, they hurt our city. I hope you'll take all of this in consideration when you vote on the issue before you tonight. Please don't hesitate to email me back or call me to discuss any of these points.

Respectfully,

Gordon Adams
949 233 6936

From: Murillo, Jaime
To: Lee, Amanda
Subject: FW: Reed Residence PA2019-060/VA2019-002 - Planning Commission Agenda Item #4 - Steinmann Response
Date: Thursday, May 23, 2019 3:59:36 PM

From: Pua Whitford <PWhitford@caaplanning.com>
Sent: Thursday, May 23, 2019 3:57 PM
To: Murillo, Jaime <JMurillo@newportbeachca.gov>
Cc: Shawna Schaffner <sschaffner@caaplanning.com>
Subject: Reed Residence PA2019-060/VA2019-002 - Planning Commission Agenda Item #4 - Steinmann Response

Hi Jaime,

We are providing this correspondence in response to a letter of opposition provided by Mr. Josh Steinmann, dated May 22, 2019. Mr. Steinman raised issue with granting of the variance due to it not meeting the finding that without it the property owner would be deprived of property privileges enjoyed by other properties and that the issuance of the variance would expand the number of variances along Kings Road.

The previous variance for the subject site was granted under the same condition and for the same reason as the current variance is being requested. There are several multi-directional slopes on the site that create a gully on the eastern edge of the subject site. The gully is pre-existing on the subject site; and therefore, the previous variance was approved for the existing structure to allow the structure to be built to what we observe as a uniform height, even at the point where the gully dips down.

The frontage of the home along Kings Road has been designed as thoughtfully as possible so as not to “max out” either the height or massing and does not require a variance for its features. The home is terraced down the slope and the area that requires the variance will not be visible from Kings Road or from the residences on the inland side of Kings Road.

A variance would not be necessary were it not for the topographic anomaly of the gully. Again, the variance will not permit any roof features to be higher than any other part of the roof. In fact, the area for which the variance is required is for the outer portion of eaves of the roof and at an elevation much lower than the ridgeline of the roof. The requested variance accounts for the mathematical calculation between grade of a parcel and the depth of the gully.

An aerial survey of the homes on Kings Road and in the surrounding community shows that the development for nearly every property is completely up to the minimum setback which in most cases is 4 feet. In order to avoid the gully the homeowner would need to set their home back 19 feet from the property line. The existing structure was granted a variance due to the gully in order for the homeowner to be able to build to the width of the property. The issuance of a variance would allow the home to be built the width of the lot and afford the homeowner the same privilege as enjoyed

by the rest of the community.

The property at 1101 Kings Road is the immediate next-door neighbor to the subject property. As identified in the Staff Report, this property shares the same topographic anomaly features as the subject property. The explicit purpose for the variance request is to allow the main level and a small portion of the upper eaves and deck the home to be built the width of the property by accounting for depth created by the gully at the eastern boundary of the subject site.

Please do not hesitate to contact us if you have any further questions.

Sincerely,
Pua

From: Murillo, Jaime
Sent: Thursday, May 23, 2019 4:42 PM
To: Lee, Amanda
Subject: FW: Reed Residence PA2019-060/VA2019-002 - Planning Commission Agenda Item #4 - Sokolich Response

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From: Pua Whitford <PWhitford@caaplanning.com>
Sent: Thursday, May 23, 2019 4:04 PM
To: Murillo, Jaime <JMurillo@newportbeachca.gov>
Cc: Shawna Schaffner <sschaffner@caaplanning.com>
Subject: Reed Residence PA2019-060/VA2019-002 - Planning Commission Agenda Item #4 - Sokolich Response

Hi Jaime,

This correspondence is provided in response to a letter of opposition provided by Mr. Gary Sokolich, dated May 22, 2019. Mr. Sokolich raised several concerns and assertions. Our responses are concentrated on the issues he raised as numbered 1 through 5 in his letter.

1. There are several lots in the area that would be considered "considerably wider than adjacent lots." For example:

    - The subject property 1113 Kings Road is 17,745 sq.ft. and 84 feet wide.
    - 1201/1121 Kings Rd (next to subject property) was originally 21,471 sq.ft. prior to the lot split in 1973 (122 feet wide)
    - 1021 Kings Road is 19,013 sq.ft. (92 feet wide)
    - 1211 Kings Road is 14,925 sq.ft. (75 feet wide)
    - 1421 Kings Road is 14,080 sq.ft. (80 feet wide)
    - 615 Kings Road is 18,247 sq.ft. (121 feet wide)
    - 801 Kings Road is 11,667 sq.ft. (70 feet wide)

    Contrary to the commenter's assertion that the subject lot was purposefully subdivided as a larger lot to account for the gully, the adjoining neighbor to the east at 1101 Kings Road does not have a wider or larger than average lot and is also challenged topographically by the gully and requires a variance for main level development, just as the subject property. There is no statistical for historical data to support the commenters assertions that the reason for the width or size of the subject property is to compensate for the gully.
2. There is no statistical or historical data to support the commenters assertions regarding the reason for the width or size of the subject property or the widths or sizes of any of the other larger properties on the blufftop on Kings Road.

    A survey of aerial mapping shows that the prevailing development in the community is for homes to be built the entire width of the property. A variance was granted for the existing structure on the subject site due to the constraints of the gully. The issuance of a variance would allow the home to be built the width of the lot and afford the homeowner the same privilege as

enjoyed by the adjoining neighbor who also shares the gully and requires a variance for development, and the rest of the community.

3. The frontage of the home along Kings Road will be built to a maximum height of 25-8 feet when a maximum of 29 feet is permitted, and has been designed as thoughtfully as possible so as not to "max out" either the height or massing, and does not require a variance for its features. The home is terraced down the slope and the area which requires the variance is on the main level and small portion of the back corner of the upper level and upper deck which will not be visible from Kings Road or from the residences inland of Kings Road.

   A variance would not be necessary were it not for the topographic anomaly of the gully. Again, the variance will not permit any roof features to be higher than any other part of the roof. In fact, the area for which the variance is required is for the eaves for the roof and is located at an elevation lower than the ridgeline of the roof.

   The hardship related to the limitation of buildable area is due to the presence of the gully adjacent to the east property line. The existing slope of the eastern property line is 40% whereas the existing slope adjacent to the west property line is 5%. Avoiding the existing gully would reduce the buildable width of the structure from 80 ft. wide to 55 ft. wide (32% reduction), which would be a hardship. The requested variance only accounts for the mathematical calculation between how the City determines the overall grade of a parcel and the actual grade.

4. There is no evidentiary data to support this assertion. The requested variance is for an existing condition. A variance was issued for the existing structure at the exact location and due to the same topographical constraints**.**

5. The over-height features will be located on the main level and small portion of the back corner of the upper level which will not be visible from the street. They will not, themselves, cause interference with the coastal views of adjacent or neighboring properties. Although the over-height features are calculated as such based on the City's zoning code, the observed heights will not be taller than other area of the residence.

   The proposed two-story residence will replace an existing one-story residence. The portion of the residence that may cause limitations to coastal views for the across the street neighbor would be the portion of the residence on the Kings Road frontage. This portion of the residence will be 25-8 feet in height and is well within the 29-foot height limit.

   While certain lots along Kings Road are subject to private deed restrictions related to view protection, there is no such deed restriction on 1113 Kings Road. In addition, there are no view corridors within the project vicinity that would be impacted by the proposed project**.**

If you have any further questions please do not hesitate to contact us.

Sincerely,
Pua

From: Murillo, Jaime
To: Lee, Amanda
Subject: FW: 1800 Kings Road - Adams.docx
Date: Thursday, May 23, 2019 6:09:53 PM

From: Carolyn <clynn131@gmail.com>
Sent: Thursday, May 23, 2019 6:09 PM
To: Murillo, Jaime <JMurillo@newportbeachca.gov>
Subject: Fwd: 1800 Kings Road - Adams.docx

See below

Carolyn Reed

Sent from my iPhone

Begin forwarded message:

> **From:** Anne Adams <annymac17@gmail.com>
> **Date:** May 23, 2019 at 5:40:42 PM PDT
> **To:** Carolyn <clynn131@gmail.com>
> **Subject: Re: 1800 Kings Road - Adams.docx**
>
> Hi Carolyn,
>
> I just spoke with my husband Gordon (very quick call as he is playing in a tournament at the moment) and he said he had sent a letter earlier today largely based on the information he'd been given and the overall desire to stop neighbors from fighting with each other. He was suggesting a solution to stop the neighbor vs neighbor situation from happening again by suggesting a no variance policy for the entire area as other neighborhoods have done. I explained to him that the information we were given was wrong, that we had been mislead.
> We didn't get to keep talking but I forwarded the email you sent me so if he has a break he can read it.
>
> I was confused when the letter you penned mentioned "a letter " that had been sent earlier today....now I understand. I did not know one had been sent.
>
> I have no problem writing a letter that explains I was misinformed and that my signature on the petition was only in support because of the lies I had been told.
>
> I am sorry that you are having to deal with this.
>
> Blessings,
>
> Annie

Sent from my iPhone

> On May 23, 2019, at 3:47 PM, Carolyn <clynn131@gmail.com> wrote:
>
> Hi- it was so nice chatting with you today. I hope to chat again under different circumstances in the future. Thank you again for taking the time to listen and understand what we are asking for. Below is the letter you can email to the city at planningcommissioners@newportbeachca.gov. Please free to modify as you see fit.
>
> Carolyn Reed
>
> <1800 Kings Road - Adams.docx>
>
> Carolyn Reed
>
> Sent from my iPhone

From: Anne Adams <annymac17@gmail.com>
Sent: Thursday, May 23, 2019 6:25 PM
To: Planning Commissioners
Subject: New information regarding property on Kings Rd

Hi,

I recently signed a petition stating I was against the property at 1113 Kings Rd getting a height variance. My signing of that petition was based on information that I have found out to be incorrect. My understanding was that the height variance would be from street level and would block many views from neighbors across the street. The misunderstanding is my fault as I failed to do my homework and clearly grasp what was being proposed. I had a visit from the homeowner today that explained what I had misunderstood.
I now understand that the variance is not for street level height adjustment and wish to resend my petition support.

Thank you for your time and consideration,

Annie Adams

Sent from my iPhone

Attachment D

May 23, 2019, Planning Commission
Meeting Minutes

AYES: Zak, Weigand, Lowrey, Kleiman, Koetting, Kramer
NOES:
RECUSED: Ellmore
ABSENT:

ITEM NO. 4 **REED RESIDENTIAL VARIANCE (PA2019-060)**
Site Location: 1113 Kings Road

Summary:
A variance request to allow portions of a new single-family residence to exceed the allowed height limit due to the steep topography of the property.

Recommended Action:
1. Conduct a public hearing;
2. Find this project categorically exempt under Section 15303, of the California Environmental Quality Act ("CEQA") Guidelines - Class 3 (New Construction or Conversion of Small Structures), California Code of Regulations, Title 14, Division 6, Chapter 3, because it has no potential to have a significant effect on the environment; and
3. Adopt Resolution No. PC2019-060 approving Variance No. VA2019-002.

Senior Planner Jaime Murillo reported the project proposes the demolition of an existing single-family residence and the construction of a new approximately 10,800-square-foot single-family residence and new 1,500-square-foot, four-car garage. Due to unique topographic constraints on the property, the applicant is requesting a variance for portions of the dwelling to exceed the height limit for the property. The property is located on the south side of Kings Road. Properties along the south side of Kings Road are typically developed with one- and two-story dwellings that step down the slope towards Coast Highway. Properties on the north side of Kings Road are typically two- and three-story single-family homes. The subject property is constrained by a gully, which causes the property to slope west-to-east as well as north-to-south. The existing home has one story when viewed from the street and two stories when viewed from the cliff side. The existing garage is approximately 13 feet tall measured from the curb. In 1976, a variance was granted for the height of the rear portion of the garage, which measures 31.5 feet from the flat roof to the gully below. The adjacent property to the east, which is more severely impacted by the gully than the subject property, was granted variances in 1973 for the home to exceed the maximum height limit and in 1989 for the patio to exceed the height limit. The new proposed residence will have three levels, but it will appear as two levels from the street. The height of the structure will measure approximately 24 feet from the front ridge elevations to grade, and the highest ridge elevation behind the front ridges will measure approximately 25 feet to grade. When viewed from Kings Road, the structure will appear as a Code-compliant, two-story home. The maximum height limit for sloping roofs in a single-family residential zoning district is 29 feet measured from the existing grade. Because of the gully, the proposed new home will appear as three stories to the adjacent property to the east, and portions of the new home will exceed the maximum height limit of 29 feet. The four key findings to grant a variance are special or unique circumstances of the property, preservation and enjoyment of property rights, no special privilege for the property, and no detrimental impact to the community or surrounding properties. Along the west boundary line, the slope of the lot is 5 percent for the length of the proposed structure. Along the east boundary line, the slope of the lot is 25.5 percent for the length of the proposed structure and approximately 40 percent from the front property line to the deepest point of the gully, which is approximately 26 feet below the front property line. Because of the gully, elements along the east side of the proposed structure will exceed the 29-foot height limit. The elements could be pulled back 19 feet from the east property line, but that would reduce the buildable width of the property from 90 percent to 72 percent of the lot. The Zoning Code allows by-right single-family dwellings to reach a height of 29 feet from the existing grade. Without a variance, the private view impacts from Kings Road would continue to exist with a fully compliant project. To minimize the impact on the adjacent property to the east, the applicant has stepped back the third-floor elements and sloped the roofs adjacent to the east property line.

In response to Chair Zak's inquiries, Senior Planner Murillo advised that the applicant has revised the design multiple times to reduce roof and deck elements on the eastern side as much as possible. The revisions reduce the massing of the structure when viewed from the property to the east but has no effect on the view from the street. A fully compliant structure would block some private views from Kings Road. Deputy Community Development Director Campbell added that no special construction-related conditions of approval have been

proposed for the project because the plan check process will ensure the project complies with all provisions of the Building Code.

Commissioners Kramer and Kleiman disclosed a communication with the applicant's consultant. Chair Zak disclosed communications with the applicant's consultant and the applicants. Commissioner Koetting disclosed a phone call from the applicant's consultant. Commissioner Ellmore disclosed a meeting with the applicant's consultant. Commissioner Lowrey disclosed a conversation with the applicant's consultant. Vice Chair Weigand disclosed conversations with the applicant's consultant and members of the public.

Chair Zak opened the public hearing.

Shawna Schaffner, applicant's representative, advised that a 26-foot-deep gully on the lot results in a steeply sloping surface, which severely limits the allowable building height on the eastern portion of the site. The areas for which a variance is requested are located below the height-compliant areas of the front of the house. The applicant requests a variance for the upper-level eaves, the upper-level deck and railing, and the main-level office and covered patio roof. The largest encroachment above the height limit is located at the main level of the house. The property owners have reached out to their neighbors. The applicants have revised plans by removing exterior decks and covered patios, removing enclosed rooms at the rear of the house, redesigning the upper level, reducing the footprint of the upper level, changing the a central roof ridge, and reducing the height of the eastern roof ridge. The proposed house will increase the footprint of the western side of the existing house by 12 feet. The footprint for the eastern side of the existing house will be stepped back. If the variance is granted, the structure will be approximately a half foot taller than the existing garage, for which a variance was granted. The chimney is allowed to exceed the height limit and is not part of the variance request. The areas of the house that require a variance are not visible from the street and are located behind the height-compliant sections of the house. If the applicant proposed a single-story structure, the main level would still require a variance. The applicant agrees with the conditions of approval.

In reply to Vice Chair Weigand's queries, Deputy Community Development Director Campbell advised that the applicant will be required to comply substantially with the plans presented to the Planning Commission. Senior Planner Murillo clarified that the existing garage measures 13 to 15 feet tall from Kings Road. Ms. Schaffner provided street view depictions of the existing structure, the proposed structure, and a structure at the height limit. Deputy Community Development Director Campbell explained that there are no restrictions protecting private views from Kings Road. Private deed restrictions have been placed on some properties along the south side of Kings Road, but they are not subject to City enforcement. Granting the variance will affect the views for the neighbor to the east of the property. Other designs that are below the height limit could push the house further away from the street, but that is not the proposed project.

Vice Chair Weigand wished to ensure the public is aware of other designs the applicant could propose that would not require Commission approval.

In answer to Commissioner Ellmore's inquiries, Ms. Schaffner indicated the maximum buildable square footage for the lot is approximately 29,000 square feet. The proposed square footage is approximately 10,800 with a 1,500-square-foot garage. Ms. Schaffner was not aware of a study of a 29,000-square-foot house that determined whether a variance would be needed. Based on buildable area, many of the lots in the neighborhood are developed more intensely than the project site. Deputy Community Development Director Campbell explained that staff utilized a technique contained in the Municipal Code to determine the grade for the purposes of measuring height. The grade determination is accurate and reflects the existing topography of the lot. He would not recommend any changes to the grade plane that staff identified in the report. To determine a grade that would not require a variance for the proposed project, staff would have to use grades in the gully that are approximately 13 feet higher than they actually are. Staff did not feel those grades would reflect the existing topography, and those grades could be detrimental to the neighboring property. Staff looks at the grades and identified the points necessary to achieve and create a plane that closely reflects the existing topography. If an applicant feels the points are inappropriate, the determination can be appealed to the Planning Commission. Staff does not recommend the Planning Commission change the technique utilized to determine the grade.

In response to Commissioner Kleiman's questions, Deputy Community Development Director Campbell indicated the neighboring property would be subject to the same grade determination procedure used for the project site,

but staff would probably utilize more grade points. The neighboring house would probably continue to require a variance if staff utilized a similar procedure.

In reply to Commissioner Lowrey's query, Ms. Schaffner advised that the property owners contacted the neighbors across Kings Road when they first developed plans and have continued outreach over the past six months with neighbors. The neighbors to each side of the subject property have submitted correspondence in support of the project.

Jeff Wingler remarked that the project improves the neighborhood. The property is unique in comparison to other properties in the vicinity. The applicant should be granted a variance.

Peggy Palmer related that the applicant worked with the neighbors and offered four options for the project. The Cliff Haven Community Association is willing to host an event for the applicant to explain the project to neighbors.

Charles Klobe, Newport Heights Improvement Association Board Member, commented that variances should be the exception rather than the rule. Variances should be granted when there is an overwhelming hardship to the builder or a public benefit for the change in policy. The project meets neither condition.

Jim Mosher did not understand the reasons for staff recommending a variance instead of a site development review. Section 20.52.090.G of the Municipal Code clearly states the granting of prior variances is not relevant or admissible evidence for the granting of a new variance. The applicant did not provide any simulations of how the project will affect the public views from Coast Highway, a designated coastal view road, or minimize alteration to a site's natural topography as stated in the General Plan Natural Resources Element.

John Pomer indicated his family is comfortable with the project.

Bruce Trotter opposed a variance for the project.

Mike Robertson related that the project will impact every homes' views to some degree and will impact the values of all neighboring homes.

T.J. Williams advised that the project will block the entire view from his home and the views from most homes along the street. He wanted a second opinion regarding staff's determination of the grade points for the subject property.

Amy Williams stated there are different techniques to determine the grade of the property. Many aspects of the project should be discussed and reviewed.

Chris Gruber supported the project.

Brian Krebs supported the Planning Commission granting a variance for the project. The project is consistent with the character of the neighborhood.

Lee Goodin understood the project designer has minimized the potential visual impacts of the project, especially considering the landscape of the lot. The small portion of the home that exceeds the height limit is minimally visible from West Coast Highway. He supported a variance for the project.

Matt Wooley supported the project.

John Stedfield indicated the project will affect his views and property value. Earlier in the day, the applicant approached him for the first time to discuss the project. He opposed the variance.

Carol Anne Dru advised that the neighbors would contest approval of the project without a community meeting. She did not understand the calculation of the existing grade in order to determine the height limit. She requested the Planning Commission continue the project so that neighbors can reach a congenial resolution.

Nancy Barfield expressed frustration with people being allowed to build tall homes and in the setbacks. The project will impact her views.

DJ Countess believed the requested variance is reasonable and supported a granting of the variance. The large lot has substantial land constraints.

Doug DeCinces suggested the applicant excavate the site in order to build the maximum square footage for the house without exceeding the height limit. The massing of the house is an eyesore.

Lynn Lorenz concurred with the comments of Michael Alexander. Granting the variance will set a precedent for future projects in the neighborhood. The project should comply with the standards and rules.

Jeff Frum indicated the project will impact neighbors' views.

Tom Baker requested the Planning Commission not approve the variance request as the building height will not be compatible with the neighborhood. The applicant should revise the design so that a variance is not needed.

Robert Brauchli supported the project as it conforms to the Building Code. The applicant has attempted to lessen the project's impact on neighbors.

Carolyn Brubaker remarked that the project appears to be overwhelming and overbearing. She requested the project be reduced in size.

Doris Perry supported the project because the applicant should be allowed to develop the property as they wish.

Max Johnson supported a continuance of the item to allow a community discussion of the project.

Josh Beyer did not understand the community outrage because the project complies with the Code. He supported the project.

Sandra Ayers indicated the project is not fully compliant with the Code. The granting of a previous variance is not justification for granting another variance. The project does affect the views from the bluffs. A variance is not necessary to build a house on the lot.

Ms. Schaffner reported the alternative to a variance is to terrace the property further to Coast Highway, which would cause more prominent views throughout the community. The project will block the view from the main level of Mr. Williams' home but not from the upper level of his home. The adjacent property is subject to a height restriction via a private deed restriction. Ed Selich, a member of the committee that wrote the grade language, has indicated the grade determination is appropriate. Wide lots prevail in the neighborhood. Excavating to construct the home will not eliminate the need for a variance. The public has not presented facts that dispute the findings contained in the staff report.

Commissioner Kleiman wondered whether the applicant felt the few elements that require the variance are worth the contentious nature of the variance.

In reply to Commissioners' questions, Ms. Schaffner indicated the applicant conducted three studies regarding adjusting the grade determination. In all scenarios, the structure could have a height of 29 feet for a length of 20 feet into the lot before the grade would have to be adjusted. Deputy Community Development Director Campbell reiterated that the determination is appropriate and reflects the existing topography. Lowering the grade determination would not change the front of the house. The grade could be viewed differently, but in staff's judgment the chosen points are appropriate. The height limit in Newport Beach has changed over the years. The current procedure for determining the grade of a lot was developed in 2008. For many years, structures were not built to the maximum height limit.

Deputy Community Development Director Campbell remarked that staff pushes back quite hard on projects that exceed the height limit and counsels applicants to comply with Code requirements. The Code provides a process

for the applicant to seek relief from standards, a variance application. The encroachments are small and not visible from the street.

Commissioner Koetting commented that the portions of the roof that encroach comprise perhaps 3 to 4 percent of the total roof area. The house could be taller than proposed. He could not understand the outcry over loss of views when the houses are so close together that there are no views. Deputy Community Development Director Campbell added that the two-story front of the home does block private views, but the height at the front of the house is allowed. Therefore, the portion of the residence subject to the variance is not visible. The detriment due to views being blocked expressed by neighbors is not created by the variance. The Planning Commission's discretion lies with the project exceeding the height limit, not the grade determination.

Commissioner Lowrey understood the pros and cons of granting the variance. The applicant's outreach has been unsatisfactory.

Vice Chair Weigand felt a lot of the contentiousness could be alleviated with more information about the project. He hoped the community at large could discuss the project further.

Commissioner Ellmore noted the Planning Commission works within confined parameters. The lot is atypical in nature, and a variance for an atypical lot is justified. Based upon a technical review of the project, he could support it.

Commissioner Kramer advised that the Planning Commission's role is to adjudicate matters based on rules outlined in the General Plan and Municipal Code. In certain situation, the Code allows as normative variances for unusual conditions. The Planning Commission is charged with reviewing and granting variances. Those who oppose the project either don't understand the project or are basing their comments on false information. The City and by extension the Planning Commission have no obligation whatsoever to protect private views or financial impacts associated with such. The application has highly unusual conditions in the topography of the lot that are textbook examples of circumstances foreseen in the Code for which a variance is reasonable. The variance request is for a minor height encroachment. The public hearing before the Planning Commission is the public process.

Motion made by Commissioner Kramer and seconded by Commissioner Ellmore to find this project categorically exempt under Section 15303, of the California Environmental Quality Act ("CEQA") Guidelines - Class 3 (New Construction or Conversion of Small Structures), California Code of Regulations, Title 14, Division 6, Chapter 3, because it has no potential to have a significant effect on the environment; and to adopt Resolution No. PC2019-060 approving Variance No. VA2019-002.

AYES: Zak, Ellmore, Kleiman, Koetting, Kramer
NOES:
ABSTAIN: Weigand, Lowrey
ABSENT:

VIII. STAFF AND COMMISSIONER ITEMS

ITEM NO. 5 MOTION FOR RECONSIDERATION

None

ITEM NO. 6 REPORT BY THE COMMUNITY DEVELOPMENT DIRECTOR OR REQUEST FOR MATTERS WHICH A PLANNING COMMISSION MEMBER WOULD LIKE PLACED ON A FUTURE AGENDA.

Deputy Community Development Director Campbell reported the General Plan Update Steering Committee will meet on May 29. Staff will recommend the Steering Committee evaluate a scope of work and cost of services and make a recommendation to the City Council to hire Kearns & West.

Attachment E

Appeal Application

Appeal Application

City Clerk's Office
100 Civic Center Drive / P.O. Box 1768
Newport Beach, CA 92658-8915
949-644-3005

Clerk's Date & Time Stamp

RECEIVED
2019 JUN -5 AM 10:40

OFFICE OF THE CITY CLERK CITY OF NEWPORT BEACH

Appeals are time sensitive and must be received by the City Clerk specified time period from a decision or final action by a decision-maker. It is advisable to consult with the Department managing the issue if there is question with regards to appealing an action. This is an appeal of the:

- ☐ (CDD222)Community Development Director Action to the Planning Commission - *$1,637*
- ☐ (CDD222)Zoning Administrator Action to the Planning Commission - *$1,637*
- ☒ (CDD222)Planning Commission Action to the City Council - *$1,637*
- ☐ (CDD222)Hearing Officer Action to the City Council - *$1,637*
- ☐ (CDD223)Building Official/Fire Marshal Action to the Building/Fire Board of Appeals - *$1,637*
- ☐ (CDD224)Chief of Police Action on an Operator License to the City Manager - *$757*
- ☐ (RSS073)City Manager Action on a Special Events Permit to the City Council - *$1,747*
- ☐ (HBR001)Harbormaster Action on a Lease/Permit to the Harbor Commission - *$100*
- ☐ (HBR001)Harbormaster Action to the Harbor Commission - *Hourly Cost*
- ☐ (HBR001)Harbor Commission Action to the City Council - *Hourly Cost*
- ☐ (PBW018)Public Works Director Action Harbor Development Permits to Harbor Commission - *Hourly Cost*
- ☐ (PBW018)Public Works Director Action on a Lease/Permit to the Harbor Commission - *$100*
- ☐ Other - Specify decision-maker, appellate body, Municipal Code authority and fee: _____

Appellant Information:

Name(s): SPON. STOP POLLUTING OUR NEWPORT — CONTACT JEAN WATT, BOARD MEMBER
Address: P.O. BOX 102, — 4 HARBOR ISLAND
City/State/Zip: NEWPORT BEACH, CA 92662 — NEWPORT BEACH, CA 92660
Phone: 949-673-8164 Email: JWATT4@AOL.COM

Appealing Application Regarding:

Name of Applicant(s): CAROLYN REED Date of Final Decision: ~~JUN~~ MAY 23, 2019
Project No.: PA 2019-060 Activity No.: VARIANCE NO. VA 2019-002
Application Site Address: 1113 KINGS ROAD, NEWPORT BEACH, CA 92663
Description of application: DEMOLISH EXISTING SINGLE-FAMILY HOME AND BUILD 10,803 SQ FT. RESIDENCE PLUS GARAGE.

Reason(s) for Appeal (attach a separate sheet if necessary):
1. OPPOSITION BY NEIGHBORING HOMEOWNER ASSOCIATIONS
2. CUMULATIVE ENVIROMENTAL EFFECTS.
3. INCONSISTENCY WITH GENERAL PLAN.
4. FINDINGS NOT DEFENSIBLE.
5. ALTERNATIVES REJECTED.

Signature of Appellant: Jean M. Watt (FOR SPON (STOP POLLUTING OUR NEWPORT) **Date:** JUNE 5, 2019

FOR OFFICE USE ONLY:
Date Appeal filed and Administrative Fee received: June 5, 2019.

City Clerk

cc: Department Director, Deputy Director, Staff, File

F:\Users\Clerk\Shared\Forms\Appeal Application
Updated 3/7/2019

SPON, Stop Polluting Our Newport
P.O. Box 102, Balboa Island, CA 92662

June 4, 2019
Subject: Reed Residential Variance PA 2019-060
Reasons for appeal (continued from application form):

Especially in light of the upcoming General Plan Update (GPU) and concerns about mansionization, loss of neighborhood character, and impacts on views, we believe this Project Application should be reconsidered and denied by the City Council

1. Representatives of two neighboring Homeowner Associations stated their opposition at the Planning Commission hearing. They offered to conduct a community meeting but the offer was ignored despite the increasing desire by the City Council, in preparing for the GPU, to seek maximum public outreach.

2. The granting of this Variance is inconsistent with the General Plan. Cumulative issues in terms of heights and bluffs were not considered and the Natural Resources Element of the General Plan was not discussed. The variance will encourage construction over the ravine on the coastal bluff. But variances are only supposed to be granted (NBMC Sec. 20.52.090(F)(6), (see below) if the result would not conflict with the General Plan. One of the stated goals of the Natural Resources Element of the General Plan (all elements supposedly having equal standing) is Goal "NR 23 - Development respects natural landforms such as coastal bluffs." This is supported by policy "NR 23.1 - Preserve cliffs, canyons, bluffs, significant rock outcroppings, and site buildings to minimize alteration of the site's natural topography and preserve the features as a visual resource."

3. The Project should not be considered categorically exempt under Section 15303 of the CA CEQA Guidelines because it has potential to have significant effect on the environment.

4. NBMC Section 20.52.090(F) (Variances – Findings and Decisions). We believe the following findings cannot be made:

   Finding (2): Strict compliance with Zoning Code requirements would deprive the subject property of privileges enjoyed by other properties in the vicinity and under an identical zoning classification.

   Finding (3): Granting the variance is necessary for the preservation of enjoyment of substantial property rights of the applicant.

   Finding (4): Granting of the variance will not constitute a grant of special privilege inconsistent with the limitations on other properties in the vicinity and in the same zoning district.

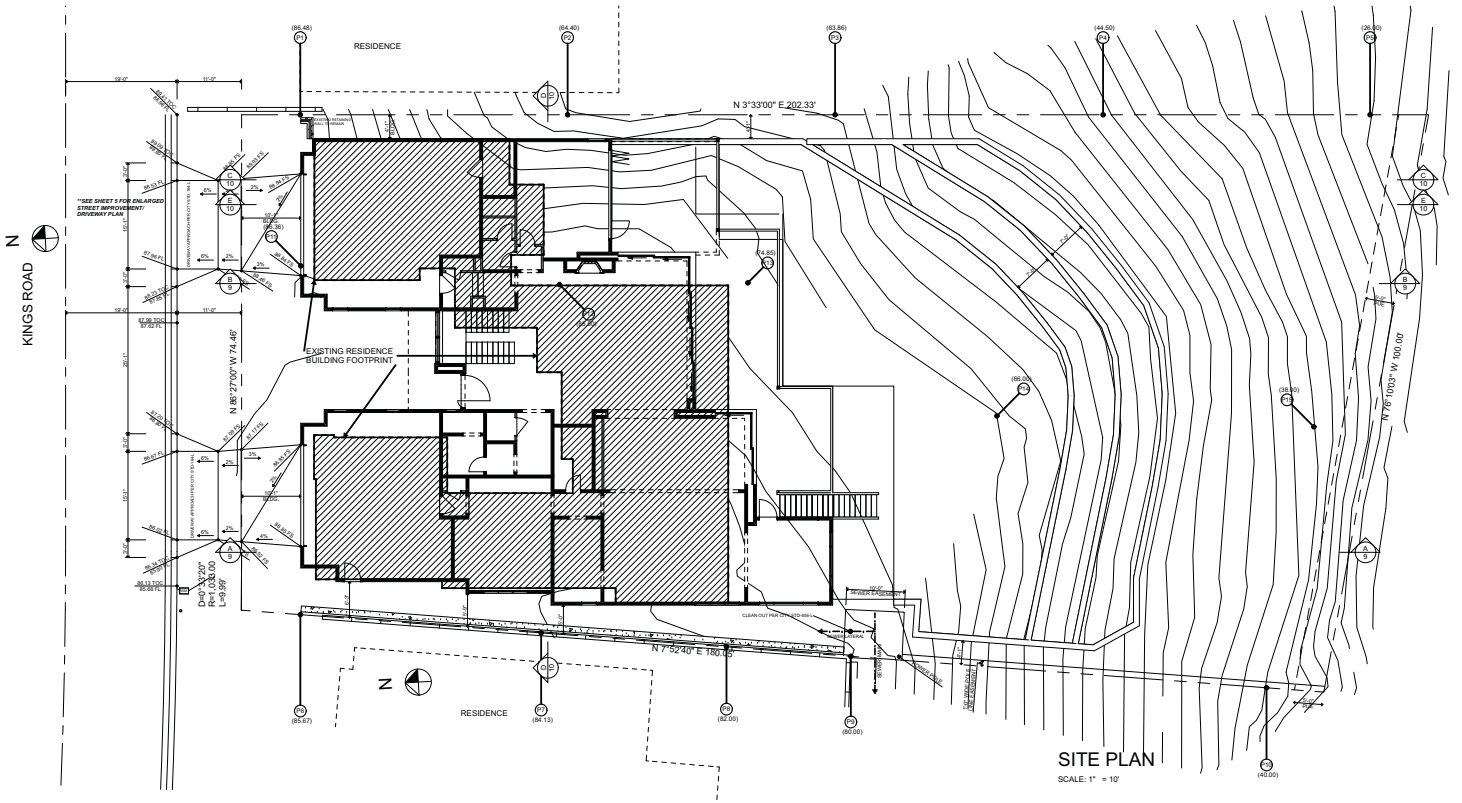
   Finding (5): Granting of the variance will not be detrimental to the harmonious and orderly growth of the City.

   Finding (6): Granting of the variance will not be in conflict with the intent and purpose of this section, the Zoning code, the General Plan, or any applicable specific plan.

SPON, info@spon-newportbeach.org
Contact: Jean Watt, jwatt4@aol.com 949-673-8164

Attachment F

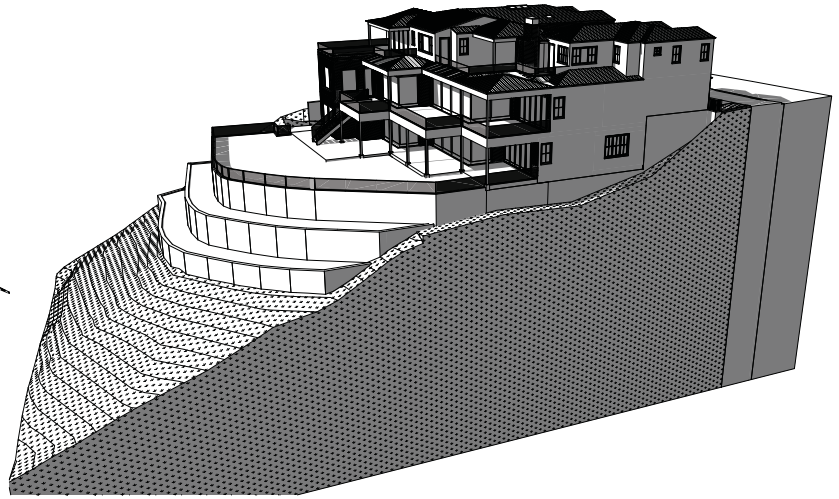
Project Plans



SITE PLAN

SCALE: 1" = 10'





PROJECT INFORMATION

CUSTOM RESIDENCE FOR
Greg & Carolyn Reed
1113 Kings Road
Newport Beach, CA 92663
(949) 698-2091

JOB ADDRESS
1113 Kings Road
Newport Beach, CA 92663

LEGAL

Lot	31
Block	E
Tract	1219
Zoning	R-1
APN:	049-212-03

SITE

Lot Area	17,745 sq. ft.
Buildable Lot Area	14,512 sq. ft.
Max Allowed Buildable Area (2x)	29,024 sq. ft.
Project Buildable Area (0.85x)	12,311 sq. ft.
Min. Open Volume Area (15%)	2,177 sq. ft.
Project Open Volume Area (125%)	18,130 sq. ft.
Max Third Floor Area (15%)	2,177 sq. ft.
Project Third Floor Area (2.8%)	411 sq. ft.

RESIDENCE

Basement Level Floor Area	4,177 sq. ft.
Main Level Floor Area	3,361 sq. ft.
Upper Level Floor Area	3,265 sq. ft.
Total Floor Area	10,803 sq. ft.
Garage Area	1,508 sq. ft.
Lower Level Covered Patio	933 sq. ft.
Main Level Covered Deck	354 sq. ft.
Main Level Deck	661 sq. ft.
Upper Level Covered Deck	318 sq. ft.
Upper Level Deck	682 sq. ft.

OCCUPANCY: R-3, U
TYPE: V-B fire-sprinkled per NFPA 13D

SHEET INDEX

ID	Name
1	SITE PLAN
2	TOPOGRAPHIC SURVEY
3	NBZC GRADE DETERMINATION (MODIFIED POINTS METHODOLOGY)
4	BASEMENT LEVEL FLOOR PLAN
5	MAIN LEVEL FLOOR PLAN
6	UPPER LEVEL FLOOR PLAN
7	ROOF PLAN
8	ROOF PLAN WITH TOPO SURVEY
9	SITE SECTIONS A & B
10	SITE SECTIONS C & D
11	SITE SECTION E & ENLARGED DRIVEWAY PLAN
12	FRONT & RIGHT ELEVATION
13	LEFT SIDE ELEVATION
14	REAR ELEVATION

NEWPORT BEACH ZONING CODE GRADE ESTABLISHMENT
EAST PROPERTY LINE
86.48-26.00= 60.48 DIVIDE BY 182.33 = 33.2% SLOPE
WEST PROPERTY LINE
85.67-40.00= 45.67 DIVIDE BY 160.00 = 28.5% SLOPE



VICINITY MAP

CRAIG S. HAMPTON
DESIGNING QUALITY CUSTOM HOMES SINCE 1979
5300 E. QUARTERHORSE STREET – BOISE, IDAHO 83716
(949) 259-8883
CRAIG@CRAIGSHAMPTON.COM
WWW.CRAIGSHAMPTON.COM

PLANNING VARIANCE DESIGN PACKAGE

SITE PLAN

1113 KINGS ROAD, NEWPORT BEACH, CALIFORNIA
CUSTOM RESIDENCE FOR
GREG & CAROLYN REED
1113 KINGS ROAD
NEWPORT BEACH, CA 92663 (949) 698-2091

Date: 5/8/19
Scale: 1" = 10'-0"
Drawn: CSH
Job: 1113 KINGS ROAD
SHEET 1
OF 14 SHEETS

20-224

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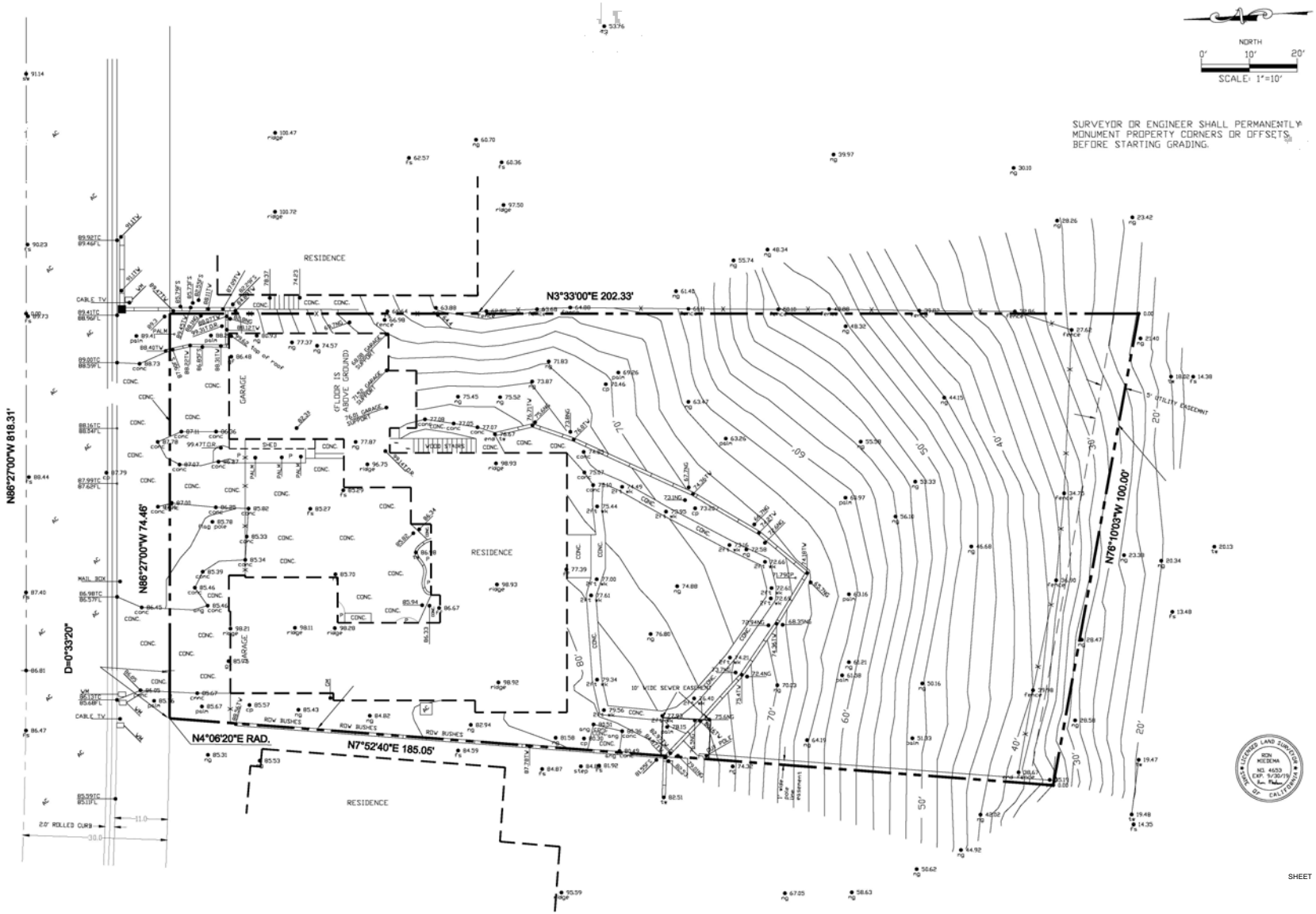


LEGEND	
	DESCRIPTION
TW	TOP WALL
#	BRICK
=	DECK
	WALL
	BUILDING
	PROPERTY LINE
X X	FENCE
N.G.	NATURAL GRADE
P.P.	POWER POLE
WM	WATER METER
F.F.	FINISH FLOOR
G.F.	GARAGE FLOOR
CONC.	CONCRETE
F.S.	FINISH SURFACE
M.H.	MAN-HOLE
P	PLANTER
A.C.	ASPHALT
T.G.	TOP-GRATE

PLANNING VARIANCE DESIGN PACKAGE

SHEET 2 OF 14 SHEETS

RdM SURVEYING INC.
RON MIEDEMA L.S. 4653
23016 LAKE FOREST DR. #409
LAGUNA HILLS, CA 92653
(949) 858-2924 OFFICE
(949) 858-3438 FAX
RDMSURVEYING@COX.NET

TOPOGRAPHIC SURVEY

JOB: (68-20) DATE: 11/28/2017
DATE: 11/02/2018 added roof elevation ove garage

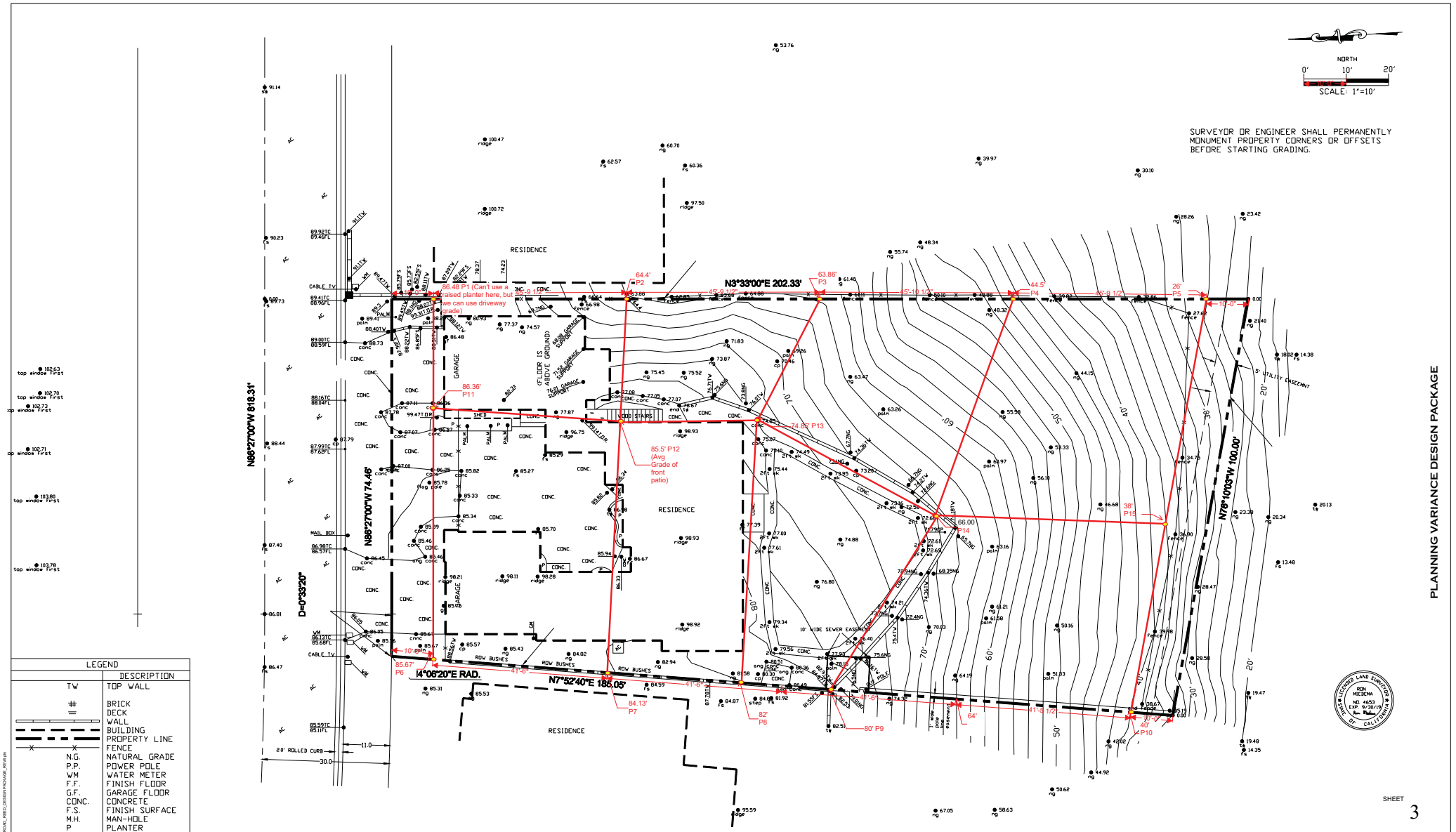
OWNER:
GREG AND CAROLYN REED
460 SANTA ANA AVENUE
NEWPORT BEACH, CA 92663

LEGAL DESCRIPTION:
LOT 31, TRACT NO. 1219
AREA OF LOT:
17,745 SQ. FT.

BENCH MARK:
BM#: 3K-23-68
ELEVATION: 10.40
DATUM: NAVD88

ADDRESS OF PROJECT:
1113 KINGS ROAD
NEWPORT BEACH

20-225



LEGEND	
	DESCRIPTION
TW	TOP WALL
###	BRICK
═══	DECK
	WALL
	BUILDING
	PROPERTY LINE
X X	FENCE
N.G.	NATURAL GRADE
P.P.	POWER POLE
WM	WATER METER
F.F.	FINISH FLOOR
G.F.	GARAGE FLOOR
CONC.	CONCRETE
F.S.	FINISH SURFACE
M.H.	MAN-HOLE
P	PLANTER
A.C.	ASPHALT
T.G.	TOP-GRATE

RdM SURVEYING INC.
RON MIEDEMA L.S. 4653
23016 LAKE FOREST DR. #409
LAGUNA HILLS, CA 92653
(949) 858-2924 OFFICE
(949) 858-3438 FAX
RDMSURVEYING@COX.NET

TOPOGRAPHIC SURVEY

JOB: (68-20) DATE: 11/28/2017

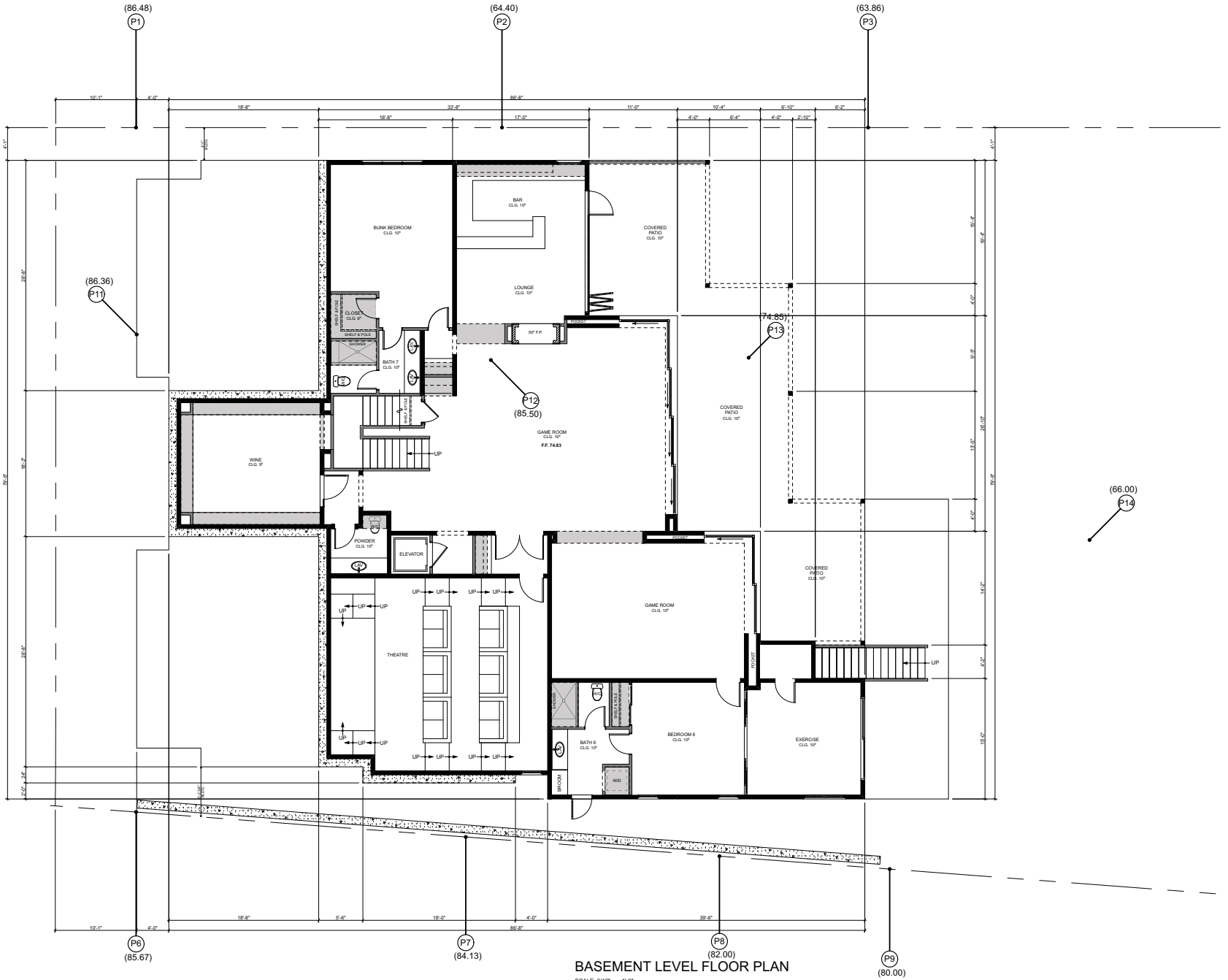
OWNER:
GREG AND CAROLYN REED
460 SANTA ANA AVENUE
NEWPORT BEACH, CA 92663

LEGAL DESCRIPTION:
LOT 31, TRACT NO. 1219

BENCH MARK:
BM#: 3K-23-68
ELEVATION: 10.40
DATUM: NAVD88

ADDRESS OF PROJECT:
1113 KINGS ROAD
NEWPORT BEACH

RON MIEDEMA
NO. 4653
EXP. 9/30/19
LICENSED LAND SURVEYOR
STATE OF CALIFORNIA



BASEMENT LEVEL FLOOR PLAN

SCALE: 3/16" = 1'-0"

CRAIG S. HAMPTON
LICENSED GENERAL CONTRACTOR
DESIGNING QUALITY CUSTOM HOMES SINCE 1979
5 500 E. QUARTERHAWK STREET – BOISE, IDAHO 83716
(949) 209-8883
CRAIG@CRAIGSHAMPTON.COM
WWW.CRAIGSHAMPTON.COM

BASEMENT LEVEL FLOOR PLAN

PLANNING VARIANCE DESIGN PACKAGE

1113 KINGS ROAD, NEWPORT BEACH, CALIFORNIA
CUSTOM RESIDENCE FOR
GREG & CAROLYN REED
1113 KINGS ROAD
NEWPORT BEACH, CA 92663
(949) 698-2091

Date: 5/8/19
Scale: 3/16" = 1'-0"
Drawn: CSH
Job: 1113 KINGS ROAD
SHEET 4
OF 14 SHEETS

20-227

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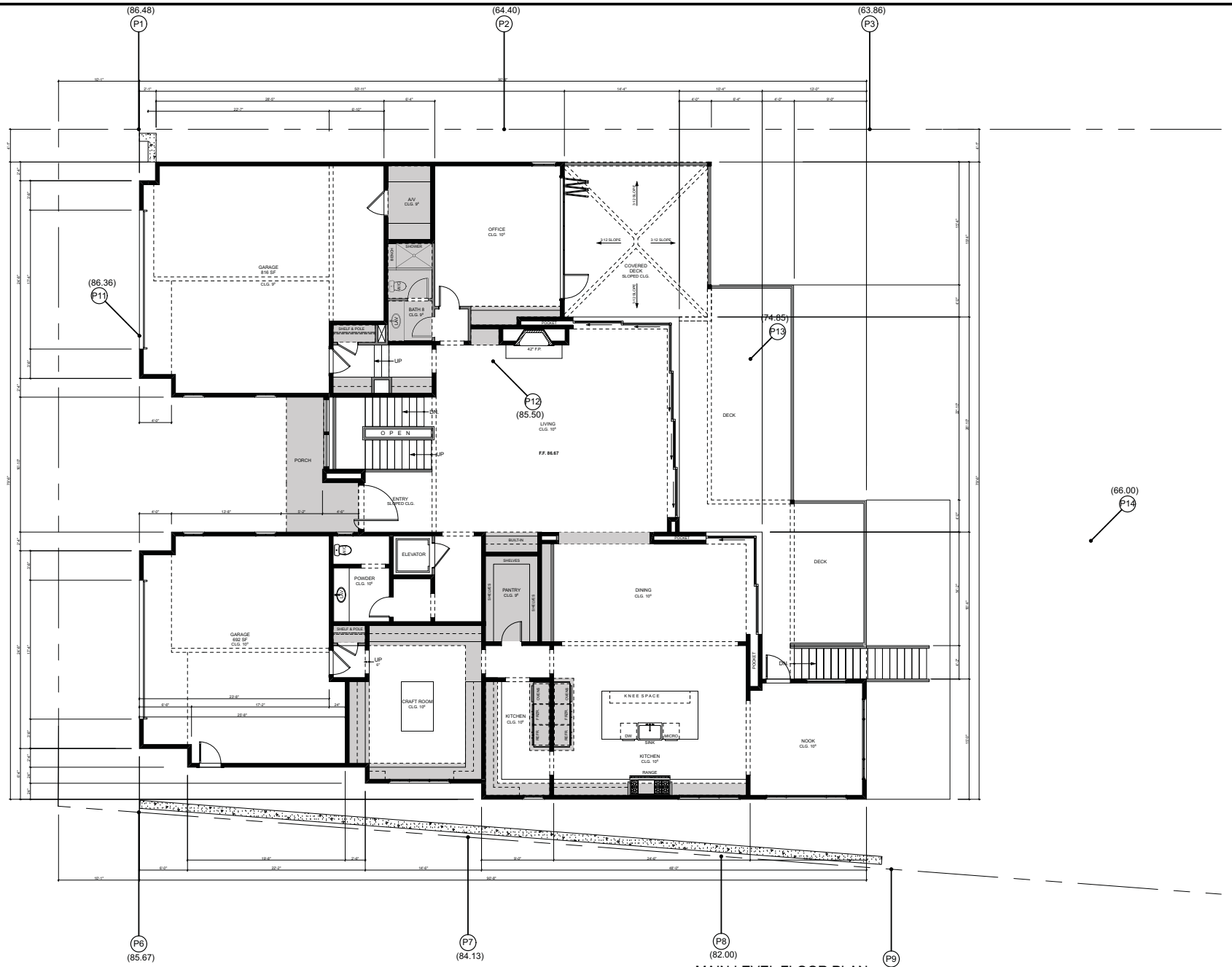

MAIN LEVEL FLOOR PLAN

SCALE: 3/16" = 1'-0"

CRAIG S. HAMPTON
INCORPORATED
DESIGNING QUALITY CUSTOM HOMES SINCE 1979
5500 E. QUARTERAWN STREET – BOISE, IDAHO 83716
(949) 209-8883
craig@craigshampton.com
www.craigshampton.com

MAIN LEVEL FLOOR PLAN

PLANNING VARIANCE DESIGN PACKAGE

1113 KINGS ROAD, NEWPORT BEACH, CALIFORNIA
CUSTOM RESIDENCE FOR
GREG & CAROLYN REED
1113 KINGS ROAD
NEWPORT BEACH, CA 92663
(949) 698-2091

Date: 5/8/19
Scale: 3/16" = 1'-0"
Drawn: CSH
Job: 1113 KINGS ROAD
SHEET
5
OF 14 SHEETS

20-228

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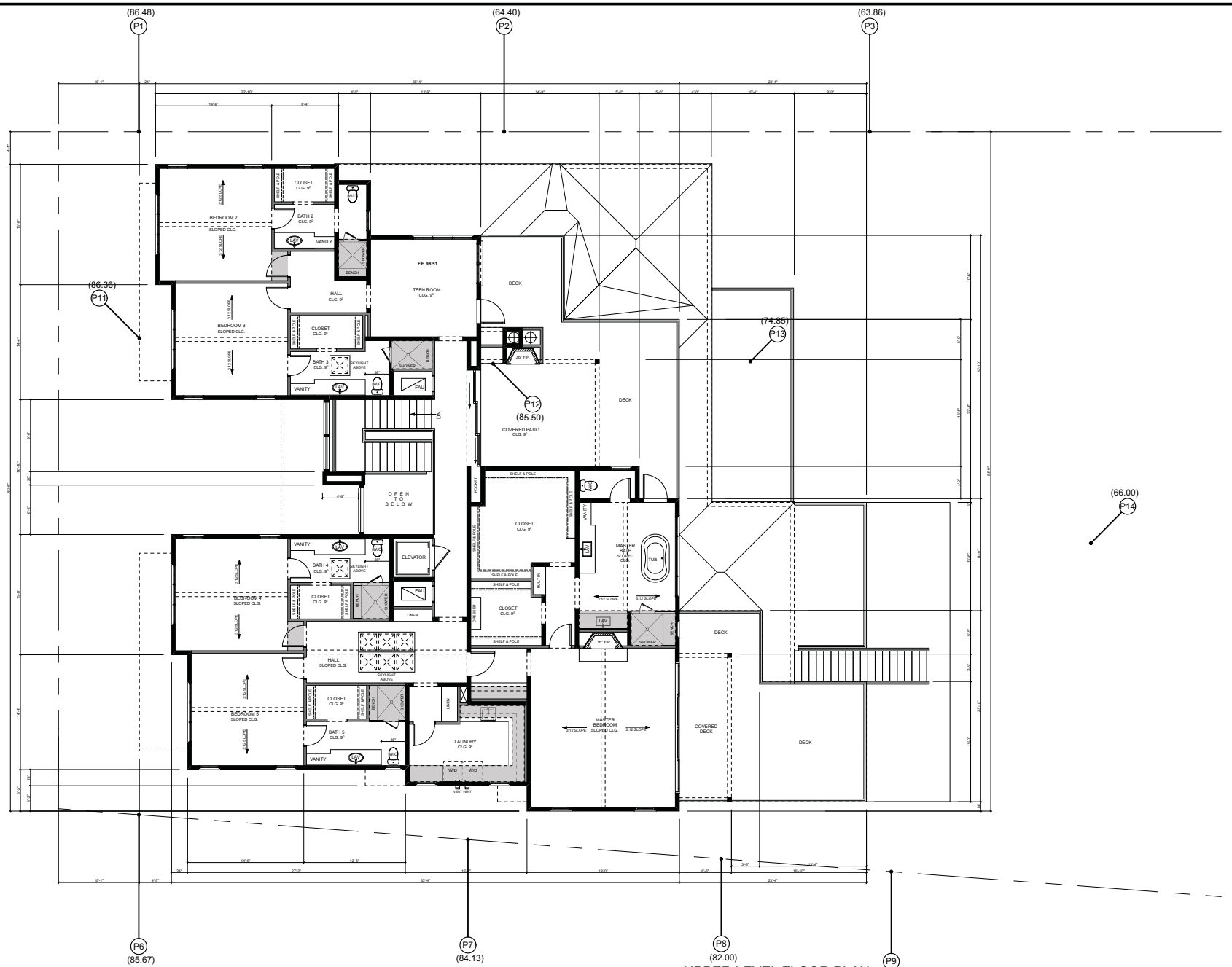

UPPER LEVEL FLOOR PLAN

SCALE: 3/16" = 1'-0"

CRAIG S. HAMPTON
LICENSED ARCHITECT
DESIGNING QUALITY CUSTOM HOMES SINCE 1979
5 500 E. QUARTERHAWN STREET – BOISE, IDAHO 83716
(949) 249-8883
CRAIG@CRAIGSHAMPTON.COM
WWW.CRAIGSHAMPTON.COM

UPPER LEVEL FLOOR PLAN

PLANNING VARIANCE DESIGN PACKAGE

1113 KINGS ROAD, NEWPORT BEACH, CALIFORNIA
CUSTOM RESIDENCE FOR
GREG & CAROLYN REED
1113 KINGS ROAD
NEWPORT BEACH, CA 92663
(949) 698-2091

Date: 5/8/19
Scale: 3/16" = 1'-0"
Drawn: CSH
Job: 1113 KINGS ROAD
SHEET 6
OF 14 SHEETS

20-229

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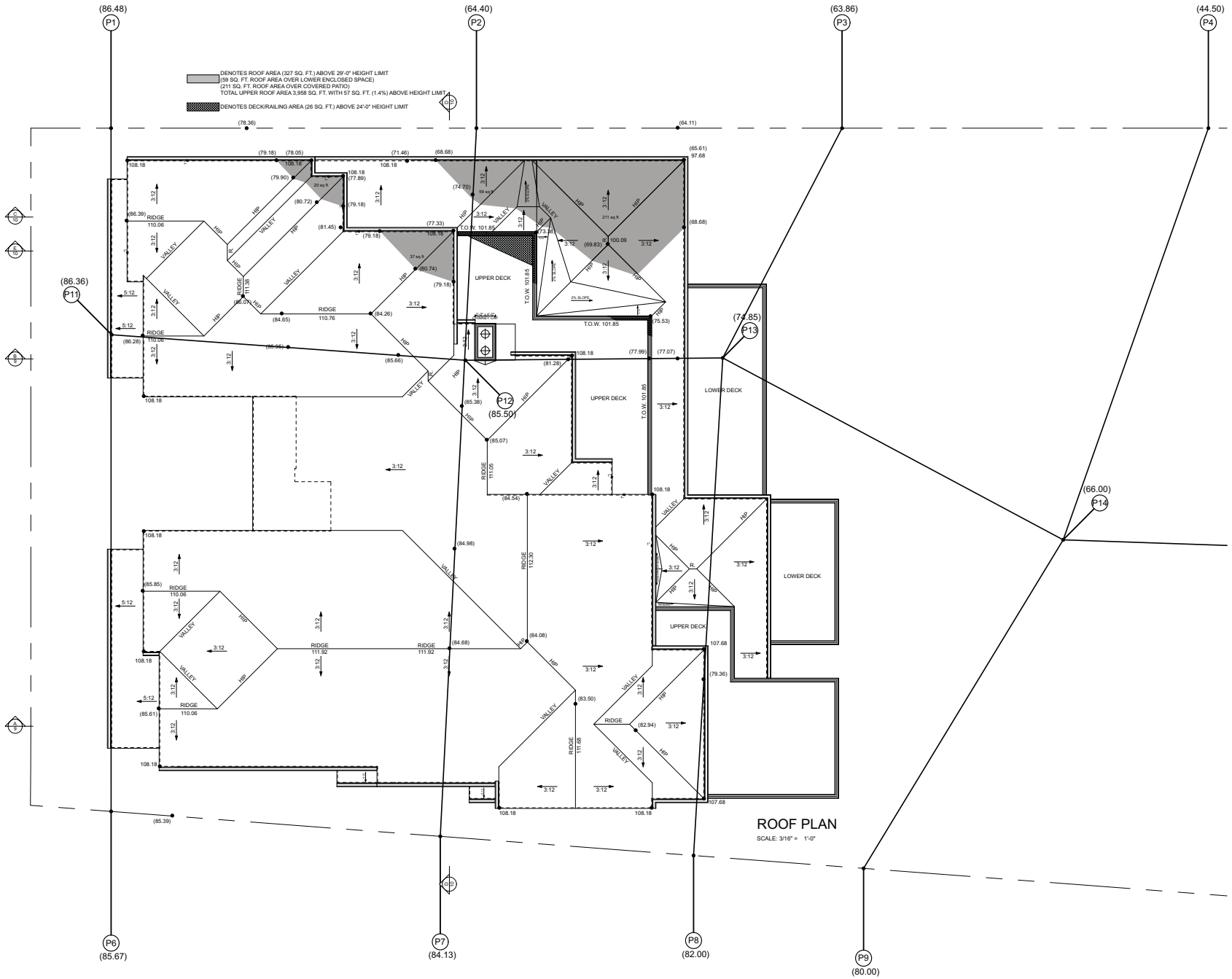

ROOF PLAN

SCALE: 3/16" = 1'-0"

CRAIG S. HAMPTON
C.S.H. CONSTRUCTION, INC.
DESIGNING QUALITY CUSTOM HOMES SINCE 1979
5 500 E. QUARTERHAWK STREET – BOISE, IDAHO 83716
(949) 269-8883
CRAIG@CRAIGSHAMPTON.COM
WWW.CRAIGSHAMPTON.COM

ROOF PLAN

PLANNING VARIANCE DESIGN PACKAGE

1113 KINGS ROAD, NEWPORT BEACH, CALIFORNIA

CUSTOM RESIDENCE FOR

GREG & CAROLYN REED
1113 KINGS ROAD
NEWPORT BEACH, CA 92663 (949) 698-2091

Date: 5/8/19
Scale: 3/16" = 1'-0"
Drawn: CSH
Job: 1113 KINGS ROAD
SHEET 7
OF 14 SHEETS

20-230

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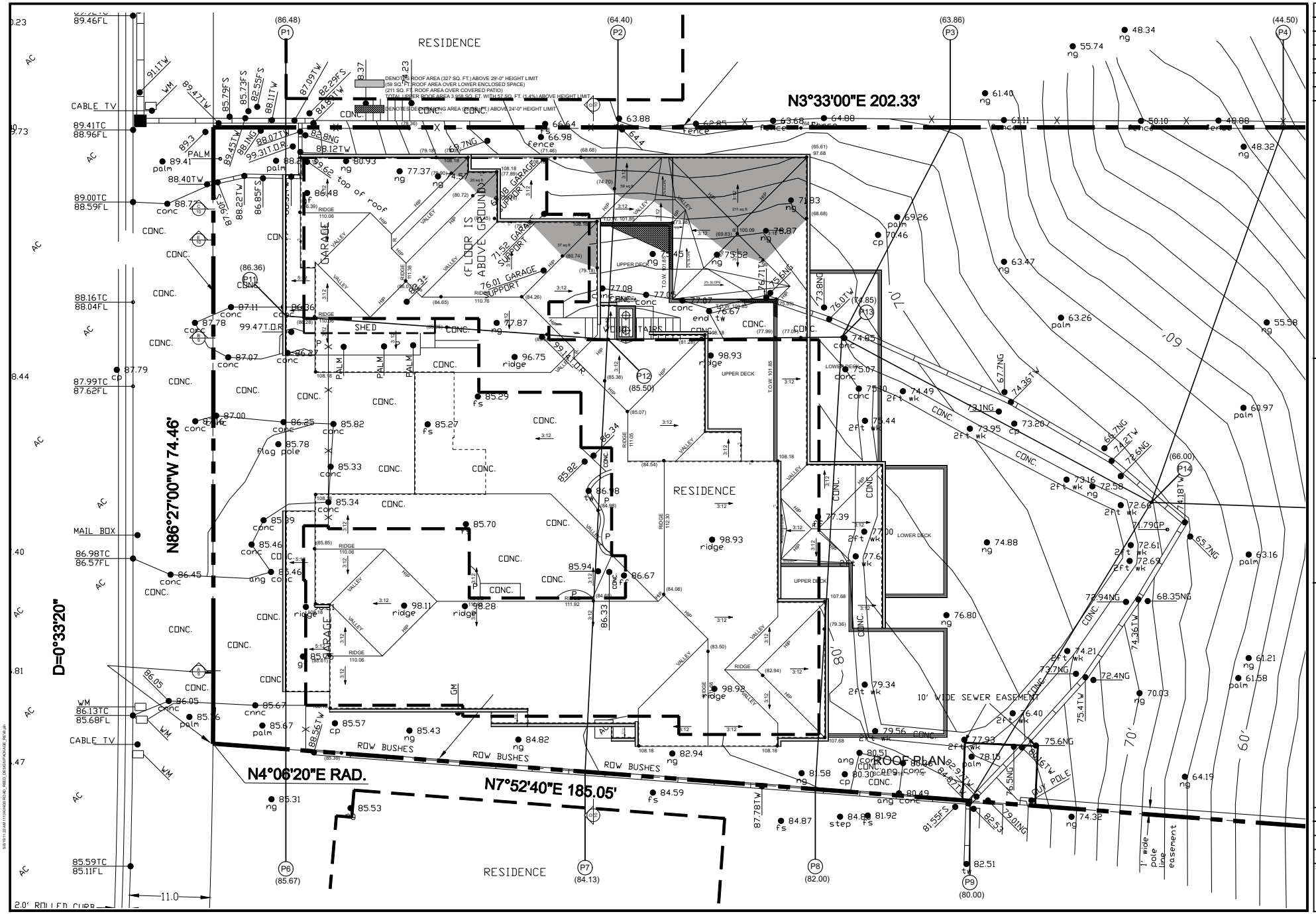


CRAIG S. HAMPTON
INCORPORATED
DESIGNING QUALITY CUSTOM HOMES SINCE 1979
5500 E. QUARTERSAWN STREET – BOISE, IDAHO 83716
(949) 209-8883
craig@craigshampton.com
www.craigshampton.com

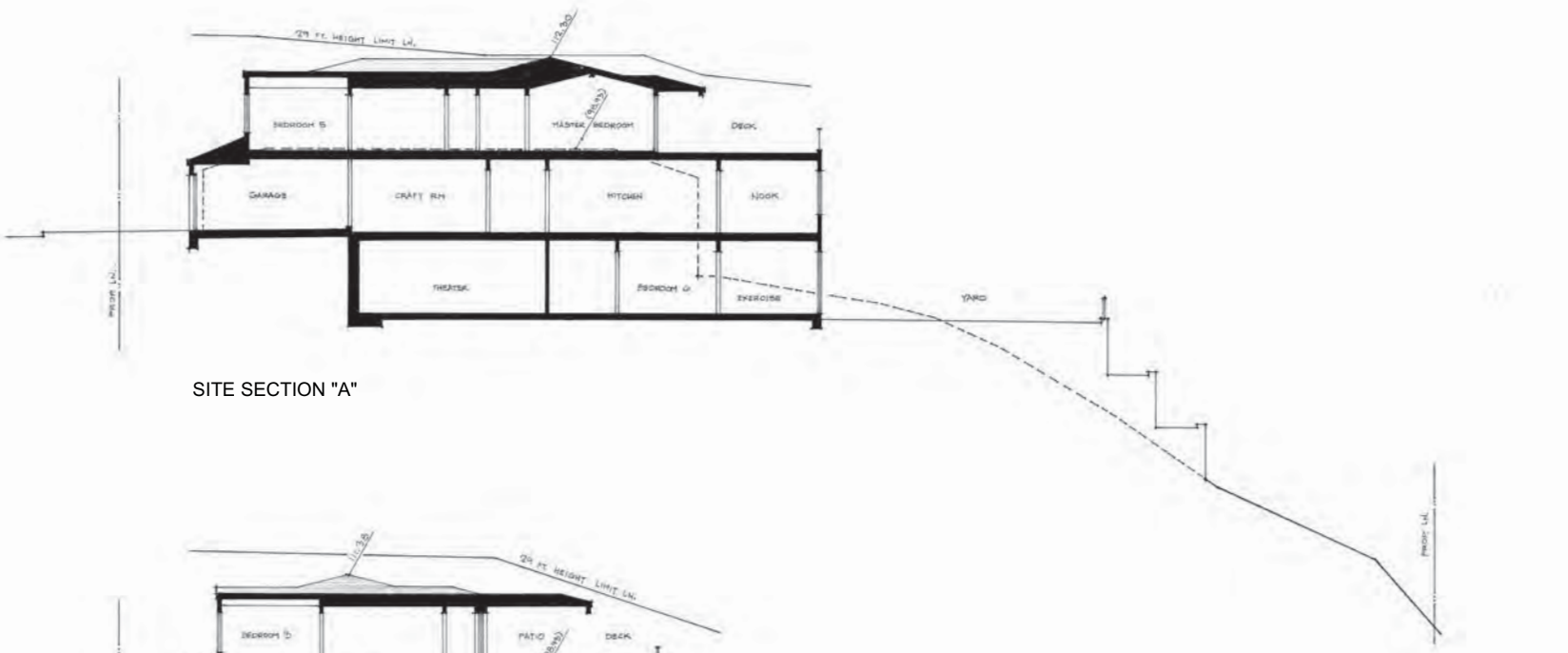
ROOF PLAN WITH TOPO SURVEY

PLANNING VARIANCE DESIGN PACKAGE

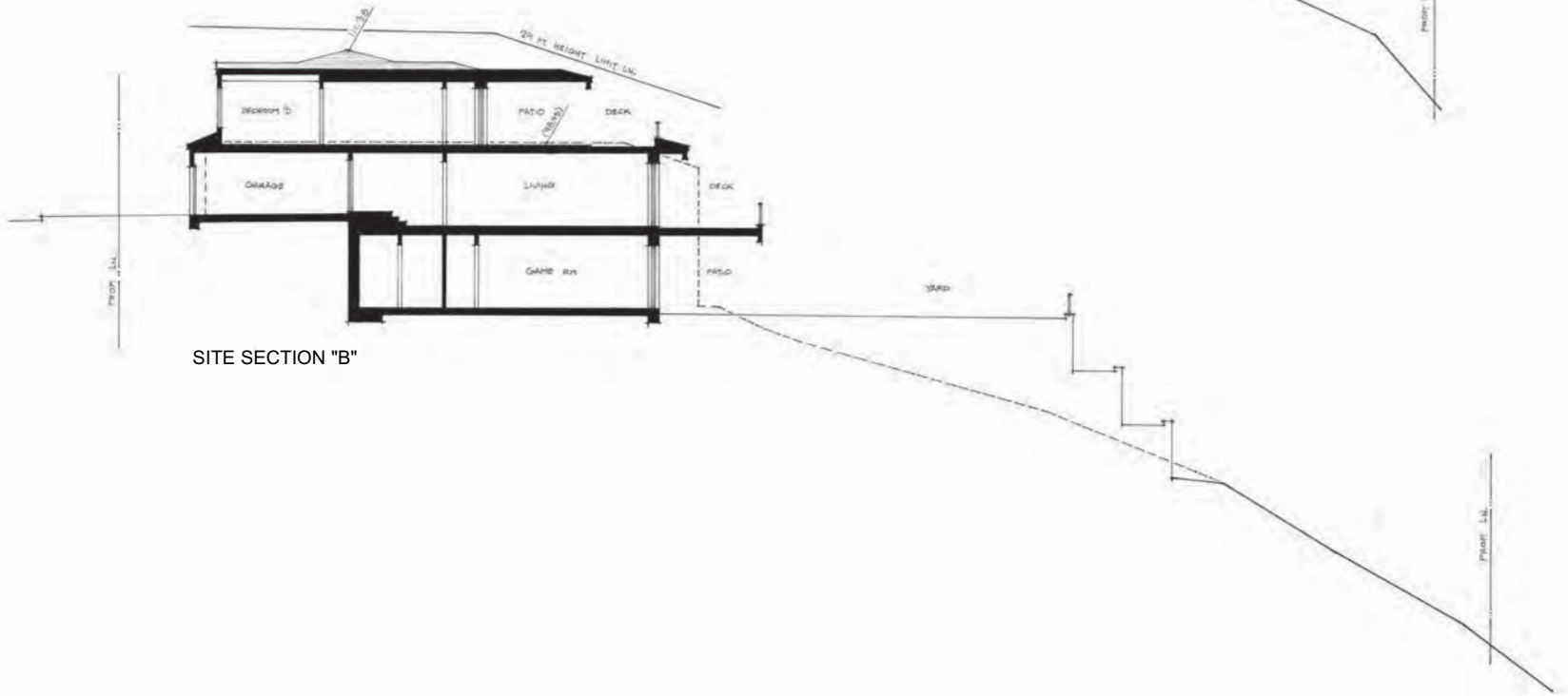
1113 KINGS ROAD, NEWPORT BEACH, CALIFORNIA
CUSTOM RESIDENCE FOR
GREG & CAROLYN REED
1113 KINGS ROAD
NEWPORT BEACH, CA 92663
(949) 698-2091

Date: 5/8/19
Scale: 3/16" = 1'-0"
Drawn: CSH
Job: 1113 KINGS ROAD
SHEET 8 OF 14 SHEETS

20-231



SITE SECTION "A"



SITE SECTION "B"

CRAIG S. HAMPTON
ARCHITECT & PLANNER
DESIGNING QUALITY CUSTOM HOMES SINCE 1979
5300 E. QUARTERHAWK STREET – BOISE, IDAHO 83716
(949) 259-8883
craig@craighampton.com
www.craighampton.com

SITE SECTIONS A & B

PLANNING VARIANCE DESIGN PACKAGE

1113 KINGS ROAD, NEWPORT BEACH, CALIFORNIA
CUSTOM RESIDENCE FOR
GREG & CAROLYN REED
1113 KINGS ROAD
NEWPORT BEACH, CA 92663 (949) 698-2091

Date: 5/8/19
Scale: 1/8" = 1'-0"
Drawn: CSH
Job: 1113 KINGS ROAD
SHEET 9
OF 14 SHEETS

20-232

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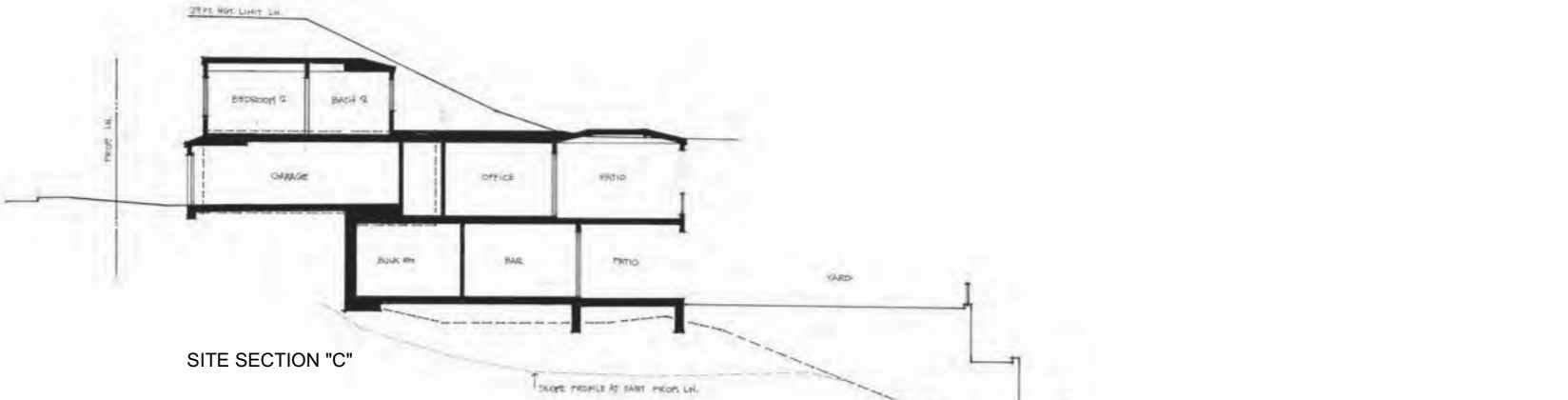
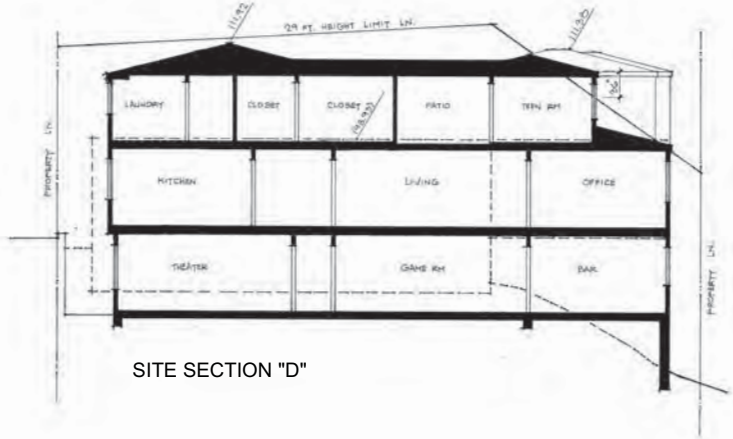


SITE SECTION "C"



SITE SECTION "D"

CRAIG S. HAMPTON
LICENSED GENERAL CONTRACTOR
DESIGNING QUALITY CUSTOM HOMES SINCE 1979
5500 E. QUARTERHAWK STREET – BOISE, IDAHO 83716
(949) 259-8883
CRAIG@CRAIGSHAMPTON.COM
WWW.CRAIGSHAMPTON.COM

PLANNING VARIANCE DESIGN PACKAGE

SITE SECTIONS C & D

1113 KINGS ROAD, NEWPORT BEACH, CALIFORNIA
CUSTOM RESIDENCE FOR
GREG & CAROLYN REED
1113 KINGS ROAD
NEWPORT BEACH, CA 92663 (949) 698-2091

Date: 5/8/19
Scale: 1/8" = 1'-0"
Drawn: CSH
Job: 1113 KINGS ROAD
SHEET 10
OF 14 SHEETS

20-233

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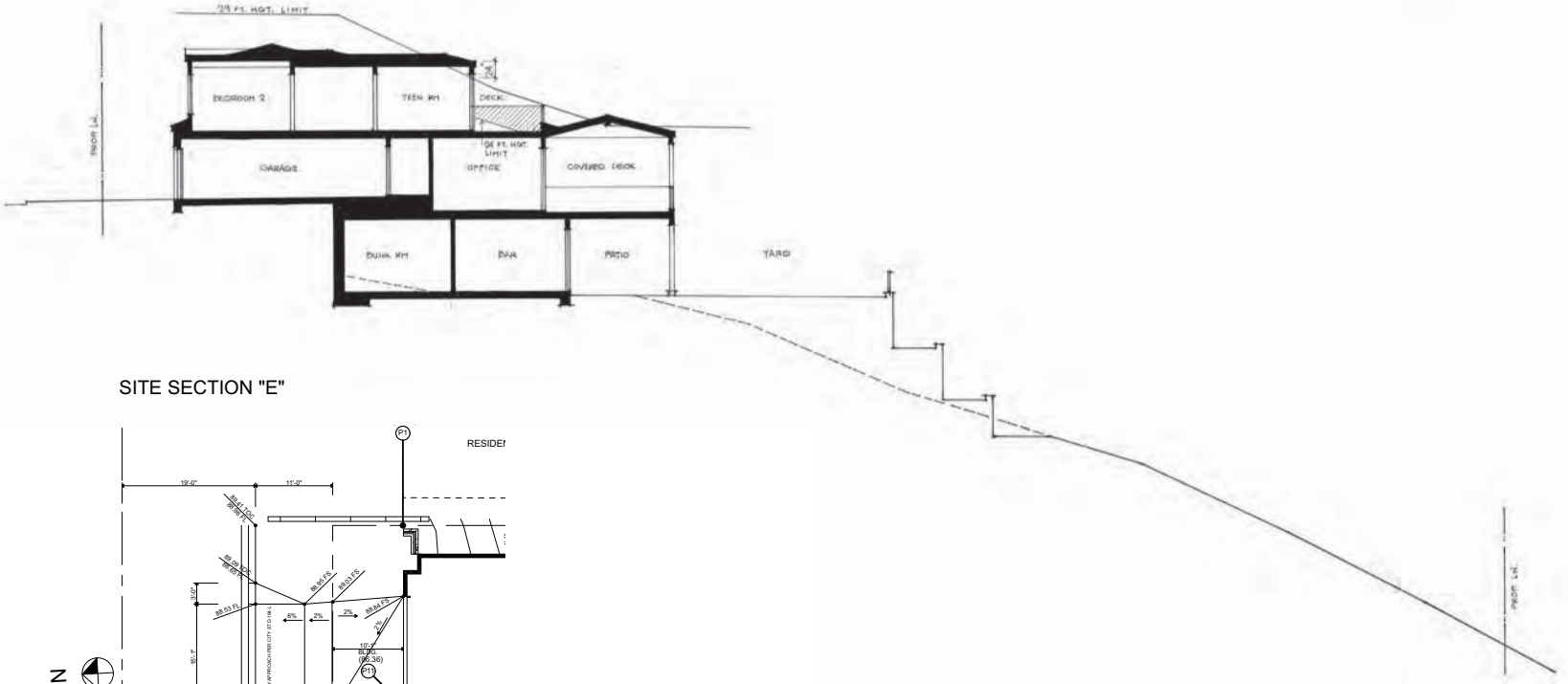
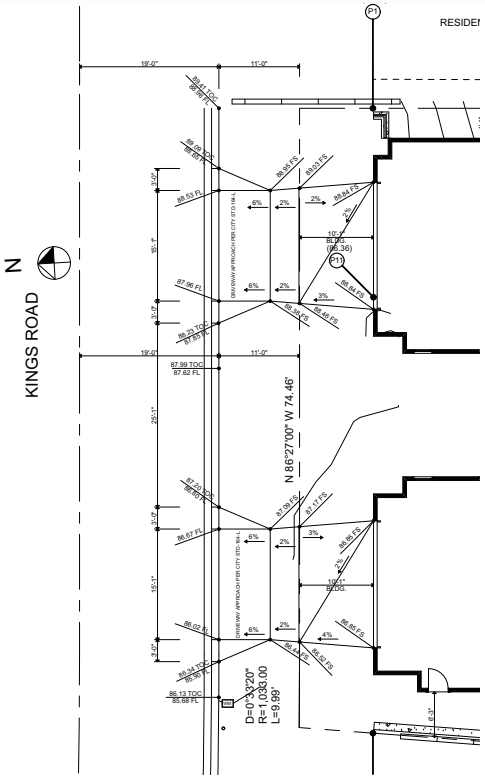


SITE SECTION "E"



ENLARGED DRIVEWAY PLAN
SCALE: 1/8"=1'-0"

CRAIG S. HAMPTON
INCORPORATED
DESIGNING QUALITY CUSTOM HOMES SINCE 1979
5500 E. QUARTERAWN STREET – BOISE, IDAHO 83716
(949) 209-8883
craig@craigshampton.com
www.craigshampton.com

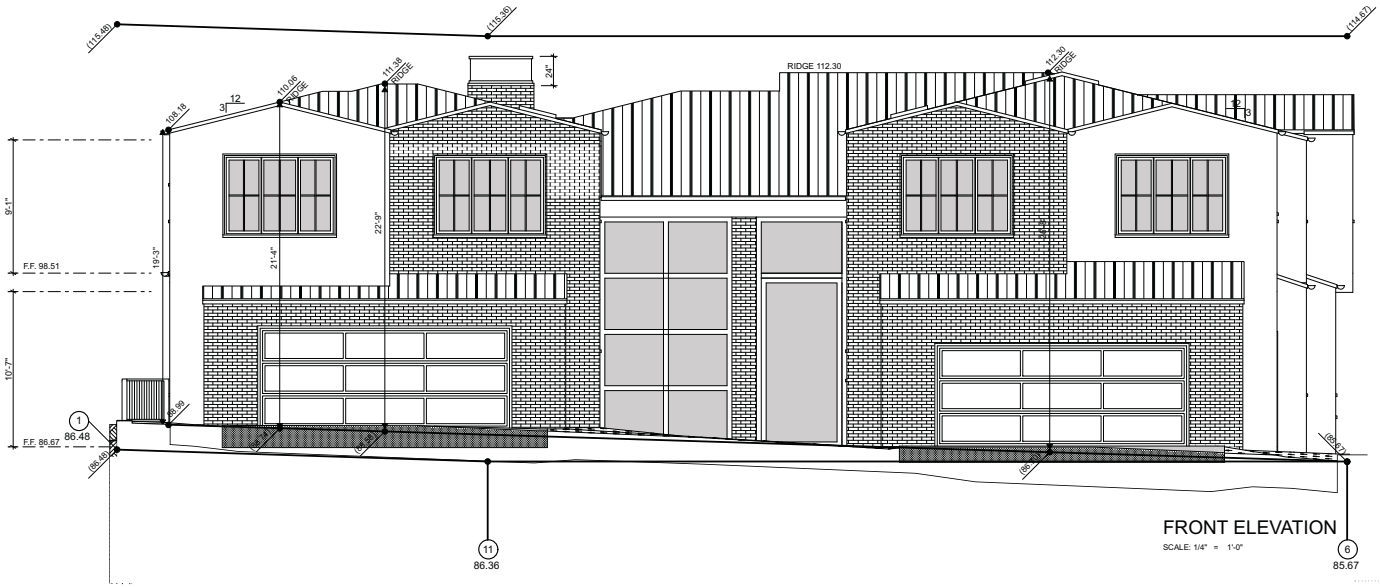
SITE SECTION E & ENLARGED DRIVEWAY PLAN

PLANNING VARIANCE DESIGN PACKAGE

1113 KINGS ROAD, NEWPORT BEACH, CALIFORNIA
CUSTOM RESIDENCE FOR
GREG & CAROLYN REED
1113 KINGS ROAD
NEWPORT BEACH, CA 92663
(949) 698-2091

Date:	5/8/19
Scale:	1/8" = 1'-0"
Drawn:	CSH
Job:	1113 KINGS ROAD
SHEET	11
OF	14 SHEETS

20-234



FRONT ELEVATION

SCALE: 1/4" = 1'-0"



RIGHT SIDE ELEVATION

SCALE: 1/4" = 1'-0"

CRAIG S. HAMPTON
LICENSED ARCHITECT
DESIGNING QUALITY CUSTOM HOMES SINCE 1979
5500 E. QUARTERHAWK STREET – BOISE, IDAHO 83716
(949) 250-8883
CRAIG@CRAIGSHAMPTON.COM
WWW.CRAIGSHAMPTON.COM

FRONT & RIGHT ELEVATION

PLANNING VARIANCE DESIGN PACKAGE

1113 KINGS ROAD, NEWPORT BEACH, CALIFORNIA

CUSTOM RESIDENCE FOR

GREG & CAROLYN REED
1113 KINGS ROAD
NEWPORT BEACH, CA 92663
(949) 698-2091

Date: 5/8/19
Scale: 1/4" = 1'-0"
Drawn: CSH
Job: 1113 KINGS ROAD
SHEET 12
OF 14 SHEETS

20-235

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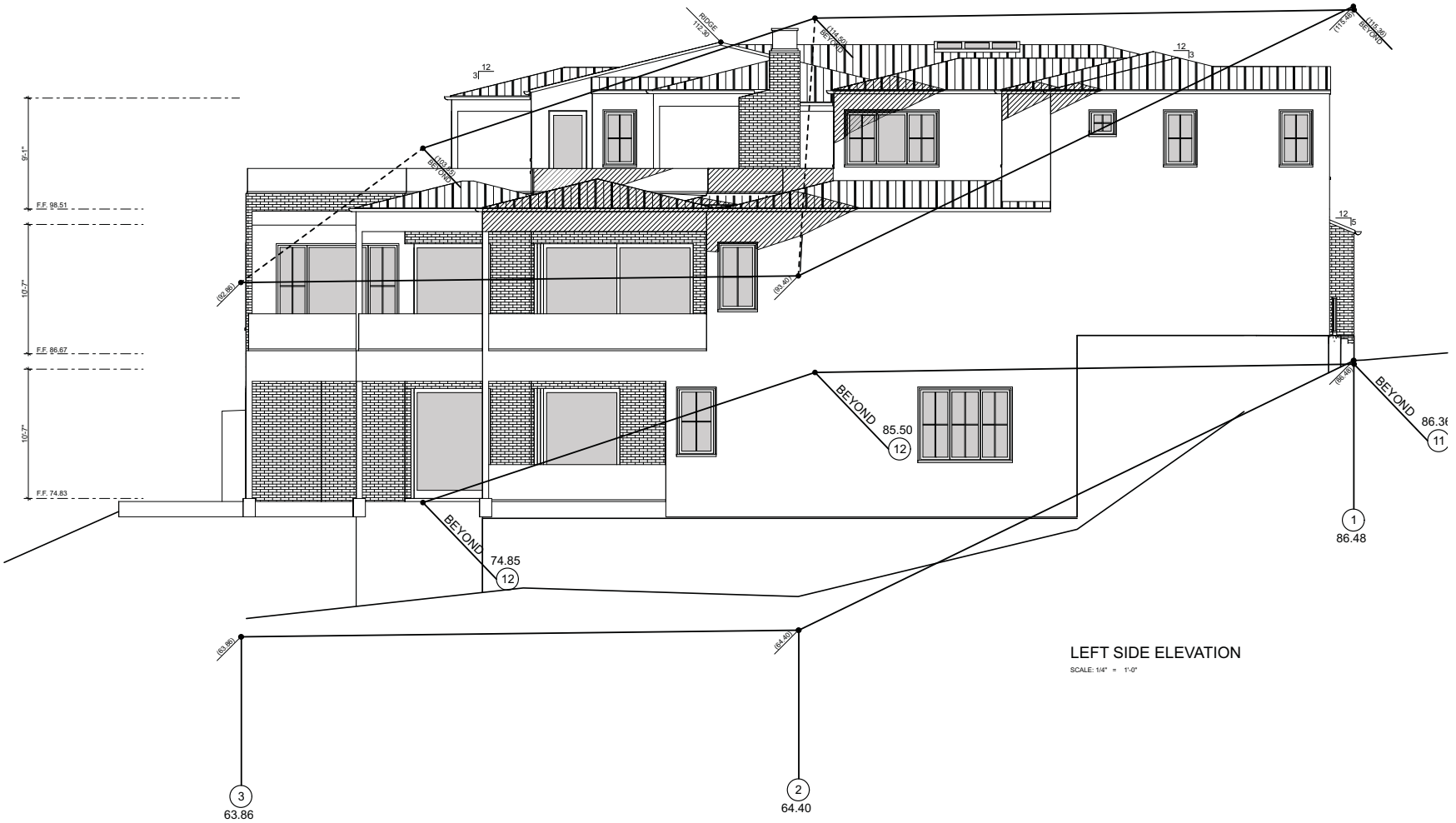

LEFT SIDE ELEVATION

SCALE: 1/4" = 1'-0"

CRAIG S. HAMPTON
INCORPORATED
DESIGNING QUALITY CUSTOM HOMES SINCE 1979
5500 E. QUARTERAWN STREET – BOISE, IDAHO 83716
(949) 209-8883
craig@craigshampton.com
www.craigshampton.com

LEFT SIDE ELEVATION

PLANNING VARIANCE DESIGN PACKAGE

1113 KINGS ROAD, NEWPORT BEACH, CALIFORNIA
CUSTOM RESIDENCE FOR
GREG & CAROLYN REED
1113 KINGS ROAD
NEWPORT BEACH, CA 92663
(949) 698-2091

Date: 5/8/19
Scale: 1/4" = 1'-0"
Drawn: CSH
Job: 1113 KINGS ROAD

SHEET
13
OF 14 SHEETS

20-236

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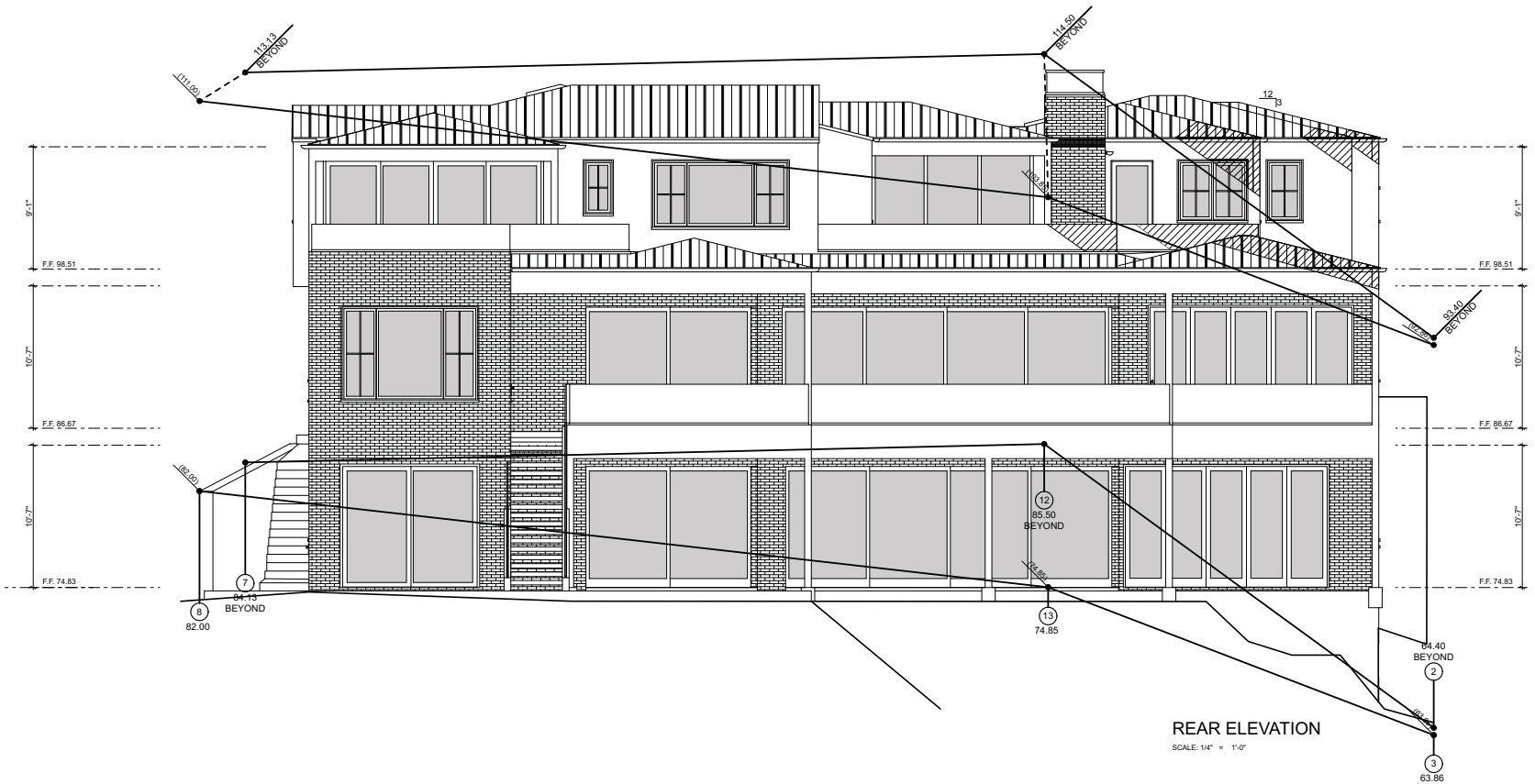

REAR ELEVATION

SCALE: 1/4" = 1'-0"

CRAIG S. HAMPTON
ARCHITECT, A.I.A.
DESIGNING QUALITY CUSTOM HOMES SINCE 1979
5 500 E. QUARTERHAWK STREET – BOISE, IDAHO 837 16
(949) 250-8883
CRAIG@CRAIGSHAMPTON.COM
WWW.CRAIGSHAMPTON.COM

REAR ELEVATION

PLANNING VARIANCE DESIGN PACKAGE

1113 KINGS ROAD, NEWPORT BEACH, CALIFORNIA
CUSTOM RESIDENCE FOR
GREG & CAROLYN REED
1113 KINGS ROAD
NEWPORT BEACH, CA 92663
(949) 698-2091

Date: 5/8/19
Scale: 1/4" = 1'-0"
Drawn: CSH
Job: 1113 KINGS ROAD
SHEET 14
OF 14 SHEETS

20-237

5/8/19 11:33 AM I:\1113 KINGS ROAD_REED_DESIGN PACKAGE_REV.pln

Attachment G

Correspondence

From: ghassem azadian <gazadian@gmail.com>
Sent: Wednesday, August 28, 2019 1:27 PM
To: Dixon, Diane
Cc: Koetting, Peter; Weigand, Erik; Lowrey, Lee; Ellmore, Curtis; Kleiman, Lauren; Kramer, Kory; Ghosn, Samir; Murillo, Jaime; Planning Commissioners; Jurjis, Seimone
Subject: Reed Residents - 1113 Kings Road - Project No. PA 2019-060

Dear Mayor Dixon and Honorable City Council Members,

Our family has lived on Kings Road for 11 years and we have always enjoyed a peaceful and quiet quality of life in our community of Cliff Haven, until recently. We live at 1121 Kings Road and our home is West of 1113 Kings Road.

The applicant, Carolyn Reed has applied for an application to build a 10,803 square-foot home with a 1,500 attached garage with a 100-foot projection; this 12,300 square foot project is completely out of character for the south, (bluff-side) of Kings Road. This is a perfect example of the continued “mansionization” that is destroying the charm of our community. The design, location, size and characteristics are not compatible with the single-family residences in the vicinity and would not be compatible with the enjoyment of nearby properties. In addition to this proposed monstrosity, the Planning Commission has granted five additional height variances. This decision is currently being appealed by SPON and both the Cliff Haven and Newport Heights Associations support this appeal. The fact is that this development is detrimental to the community.

In comparison, the average square-foot home on the bluff-side is 4,452 square-feet with an average projection of 50 to 70 feet, depending on the natural topography of the bluff.

The Reeds entered into “bad-faith” when they wrote and then asked our family to submit a letter to the City asking for our recommendation of approval for their project. We trusted the Reeds that this project would not have any impacts; however, after fully reviewing the project, this massive structure would destroy the harmony of our neighborhood and will have a detrimental impact to the bluffs, vistas and from scenic view corridor that exists along the bay.

At this time, we are retracting our previous letter that was submitted to the City on May 21, 2019 and for the record, we do not support PA 2019-060.

The neighbor to the East, 1101 Kings Road, Mrs. Manizheh Yomtoubian is the owner and is also opposed to this out of character project. This project is inconsistent with the City’s General Plan and will have cumulative environmental impacts to the bluffs, which could potentially compromise the surrounding homes. There was already a small land-slide in the area about five to seven years ago.

Further documentation from the engineering company, H.V. Lawmaster & Co., Inc., identified the geology and foundation factors pertinent to the property located at 1113 Kings Road. Their conclusions dated July 25, 1973, describes the property as having a “down-hill creep”; thus, recommending caisson footings.
It is our belief that there are no caissons footings located at 1113 Kings Road and that the bluff may not support such enormous project without jeopardizing the surrounding homes.

In closing, we oppose this project as it relates to the safety and the quality of life to the surrounding residents residing on Kings Road. Under these circumstances, we ask that the City Council make a motion to send the application PA-2019-80, back to City Staff and to return to the Planning Commission for further review.

Thank you for your time and consideration regarding this matter,

Sincerely,

Mr. & Mrs. Gus and Fawzia Azadian
1121 Kings Road
Newport Beach, CA 92663
Email ; gazadian@gmail.com
(714)290-3208

CITY OF

NEWPORT BEACH

City Council Staff Report

September 10, 2019
Agenda Item No. 21

TO:	HONORABLE MAYOR AND MEMBERS OF THE CITY COUNCIL
FROM:	Seimone Jurjis, Community Development Director - 949-644-3232, sjurjis@newportbeachca.gov
PREPARED BY:	Lauren Wooding Whitlinger, Real Property Administrator, lwooding@newportbeachca.gov
PHONE:	949-644-3236
TITLE:	Community Development Block Grant Program Year 2018-19, Consolidated Annual Performance and Evaluation Report

ABSTRACT:

The U.S. Department of Housing and Urban Development ("HUD") requires the City of Newport Beach ("City") to prepare and submit a Consolidated Annual Performance and Evaluation Report ("CAPER") to describe the City and its subrecipients' progress in meeting the goals established in the Program Year 2018-19 Action Plan that was approved by the City Council on June 12, 2018. This report must be submitted to HUD on or before September 28, 2019. The Program Year 2018-19 CAPER was prepared and made available for the HUD-required 15-day public review and comment period, which began on August 26, 2019, and concludes with the public hearing before the City Council on September 10, 2019.

RECOMMENDATION:

a) Hold a public hearing to receive comments on the Program Year 2018-19 CAPER;

b) Find this activity 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) 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, Chapter 3, because it has no potential for resulting in physical change to the environment, directly or indirectly;

c) Approve the Program Year 2018-19 CAPER; and

d) Authorize the City Manager or her designee to submit the Program Year 2018-19 CAPER to HUD.

FUNDING REQUIREMENTS:

There is no fiscal impact related to this item.

DISCUSSION:

On August 24, 2019, the City published a notice in the Daily Pilot informing the general public that the Draft 2018-19 CAPER (Attachment A) would be available for review and comment from August 26, 2019 to September 10, 2019. The public was informed of the opportunity to provide oral and/or written comments on the CAPER. To date, no public comments have been received. Additionally, the CDBG Citizen Participation Plan requires that a public hearing is held to receive comments from interested parties regarding the CAPER. This public hearing addresses the CDBG citizen participation requirement.

The 2018-19 CDBG allocation from HUD was $358,444; together with $9,174 of unallocated CDBG funds from prior years and $3,067 of Program Income, totaled $370,685 for program year 2018-19. The table below shows the annual CDBG budget and expenditures.

FY 2018-2019 Program Categories	***Budget***	***Expenditures***
Public Service Activities	$ 53,766	$ 52,158.04
Capital Improvement Project		
Section 108 Loan Repayment	$177,561	$177,560.90
Public Facilities - TBD	$67,669	$0
Program Administration & Fair Housing	$ 71,689	$71,688.80
Total	**$370,685**	**$301,407.74**

The accomplishments for this year include, but are not limited to, a senior mobile meals program serving 101 residents, a homelessness prevention program serving 343 residents, fair housing services for 102 residents, special needs substance abuse recovery services serving 5 residents, and scheduled debt service payments on the Section 108 loan that funded prior public improvements in Balboa Village. A more detailed explanation of accomplishments can be found in the attached draft 2018-19 CAPER.

ENVIRONMENTAL REVIEW:

Staff recommends the City Council find approval of the Agreement 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, Chapter 3, because it has no potential for resulting in physical change to the environment, directly or indirectly.

NOTICING:

In accordance with HUD requirements for a 15-day public review and comment period, notice of the public hearing was published in the Daily Pilot on August 24, 2019. Further, the agenda item has been noticed according to the Brown Act (72 hours in advance of the meeting at which the City Council considers the item).

ATTACHMENT:

Attachment A – Draft Consolidated Annual Performance and Evaluation Report (CAPER) for the 2018-19 Program Year

Attachment A

Draft Consolidated Annual Performance and Evaluation Report (CAPER)
for the 2018-19 Program Year

City of Newport Beach

Draft

Program Year 2018-2019

Consolidated Annual Performance and Evaluation Report

(CAPER)

September 10, 2019

Prepared by:

LDM Associates, Inc.

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CR-05 - Goals and Outcomes

Progress the jurisdiction has made in carrying out its strategic plan and its action plan. 91.520(a)

The City of Newport Beach has prepared the 2018-2019 Consolidated Annual Performance and Evaluation Report (CAPER) as required by the U.S. Department of Housing and Urban Development (HUD) which describes the use of federal Community Development Block Grant (CDBG) funds during the fourth program year of the 2015-2019 Consolidated Plan period, covering July 1, 2018 to June 30, 2019.

The City receives CDBG funds from HUD on a formula basis each year, and in turn, implements projects and also awards grants to nonprofit, for-profit or public organizations for projects in furtherance of the adopted Consolidated Plan. The CDBG program generally provides for a range of eligible activities for the benefit of low- and moderate-income Newport Beach residents.

For the 2018-2019 program year, the City received $358,444 of CDBG funds from HUD, which was combined in the Action Plan with $9,174 of unallocated CDBG funds from prior years as well as $3,067 of Program Income for a total investment of $370,685. This investment of CDBG funds was a catalyst for positive change in the community. Together with other federal, state and local investments, HUD resources allowed the City and its partners to:

- Provide fair housing services to 102 residents
- Provide homelessness prevention and assistance services to 343 residents
- Provide public services such as addressing elder abuse and neglect for 54 residents
- Provide public services such as home delivered meals to 101 senior residents
- Provide substance abuse recovery services to 5 residents
- Provide funds for Section 108 Loan Repayment

Table 1 provides a summary of the five-year and one-year accomplishments for the period ending June 30, 2019, arranged by each of the Strategic Plan Goals included in the 2015-2019 Strategic Plan of the Consolidated Plan.

Comparison of the proposed versus actual outcomes for each outcome measure submitted with the consolidated plan and explain, if applicable, why progress was not made toward meeting goals and objectives. 91.520(g)

Table 1 - Accomplishments – Program Year & Strategic Plan through June 30, 2018

Goal	Category	2018-2019 Amount	Indicator	Unit of Measure	5-Year Strategic Plan			2018-2019 Program Year No. 4		
					Expected	Actual	Percent Complete	Expected	Actual	Percent Complete
Fair Housing Services	Affordable Housing	CDBG: $12,000	Other	Other	600	472	78.66%	125	102	82%
Homelessness Prevention Services	Homeless	CDBG: $15,000	Homelessness Prevention	Persons Assisted	800	965	120.62%	240	343	143%
Public Facilities and Section 108 Debt Service	Non-Housing Community Development	CDBG: $245,230	Public Facility or Infrastructure Activities other than Low/Moderate Income Housing Benefit	Persons Assisted	8,595	8,595	100%	8,595	8,595	100%
			Other	Other	5	4	80.00%	1	1	100.00%
Public Services	Non-Housing Community Development	CDBG: $32,500	Public service activities other than Low/Moderate Income Housing Benefit	Persons Assisted	700	518	74%	132	155	117%
Special Needs Services	Non-Homeless Special Needs	CDBG: $6,266	Public service activities other than Low/Moderate Income Housing Benefit	Persons Assisted	50	23	46%	3	5	167%
Planning	Planning and Administration	CDBG: $59,689	Other	Other	N/A	N/A	N/A	N/A	N/A	N/A

Assess how the jurisdiction's use of funds, particularly CDBG, addresses the priorities and specific objectives identified in the plan, giving special attention to the highest priority activities identified.

During the program year, the City and local nonprofit organizations made progress on several 2018-2019 activities. All CDBG funded activities addressed specific high priority objectives identified in the 2015-2019 Consolidated Plan.

The majority of CDBG funds available in the 2018-2019 Action Plan were allocated to public service activities carried out by nonprofit organizations during the Program Year including fair housing services, homelessness prevention services, special needs services and other public services benefitting low- and moderate-income residents.

All of the activities funded during the program year are listed in Figure 1, including the amount of CDBG funds allocated to the activity and the amount spent as of June 30, 2019. Figure 2 provides the numeric accomplishment goal and the accomplishments as of June 30, 2019.

Figure 1 – Use of CDBG Funds

Strategic Plan Goal / Activity	Source	Allocation	Spent through 6/30/19	Percent Spent
1. Fair Housing Services				
Fair Housing Services	CDBG	$12,000.00	$12,000.00	100.00%
2. Public Services				
Age Well Senior Services: Home Delivered Meals	CDBG	$25,000.00	$25,000.00	100.00%
Council on Aging-SC: Long Term Care Ombudsman	CDBG	$7,500.00	$5,892.04	78.56%
3. Special Needs Services				
Second Chance Orange County	CDBG	$6,266.00	$6,266.00	100%
4. Homelessness Prevention Services				
Families Forward Housing Program	CDBG	$15,000.00	$15,000.00	100 %
5. Public Facilities and Infrastructure Improvements				
Public Facilities - TBD	CDBG	$67,669.00	$0.00	0%
6. Public Facilities and Section 108 Debt Service				
Section 108 Loan Repayment	CDBG	$177,561.00	$177,560.90	100%
6. Planning and Administration				
CDBG Administration	CDBG	$59,689.00	$59,688.80	100.00%
Total for all Goals:		**$370,685**	**$301,407.74**	**72.05%**

***Notes:** Construction of the Public Facilities/Infrastructure ADA Improvements Project was completed in FY17-18, by June 30, 2018. However, the retention payment to the construction contractor was paid during FY18-19, in September 2018, in the amount of $59,130.*

Figure 2 – Program Year Accomplishments by Strategic Plan Goal

Strategic Plan Goal / Activity	Unit of Measure	Expected	Actual
1. Fair Housing Services			
Fair Housing Services	People	125	102
2. Public Services			
Age Well Senior Services: Home Delivered Meals	People	92	101
Council on Aging-SC: Long Term Care Ombudsman	People	40	54
3. Special Needs Services			
Second Chance Orange County	People	3	5
4. Homelessness Prevention Services			
Families Forward Housing Program	People	240	343
5. Public Facilities and Infrastructure Improvements			
Public Facilities/Infrastructure ADA Improvements	People	8,595	8,595
6. Public Facilities and Section 108 Debt Service			
Section 108 Loan Repayment	Other	1	1
7. Planning and Administration			
CDBG Administration	N/A	N/A	N/A

***Notes:** The actual goals figure represents the number of unduplicated persons assisted. Some received multiple or ongoing services throughout the year, such as the Home Delivered Meals Program. Construction of the Public Facilities/Infrastructure ADA Improvements project was completed in FY17-18, by June 30, 2018. However, the retention payment to the construction contractor was paid during FY18-19, in September 2018, and as such is being reported as "complete" in this year's CAPER.*

CR-10 - Racial and Ethnic composition of families assisted

Describe the families assisted (including the racial and ethnic status of families assisted). 91.520(a)

Table 2 – Assistance to Racial and Ethnic Population by Source of Funds

	CDBG
White	8,147
Black or African American	171
Asian	375
American Indian or Alaskan Native	83
Native Hawaiian or Other Pacific Islander	27
Asian & White	2
Black or African American & White	1
Other Multi-Racial	394
Total	**9,200**
Hispanic	684
Non-Hispanic	8,516

***Note:** *The data in this table is supplied by HUD's database and reports from the Fair Housing Foundation. The figures in this table represent the sum of the reported number of people, families, households or housing units reported during the fiscal year, without regard to the number of people in each family, household or housing unit. In addition, the data in this table reflects 100 percent completed activities only.*

Narrative

Table 2 provides an aggregate of race and ethnicity data for the combined number of people, families, households or housing units served during the program year based on accomplishment data from all CDBG activities reported in HUD's Integrated Disbursement and Information System (IDIS).

CR-15 - Resources and Investments 91.520(a)

Identify the resources made available

Table 3 – Resources Made Available

Source of Funds	Resources Made Available 2018-2019	Amount Expended During Program Year
CDBG	$370,685	$301,407.74

Narrative

The CDBG resources made available included $358,444 of CDBG formula grant funds and $9,174 of unallocated CDBG funds from prior years as well as $3,067 of Program Income for a total of $370,685. The total amount expended during this program year was $ 301,407.74. Construction of the Public Facilities/Infrastructure ADA Improvements activity was completed as of June 30, 2018. The construction contract retention was paid in September 2018. Therefore, Public Facilities/Infrastructure ADA Improvements activity is being reported as complete in this year's CAPER.

Identify the geographic distribution and location of investments

Table 4 – Identify the geographic distribution and location of investments

Target Area	Planned Percentage of Allocation	Actual Percentage of Allocation	Narrative Description
Citywide	100%	100%	Citywide Area

Narrative

During 2018-2019, the City expended CDBG funds in a manner consistent with the National Objectives of the program. 100 percent of the CDBG funds expended were for activities that benefit low to moderate income persons. The percentage includes Administration and Planning activities.

The City's investments in Fair Housing Services, Public Services, Special Needs Services and Homelessness Prevention Services projects are based on a citywide geography because individuals in need of these services may live anywhere within the jurisdiction—particularly services for special needs populations such as individuals recovering from substance abuse.

Prior to the current amended Consolidated Plan, the only exception to this approach was for CDBG projects that were qualified on a low- and moderate-income area basis where a specific proportion of the residents within the service area must be low- and moderate-income residents, such as the 2016-2017 West Newport Recreational Facility project and the 2015-2016

Commercial Façade Improvement project. Both of those projects were canceled through the amendment to the 2015-2019 Consolidated Plan and 2015-2016 and 2016-2017 Action Plans.

Leveraging

Explain how federal funds leveraged additional resources (private, state and local funds), including a description of how matching requirements were satisfied, as well as how any publicly owned land or property located within the jurisdiction that were used to address the needs identified in the plan.

The City used CDBG funds to leverage appropriate state, local and private resources secured by each nonprofit organization providing public services. In addition, the City will seek to leverage other sources including but not limited to those listed below and as outlined in the Consolidated Plan.

State Resources

- State Low-Income Housing Tax Credit Program
- Building Equity and Growth in Neighborhoods Program (BEGIN)
- CalHome Program
- Multifamily Housing Program (MHP)
- Housing Related Parks Grant
- CalHFA Single and Multi-Family Program
- Mental Health Service Act (MHSA) Funding

Local Resources

- Orange County Housing & Finance Agency (OCHFA) Funding
- Southern California Home Financing Authority (SCHFA) Funding
- Orange County Continuum of Care Program
- Orange County Housing Authority (OCHA) Programs

Private Resources

- Federal Home Loan Bank Affordable Housing Program (AHP)
- Community Reinvestment Act Programs
- United Way Funding
- Private Contributions

During the 2018-2019 Program Year, the City's nonprofit public service organizations used CDBG funds in conjunction with over $5.4 million of other federal, state and local funds to implement their programs.

Matching Requirements

The CDBG program does not require matching funds.

Publicly Owned Land or Property

The City owned one property in Balboa Village known as the Balboa Theater. The property was acquired in the 1990s with CDBG funds as part of an economic revitalization strategy in place at that time. The City was able to sell the property. In consultation with the HUD Los Angeles Field Office, the City was authorized to use the proceeds of the sale of the Balboa Theater to address the needs of the current Consolidated Plan. The Consolidated Plan was amended to reflect this new resource upon completion of the property sale in the fall of 2016. In addition, the City was authorized to maintain the net sales proceeds in its local account. The funds were allocated to the Public Facilities/Infrastructure ADA Improvements activity in the 2017-2018 Action Plan.

CR-20 - Affordable Housing 91.520(b)

Evaluation of the jurisdiction's progress in providing affordable housing, including the number and types of families served, the number of extremely low-income, low-income, moderate-income, and middle-income persons served.

Table 5- Number of Households Supported

	One-Year Goal	Actual
Number of homeless households to be provided affordable housing units	0	0
Number of non-homeless households to be provided affordable housing units	0	0
Number of special-needs households to be provided affordable housing units	0	0
Total	**0**	**0**

Table 6 - Number of Households Supported

	One-Year Goal	Actual
Number of households supported through rental assistance	0	0
Number of households supported through the production of new units	0	0
Number of households supported through the rehab of existing units	0	0
Number of households supported through the acquisition of existing units	0	0
Total	**0**	**0**

Discuss the difference between goals and outcomes and problems encountered in meeting these goals.

Two high priority affordable housing needs were identified in the 2015-2019 Consolidated Plan. The City of Newport Beach will continue to use non-CDBG funding sources such as the local Affordable Housing Fund to address the following goals:

Expand the Supply of Affordable Housing
Based on evaluation of 2007-2011 ACS and CHAS data, there is a high need for additional rental housing units affordable for households earning less than 50 percent of AMI. Of the households earning 0-80 percent of AMI, 7,790 are cost burdened households — meaning households paying more than 30 percent of their income for housing. Additionally, 5,805 of the cost burdened households are considered severely cost burdened households — meaning that they pay more than 50 percent of their income for housing. Of the 5,805 severely cost burdened households, 3,580 are renters, representing the City's worst-case housing need. Of those severely cost burdened renter households, 2,945 households earn less than 50 percent of AMI and are considered the most at risk of becoming homeless. The City will continue to use its Affordable Housing Fund and other available options under the State Density Bonus law to create additional affordable housing.

Preserve the Supply of Affordable Housing
As the City's housing stock ages, a growing percentage of housing units may need rehabilitation to allow them to remain safe and habitable. The situation is of particular concern for low- and moderate-income homeowners who are generally not in a financial position to properly maintain their homes. The age and condition of Newport Beach's housing stock is an important indicator of potential rehabilitation needs. Preservation of the physical and functional integrity of existing housing units occupied by low- and moderate-income households is a cost-effective way to invest limited resources to retain existing housing units that are already affordable to low- and moderate-income households in the community.

In addition, at the point of adoption of the 2018-2019 Action Plan, the City addressed affordable housing needs through fair housing services to ensure equal access to housing opportunities to low- and moderate-income people and by providing support to homelessness prevention and special-needs services through the following activities:

- Fair Housing Foundation – Fair Housing Services assisted 102 people
  This agency addressed the priority need of ensuring equal access to housing opportunities.
- Families Forward – Housing Program assisted 343 people
  This agency addressed the priority need of preventing and eliminating homelessness

Discuss how these outcomes will impact future annual action plans.

The outcomes of this priority need will not impact future annual action plans since the City will use other source of funds for affordable housing programs as indicated in the Consolidated Plan.

Include the number of extremely low-income, low-income, and moderate-income persons served by each activity where information on income by family size is required to determine the eligibility of the activity.

Table 7 – Number of Persons Served

Number of Persons Served	CDBG Actual
Extremely Low-income	0
Low-income	0
Moderate-income	0
Total	**0**

Narrative Information

The Strategic Plan identified two high priority needs to expand the supply of affordable housing and preserve the supply of affordable housing. The Consolidated Plan indicated that CDBG funds will not be used for affordable housing. The City will continue to use other funding sources and methods to create affordable housing opportunities such as the Affordable Housing Fund and the State Density Bonus law. In addition, as outlined in the adopted 2015-2019 Consolidated Plan, the City will continue to provide CDBG funds to support fair housing services, homelessness prevention programs and public services.

The City continues to work to expand the supply of affordable housing. In 2016, the City granted a Density Bonus that will result in 455 total units at Uptown Newport, of which 92 units will be affordable to very low-income households. The affordable units became available in mid-2019.

As a result of the City's former Inclusionary Housing Ordinance, the City collected approximately $4.2 million in the Affordable Housing Fund. The fees were paid by developers of residential housing in-lieu of providing affordable units. The purpose of the Affordable Housing Fund is to construct, rehabilitate or subsidize affordable housing or assist other governmental entities, private organizations or individuals to provide or preserve affordable housing. On April 29, 2015, the City published a Request for Proposals for the use of the Affordable Housing Fund toward affordable housing development or programming. The City received three proposals

discussed below that ultimately were recommended for funding from an evaluation panel and the City's Affordable Housing Task Force.

- Newport Shores Project: An agreement with Community Development Partners granting $1,975,000 to assist with the acquisition, rehabilitation and conversion of an existing 12-unit apartment building located at 6001 Coast Boulevard for affordable housing. This project opened as of March 2018.

- Senior Home Repair Program: The City granted up to $600,000 to Habitat for Humanity Orange County for the purpose of establishing a critical home repair program for lower-income seniors. This program is active, has approved seven project applications, completed four projects and is continuing to accept applications.

- Seaview Lutheran Plaza Rehabilitation: The City Council approved an agreement granting $800,000 to Seaview Lutheran Plaza to rehabilitate 100 apartment bathrooms to include ADA toilets, removal of tubs, installation of new showers with safety grab bars, new flooring and paint. The project was completed during the 2017-2018 Program Year.

CR-25 - Homeless and Other Special Needs 91.220(d, e); 91.320(d, e); 91.520(c)

Evaluate the jurisdiction's progress in meeting its specific objectives for reducing and ending homelessness through:

Reaching out to homeless persons (especially unsheltered persons) and assessing their individual needs

As stated in prior years, the City of Newport Beach will continue to support the efforts of Orange County Continuum of Care (CoC) and its member organizations that address homelessness throughout Orange County.

According to the Ten-Year Plan to End Homelessness in Orange County adopted in 2012 (Ten-Year Plan), the CoC is in the process of implementing several regional strategies that will enhance local coordination to more effectively assist people in need. To more rapidly identify and assess people experiencing homelessness, the CoC is working to create regional homeless access centers that will offer fully coordinated systems of outreach and will facilitate universal assessment, intake, referral and transportation to resources. The CoC is also developing resources of information (such as 2-1-1) to better serve individuals who are homeless or at risk of becoming homeless. In addition, the CoC is working to implement a database using real time information from intake and assessment that is housed in the Homeless Management Information System (HIMS). Collectively these strategies will help minimize duplication of effort and better connect the most vulnerable individuals and families, chronically homeless, and people at risk of becoming homeless to appropriate resources.

To reach out to unsheltered homeless persons and assess their individual needs for the purpose of connecting them with available emergency shelter and transitional housing resources, the City of Newport Beach, through its Planning Division provided information and referrals — primarily to 2-1-1 Orange County. Additionally, to reduce and end homelessness, the City of Newport Beach provided CDBG funds for the following public service activities:

- Families Forward – Housing Program assisted 343 people
  This agency helped addressing the priority need of preventing and eliminating homelessness.

Addressing the emergency shelter and transitional housing needs of homeless persons

The ultimate solution to ending homelessness is transitional to permanent housing closely aligned with supportive services that ensure housing stability can be maintained. However, because the demand for affordable housing far outpaces the region's supply, the CoC continues to rely on its emergency and transitional housing system in order to address the immediate needs of Orange County's homeless population.

In 2013, the CoC and County identified $4.5 million in local funds to support the development of year-round emergency shelters and multi-service centers in Orange County. Over the next five years the CoC and the County will continue to search for an appropriate location for this new shelter.

For transitional housing, the Ten-Year Plan recognizes a need to maintain a level of transitional housing for the target populations that benefit most from a staged approach to housing, such as mentally ill and chronically homeless individuals. While the CoC continues to support transitional housing in special circumstances, the CoC is currently examining ways to shorten stays in emergency shelters and transitional housing so that resources may be used for rapid re-housing or placement in permanent supportive housing.

Other organizations in the CoC also address the emergency shelter and transitional housing needs of homeless persons, including Orange Coast Interfaith Shelter, Orange County Rescue Mission and WISEPlace.

Helping low-income individuals and families avoid becoming homeless, especially extremely low-income individuals and families and those who are: likely to become homeless after being discharged from publicly funded institutions and systems of care (such as health care facilities, mental health facilities, foster care and other youth facilities, and corrections programs and institutions); and, receiving assistance from public or private agencies that address housing, health, social services, employment, education, or youth needs

An individual or family is considered to be at-risk of becoming homeless if it experiences extreme difficulty maintaining their housing and has no reasonable alternatives for obtaining subsequent housing. Homelessness often results from a complex set of circumstances that require people to choose between food, shelter and other basic needs. Examples of common circumstances that can cause homelessness include eviction, loss of income, insufficient income, disability, increase in the cost of housing, discharge from an institution, irreparable damage or deterioration to housing, and fleeing from family violence.

Orange County's current CoC system encourages services aimed at reducing incidences of homelessness for those receiving public assistance and individuals likely to become homeless after being discharged from publicly funded institutions and systems of care, including:

- Emergency Rental and Utility Assistance: Short-term financial assistance to prevent eviction and utility shut-off.
- Credit Counseling: Financial counseling and advocacy to assist households to repair credit history.
- Legal/Mediation Services: Tenant-landlord legal/mediation services to prevent eviction.
- Food Banks and Pantries: Direct provision of food, toiletries and other necessities.
- Transportation Assistance: Direct provision of bus vouchers and other forms of transportation assistance.

- Clothing Assistance: Direct provision of clothing for needy families and individuals.
- Prescription/Medical/Dental Services: Direct provision of prescription, medical and dental services.
- Workforce Development: Direct provision of job training services designed to develop and enhance employment skills, as well as to help clients secure and retain living wage jobs.
- Information & Referral Services: Direct provision of 24-hour/7-days-a-week call center services to provide health and human service information to at-risk populations.
- Recuperative care for homeless individuals who become ill or injured.

In addition, the City provided CDBG funds to nonprofit organizations to meet the goals of the Consolidated Plan. The following is a detailed description of services provided by each organization per activity and according to the Action Plan:

Families Forward – Housing Program

The Families Forward Housing Program transitions homeless families from crisis to stability and self-sufficiency. Services include housing, counseling, food, career coaching, life-skills, education and acquisition of permanent housing. Individualized self-sufficiency plans are developed with case managers, and progress is monitored on a regular basis at monthly case management meetings. Depending on financial capacity, families will pay 0-30 percent of their income in rent. Transitional housing ranges from 1-24 months. Case managers conduct pre and post program surveys to document this data. Additionally, services provided through this program are mentioned through ClientTrack, HMIS-compliant client data system, at regular intervals. Families Forward assisted 343 people.

Helping homeless persons (especially chronically homeless individuals and families, families with children, veterans and their families, and unaccompanied youth) make the transition to permanent housing and independent living, including shortening the period of time that individuals and families experience homelessness, facilitating access for homeless individuals and families to affordable housing units, and preventing individuals and families who were recently homeless from becoming homeless again

The City of Newport Beach continues to support CoC efforts. The 2015-2019 Strategic Plan prioritized the use of CDBG funds to support activities implemented by local nonprofit organizations that provide services to help prevent and eliminate homelessness, including families at risk of homelessness. To address the needs of homeless families, families with children, veterans and their families, the City provided funds to support the Families Forward Housing Program, which provides transitional housing, counseling and case management to families at risk of homelessness. When paired with financial counseling, career coaching and other available case management services, Families Forward makes certain that families are ready to succeed in their transition to permanent housing.

CR-30 - Public Housing 91.220(h); 91.320(j)

Actions taken to address the needs of public housing

Newport Beach is within the service area of the Orange County Housing Authority (OCHA) for the purposes of Section 8 and Public Housing. The data presented below is for Newport Beach and the narrative responses address the needs for the entire county, with specific references to the City of Newport Beach.

As of July 2019, OCHA administered 114 Housing Choice Vouchers utilized by Newport Beach residents, including 32 for families, 19 for households with disabled members, and 63 for elderly households.

Actions planned during the next year to address the needs to public housing

During the current five-year planning period, OCHA's goals are:

- Apply for additional housing assistance funding and programs that may become available.
- Explore the use of Project-Based Housing Choice Vouchers or other housing funds to promote the construction or acquisition activities that will result in additional units or developments that will serve special needs populations.
- Ensure consistent quality of assisted housing services by maintaining high performer status in Section Eight Management Assessment Program (SEMAP) scores.
- Promote Family Self-Sufficiency incentives and homeownership opportunities for Housing Choice Voucher participants in partnership with local programs and related service providers.
- Expand assisted housing choices by conducting outreach efforts to increase the number of property owners and their participation in housing assistance programs.
- Identify and utilize technology to enhance operational effectiveness and efficiency in delivery of housing assistance services

Actions taken to encourage public housing residents to become more involved in management and participate in homeownership

OCHA supports resident councils and actively seeks input from PHA residents on the management and implementation of OCHA policies and procedures.

Housing prices in Orange County are so high that homeownership opportunities are limited for OCHA residents. On a limited basis, OCHA has partnered with Habitat for Humanity to provide two affordable homeownership units, but these types of efforts are limited.

OCHA also manages a Housing Choice Voucher Homeownership Program that it markets to all OCHA program tenants.

Actions taken to provide assistance to troubled PHAs

Not applicable. OCHA is designated as a High Performing PHA.

CR-35 - Other Actions 91.220(j)-(k); 91.320(i)-(j)

Actions taken to remove or ameliorate the negative effects of public policies that serve as barriers to affordable housing such as land use controls, tax policies affecting land, zoning ordinances, building codes, fees and charges, growth limitations, and policies affecting the return on residential investment. 91.220 (j); 91.320 (i)

Based on the Consolidated Plan Needs Assessment Survey, the 2013-2021 Housing Element and market analysis, the primary barriers to affordable housing in Newport Beach are housing affordability and the lack of monetary resources necessary to develop and sustain affordable housing.

The City evaluated significant public policies affecting affordable housing development such as land use controls, tax policies affecting land, zoning ordinances, building codes, fees and charges and growth limitations. Based on this evaluation, the City determined that it has taken all appropriate and necessary steps to ameliorate the negative effects of public policies that may have been a barrier to affordable housing.

Moreover, to address housing affordability and the lack of monetary resources for affordable housing, the City will continue to invest Affordable Housing Fund resources to incentivize the development of affordable housing during the five-year period of the Consolidated Plan. In addition, the City will continue to work with the County and refer low- and moderate-income residents for participation in their Housing Rehabilitation Program.

Actions taken to address obstacles to meeting underserved needs. 91.220(k); 91.320(j)

The primary obstacles to meeting the underserved needs of low- and moderate-income people include lack of funding from federal, state and other local sources, and the high cost of housing that is not affordable to low-income people.

To address these obstacles, the City invested CDBG funds through the 2018-2019 Action Plan in projects that provide assistance to those with special needs, projects that prevent homelessness, and strengthen economic opportunities for low- and moderate-income residents. Additionally, the City allocated 100 percent of its non-administrative CDBG investments for program year 2018-2019 to projects and activities that benefit low- and moderate-income people or people presumed under HUD regulations to be low- and moderate-income. The following are the activities funded this program year:

Fair Housing Foundation – Fair Housing Services
The Fair Housing Foundation provided fair housing and landlord/tenant mediation to ensure universal access to fair housing to low- and moderate-income residents. This agency assisted 102 people.

Age Well Senior Services Home - Delivered Meal Program
Provided home delivered meals to seniors and disabled persons to reduce the possibility of institutionalization. This agency assisted 101 seniors.

Council on Aging of Southern California - Long Term Care Ombudsman
This program provided services as ombudsman of Long-Term Care facilities and act on behalf of those seniors unable to advocate for themselves. The agency receives over 60 percent of complaints during Ombudsman regular unannounced visits. This program addresses the growing problem of abuse and neglect of the elderly in Long-Term Care facilities. This agency assisted 54 seniors.

Families Forward - Housing Programs
This program provided assistance to transit homeless families and at risk to become homeless families from crisis to stability and self-sufficiency. Services include housing, counseling, food, career coaching, life-skills, education and acquisition of permanent housing. This agency assisted 343 people.

Second Chance O.C. – Substance Abuse Recovery Program
This program provided assistance for low-income individuals recovering from substance abuse to become productive members of society. The agency provides individualized services including job and life skills training, one-on-one mentoring and job placement. This agency assisted 5 people.

Actions taken to reduce lead-based paint hazards. 91.220(k); 91.320(j)

The City of Newport Beach does not currently implement a Residential Rehabilitation Program with CDBG funds; however, if such a program is implemented in the future, the City will disseminate brochures provided by the U.S. Environmental Protection Agency to all applicants as part of the transmittal of the program application. Any unit receiving assistance through the program that was built prior to January 1, 1978 will be tested for lead-based paint. If lead-based paint is present, appropriate abatement procedures are implemented as part of the rehabilitation contract consistent with the requirements of 24 CFR Part 35.

Actions taken to reduce the number of poverty-level families. 91.220(k); 91.320(j)

The implementation of CDBG activities meeting the goals established in the 2015-2019 Consolidated Plan-Strategic Plan and this Annual Action Plan helped to reduce the number of poverty-level families by:

- Supporting activities that expand the supply of housing that is affordable to low- and moderate-income households, including investment of the City's Housing Trust Fund resources and using the State Density Bonus law to incentivize the development of additional affordable housing units;

- Supporting a continuum of housing and public service programs to prevent and eliminate homelessness;
- Supporting housing preservation programs that ensure low income households have a safe, decent and appropriate place to live;
- Supporting public services through various nonprofits funded by CDBG that serve the community's youth, seniors, families and those with special needs; and
- Promoting economic opportunity for all residents working for employers doing business with the City of Newport Beach through the Commercial Façade Improvement Program.

In addition to these local efforts, mainstream state and federal resources also contribute to reducing the number of individuals and families in poverty. Federal programs such as the Earned Income Tax Credit and Head Start provide a pathway out of poverty for families who are ready to pursue employment and educational opportunities. Additionally, in California, the primary programs that assist families in poverty are CalWORKs, CalFresh (formerly food stamps) and Medi-Cal. These programs provide individuals and families with employment assistance, subsidy for food, medical care, childcare and cash payments to meet basic needs such as housing, nutrition and transportation. Other services are available to assist persons suffering from substance abuse, domestic violence and mental illness.

Actions taken to develop institutional structure. 91.220(k); 91.320(j)

The institutional delivery system in Newport Beach is high-functioning and collaborative — particularly the relationship between local government and the nonprofit sector comprised of a network of capable community-based organizations that are delivering a full range of services to residents. Affordable housing development and preservation activities will be carried out by the Planning Division of the Community Development Department in partnership with other agencies. Public service activities will be carried out by nonprofit organizations to achieve the Strategic Plan goals. The Planning Division and the Public Works Department will work together with contractors to implement public facility improvement projects in subsequent program years implementing the 2015-2019 Consolidated Plan Strategic Plan.

One of the key ways the City is developing and expanding institutional structure to meet underserved needs is by funding a wide variety of services targeted to seniors, special needs populations and individuals or families at risk of homelessness with CDBG public service grants.

Actions taken to enhance coordination between public and private housing and social service agencies. 91.220(k); 91.320(j)

To enhance coordination between public and private housing and social service agencies, the City invested CDBG funds and will continue consulting with and inviting the participation of a wide variety of agencies and organizations involved in the delivery of housing and supportive services to low- and moderate-income residents in Newport Beach.

In the implementation of the 2018-2019 Action Plan, the City invested CDBG resources to public service agencies to assist low- and moderate- income residents in Newport Beach such as Fair Housing Foundation, Families Forward, Second Chance and Age Well Senior Services.

Identify actions taken to overcome the effects of any impediments identified in the jurisdictions analysis of impediments to fair housing choice. 91.520(a)

In Orange County, 16 entitlement cities prepared a regional Analysis of Impediments to Fair Housing Choice to affirmatively further fair housing choice for all their residents. The City of Newport Beach is one of the 16 Entitlement Cities included in the Orange County Regional AI. This analysis of impediments was built upon the previous analysis, summarized conclusions and presented a list of recommendations to help address the impediments. The summary below focuses on issues pertaining to the region in general and then Newport Beach in particular.

A. REGIONAL PRIVATE SECTOR IMPEDIMENTS

Impediment A-1: Housing Discrimination

Housing discrimination continues to exist throughout Orange County, as evidenced by the number of complaints and fair housing cases opened by the Fair Housing Foundation and Fair Housing Council of Orange County. An average of 85 cases were opened in the participating cities over the past three years, with the leading bias based on disability (physical and mental), followed by familial status, national origin and race**.**

Regional Actions:

- In partnership with each city's fair housing provider, conduct multi-faceted fair housing outreach to tenants, landlords, property owners, realtors, and property management companies. Methods of outreach should include workshops, informational booths at community events, presentations to civic leaders and community groups, staff trainings, and distribution of multi-lingual fair housing literature.

- Conduct focused outreach and education to small property owners/landlords on fair housing, and race, reasonable accommodation and familial status issues in particular. Conduct property manager trainings on a regular basis, targeting managers of smaller properties, and promote fair housing certificate training offered through the fair housing providers.

- Provide general counseling and referrals to address tenant-landlord issues through each city's fair housing contractor, and provide periodic tenant-landlord walk-in clinics at City Halls and other community locations.

- Include testing/audits within the scope of work for each city's fair housing provider.

Support enforcement activity and publicize outcomes of fair housing litigation as a means to deter discriminatory practices and to encourage reporting.

Impediment A-2: Racial and Ethnic Segregation

Residential segregation refers to the degree in which groups live separately from one another. Within the County there are areas of racial/ethnic concentrations, such as in Santa Ana where over three-quarters of the population is Hispanic and ten percent is Asian. Approximately ten percent of households in the County are considered to be limited English-speaking households.

Regional Actions:

- Coordinate with fair housing providers to focus fair housing services, education/outreach, and/or additional testing in identified areas of racial/ethnic concentrations.

- Offer a variety of housing opportunities to enhance mobility among residents of all races and ethnicities. Facilitate the provision of affordable housing throughout the community through: 1) available financial assistance; 2) flexible development standards; 3) density bonuses; and 4) other zoning tools.

- Promote equal access to information on the availability of affordable housing by providing information in multiple languages, and through methods that have proven successful in outreaching to the community, particularly those hard-to-reach groups.

- Affirmatively market first-time homebuyer and/or housing rehabilitation programs to low- and moderate-income areas, and areas of racial/ethnic concentration.

- Work collaboratively with local housing authorities to ensure affirmative fair marketing plans and de-concentration policies are implemented.

Impediment A-3: Denial of Reasonable Modifications/Reasonable Accommodations

Denial of reasonable modification or reasonable accommodation is a continuing impediment to fair housing choice, and represents over one-half of alleged discriminatory acts in the 16 participating jurisdictions. The City has not denied any legitimate requests for reasonable accommodation.

Regional Actions:

- Through each city's fair housing contractor, continue to provide fair housing education and information to apartment managers and homeowner associations on why denial of reasonable modifications/accommodations is unlawful.

- Provide information on the unlawful practice of denying reasonable

modifications/accommodations at fair housing seminars conducted by the Apartment Association of Orange County.

Impediment A-4: Discriminatory Advertising

Regionally, there were incidents of discriminatory advertising that have the potential to discourage a certain type of renter or buyer from pursuing a housing opportunity. Ads indicating a preference for a certain type of tenant or buyer, such as “no pets”, “no children”, or “Ideal for single adult” have the effect of housing discrimination.

Regional Actions:

- Through each city's fair housing contractor, periodically monitor local newspapers and online media outlets to identify potentially discriminatory housing advertisements. When identified, make contact with the individual or firm and provide fair housing education.

- Take steps to encourage both the Los Angeles Times and Orange County Register to publish a Fair Housing Notice and a "no pets" disclaimer that indicates rental housing owners must provide reasonable accommodations, including "service animals" and "companion animals" for disabled persons.

Impediment A-5: Hate Crimes

Hate crimes committed at a residence are an impediment to fair housing choice because they impact the lives of an average of 35 households per year in the 16 participating Orange County cities. Of the total 169 hate crime incidents reported between 2010 and 2014, 57 incidents were related to race, 38 to religion, 37 to sexual orientation, 33 to ethnicity, 2 to disability and 2 to gender identity. Nearly 60 percent of these incidents occurred within the following four jurisdictions: Huntington Beach (36 incidents), Santa Ana (31 incidents), Newport Beach (18 incidents), and Garden Grove (15 incidents).

Regional Actions:

- Continue to monitor FBI data to determine if any hate crimes are housing related and if there are actions that may be taken by the City or its fair housing service provider to address potential discrimination linked to the bias motivations of hate crimes.

- Continue to coordinate with various City and County housing, building and safety, health and sanitation, law enforcement and legal aid offices to maintain a comprehensive referral list of support services for victims of hate crimes or other violent crimes – inclusive of housing resources.

Impediment A-6: Unfair Lending

Disparities in the home purchase loan denial rates experienced by Hispanic and Black/African American applicants within the 16 Orange County cities creates an impediment to fair housing

choice as they have loans denied at rates 1.5 to 1.6 times greater than White applicants. In addition, Hispanic residents, which comprise 34 percent of Orange County's population, account for just 10 percent of applications for home purchase loans. Examples of the disparity between Hispanic residents and Hispanic applicants for home purchase loans include: Anaheim has a 53 percent Hispanic population, with 20 percent of purchase loan applicants comprised of Hispanics; La Habra has a 60 percent Hispanic population, with 23 percent Hispanic mortgage loan applicants; and Santa Ana has a 79 percent Hispanic population, with just 30 percent of home purchase loan applications made by Hispanics. In addition, the proportion of Hispanics to the total pool of mortgage loan applicants in the 16 Orange County cities has decreased in each of the past five years, from 16 percent in 2008 to 10 percent in 2013.

Regional Actions:

- As resources permit, monitor HMDA data annually using the 2013 HMDA analysis as a benchmark.

- As resources permit, monitor the top 10 lenders in Orange County to compare and contrast loan denial rates and percentage of loans completed to minority populations.

- Both of the Orange County fair housing service contractors should assist in identifying potential issues regarding redlining, predatory lending and other illegal lending activities. In addition, each city should review their agreements annually to make sure that increased and comprehensive services are being provided, and that education and outreach efforts are expanded and affirmatively marketed in low and moderate income and racial concentrated areas.

- Each city should explore ways to collaborate with local lenders and support lenders' efforts to work with community groups to help minority households purchase their homes. Collaborative efforts should ensure that minority groups have access and knowledge of City programs, supportive services, and provide for networking opportunities with these groups.

- Coordinate with local lenders to expand outreach efforts to first time homebuyers in minority neighborhoods.

- Affirmatively market first-time homebuyer and/or housing rehabilitation programs in neighborhoods with high denial rates, high minority population concentrations and limited English speaking proficiency to help increase loan approval rates.

B. PUBLIC SECTOR IMPEDIMENTS FOR NEWPORT BEACH

Impediment B-2: Housing for Persons with Disabilities

Disability is the greatest cited basis for discrimination, comprising over half of the fair housing cases opened by the Orange County Fair Housing Council and Fair Housing Foundation in the 16 cities over the past three years. Newport Beach has adopted formal policies and procedures in the Municipal Code to reasonably accommodate the housing needs of disabled residents. However, such requests require a public hearing in Newport Beach. Imposing a public hearing may be viewed as an impediment to persons with disabilities seeking reasonable accommodation.

Actions for Newport Beach:

- The City of Newport Beach should consider amending its Reasonable Accommodation procedures to eliminate the requirement for a public hearing, and to approve administratively.
    - Since the publication of the AI, the City considered eliminating the public hearing process and determined the process provides benefit to the community by providing disclosure and a public forum allowing input. The process also ensures that it not subject to abuse by less than honorable requests. These benefits outweigh the perceived impediments of the process. In-lieu of the recommend change, the City continues to conduct the process at no charge and provides expedited/priority processing to minimize delay.

Impediment B-3: Zoning Regulations
The analysis of the land use controls and zoning codes identified the following potential issues:

- **Second Units:** Prior to August 8, 2017, the City of Newport Beach did not provide for second units in its Zoning Code for single-family zoned properties, but allowed "granny units" (accessory, age-restricted units) subject to Zoning Administrator approval of a Minor Use Permit. The City's age restrictions, combined with the requirement for non-ministerial approval, may serve to impede housing choice.

Actions for Newport Beach:

- The City of Newport Beach should consider pursuing a Zoning Code amendment to eliminate the current age restriction on second units and establish a ministerial review process.
    - In response to this potential impediment and recent State legislation effective January 1, 2017 (Senate Bill 1069 and Assembly Bill 2299, Statues 2016), the City began the process of amending its zoning regulations to permit the development of Accessory Dwelling Units (ADUs) in single-family residential zoning districts. An ordinance allowing ADUs without discretionary review subject to minimal development standards consistent with applicable State law was adopted on August 8, 2017. ADUs are now allowed at all single-family residential zoned lots that are 5,000 square feet in area or larger without any age limitation.

Impediment B-4: Density Bonus Incentives

All 16 jurisdictions have adopted local density bonus ordinances which implement state density bonus law, providing density and other development incentives and concessions for the provision of affordable housing. However, with the recent addition of anti-displacement provisions under AB 2222, and modified parking standards for transit-accessible projects under AB 744, jurisdictions should update their density bonus ordinances to reflect these new State requirements.

Actions for Newport Beach:

- Amend the Zoning Code to reflect current State density bonus law.
    - The City has not updated its zoning provisions to date and intends to do so when it considers its next "clean up" amendment process. Until such time as the Zoning Code is updated, the City will process applications consistent with more recent legislation ensuring compliance with new State requirements.

CR-40 - Monitoring 91.220 and 91.230

Describe the standards and procedures used to monitor activities carried out in furtherance of the plan and used to ensure long-term compliance with requirements of the programs involved, including minority business outreach and the comprehensive planning requirements

To ensure that CDBG funds are used efficiently and in compliance with applicable regulations, the City provides technical assistance to all subrecipients at the beginning of each program year and monitors subrecipients throughout the program year.

Technical Assistance

To enhance compliance with federal program regulations, the City made technical assistance available to prospective applicants for CDBG Notice of Funding Availability (NOFA) upon request to review the Strategic Plan goals, program requirements and available resources with potential applicants. Subsequent to the approval of the Annual Action Plan, a mandatory subrecipient workshop was held at City Hall to review program regulations in detail, to provide useful forms and resources for documenting compliance and to review the City's compliance procedures and requirements. Additionally, individualized technical assistance was provided on an as-needed basis throughout a program year.

Activity Monitoring

All activities are monitored, beginning with a detailed review upon receipt of an application to determine eligibility, conformance with a National Objective and conformance with a Plan goal. This review also examines the proposed use of funds, eligibility of the service area, eligibility of the intended beneficiaries and likelihood of compliance with other federal requirements such as the National Environmental Policy Act, the System for Award Management (SAM) debarment list, prevailing wage, Minority and Women Business Enterprise, Section 3 and federal acquisition and relocation regulations, as applicable.

Subrecipients are required to submit an audit and other documentation to establish their capacity, and any findings noted in the audit are reviewed with the applicant. Eligible applications are then considered for funding. Once funded, desk monitoring includes ongoing review of required quarterly performance reports.

For CDBG public service activities, an on-site monitoring is conducted at least once every two years, or more frequently as needed to ensure compliance. These reviews include both a fiscal and programmatic review of the subrecipient's activities. The reviews determine if the subrecipient is complying with the program regulations and City contract. Areas routinely reviewed include overall administration, financial systems, appropriateness of program expenditures, program delivery, client eligibility determination and documentation, reporting systems, and achievement toward achieving contractual goals. Following the monitoring visit, a written report is provided delineating the results of the review and any findings of non-compliance and the required corrective action. Subrecipients normally have 30 days to provide the City with corrective actions taken to address any noted findings. Individualized technical

assistance is provided, as noted above, as soon as compliance concerns are identified. For CDBG capital projects, monitoring also includes compliance with regulatory agreement requirements.

Each of the five subrecipients received on-site monitoring visits this program year. All agencies were determined to be in compliance with the CDBG requirements. Technical Assistance was provided at the beginning of the program year in a congregate workshop setting as well as 1:1 technical assistance as needed during the program year, including during the on-site monitoring visits. Desk monitoring conducted of all subrecipients throughout the program year did not reveal any instances of noncompliance.

Citizen Participation Plan 91.105(d); 91.115(d)

Describe the efforts to provide citizens with reasonable notice and an opportunity to comment on performance reports.

In accordance with the City's adopted Citizen Participation Plan, a public notice was published in the Daily Pilot on August 24, 2019 notifying the public of the availability of the Consolidated Annual Performance and Evaluation Report for a 15-day public review and comment period beginning August 26, 2019 and ending September 10, 2019. A copy of the public notices is included in Appendix A.

The draft CAPER was available on the City website and at the following locations:

Community Development Department
100 Civic Center Drive
Newport Beach, CA, 926660
(949) 644-3200

Central Library
1000 Avocado Ave
Newport Beach, CA 92660
(949) 717-3800

City Website
http://www.newportbeachca.gov/CDBGreports

A public hearing will be conducted before the City Council on Tuesday, September 10, 2019 to solicit comments from residents and interested parties. A summary of any written or oral comments received during the public hearing will be included in Appendix B of the final CAPER document.

CR-45 - CDBG 91.520(c)

Specify the nature of, and reasons for, any changes in the jurisdiction's program objectives and indications of how the jurisdiction would change its programs as a result of its experiences.

CDBG funds are making a significant impact on strategies to address the high priority needs identified in the 2015-2019 Consolidated Plan Strategic Plan. As shown in Figure 1 in section CR-05 of this document, CDBG funds contributed to all six Strategic Plan goals as indicated below:

Fair Housing Services – Fair Housing Foundation - $12,000
The Fair Housing Services project provided fair housing assistance to 102 people. The estimated outcome was 125 moderate-income people. The agency utilized the full amount of its grant.

Public Services:
Age Well Senior Services: Home Delivered Meals Program - $25,000
This Public Service project provided assistance to 101 people. The annual goal was 92 presumed low-income elderly people. The agency utilized the full amount of the grant.

Council on Aging of Southern California: Long Term Care Ombudsman - $5,892.04
This Public Service project provided assistance to 54 people, exceeding the goal of serving 40 presumed low-income elderly people. The agency utilized 79 percent of the grant.

Homelessness Prevention:
Second Chance O.C.: Substance Abuse Recovery Program - $6,266
This Homelessness Prevention project provided assistance to 5 people, exceeding the goal of serving 3 low-income people. The agency utilized the full amount of the grant.

Families Forward: Housing Program - $15,000
This Homelessness Prevention project provided supportive services to 343 people. The estimated outcome was 240 presumed extremely-low income homeless people. The agency utilized the full amount of the grant.

Public Facilities/Infrastructure ADA Improvements - $59,130
Construction of the ADA Improvements project to improve accessibility throughout the City to 8,595 disabled people was completed in June 2018. The construction contract retention was paid in September 2018. Therefore, Public Facilities/Infrastructure ADA Improvements activity is being reported as complete in this years CAPER.

Section 108 Loan Debt Service - $177,560.90
The City completed its obligations with Section 108 Loan Repayment as planned in the Action Plan.

The City has met or exceeded the majority of the annual goals for the aforementioned objectives. Although, there were technically no reportable accomplishments for Public Facilities and Infrastructure during this program year, the City will report the accomplishments in this area during 2019-2020 program year as previously described.

Does this Jurisdiction have any open Brownfields Economic Development Initiative (BEDI) grants?

The City does not receive Brownfields Economic Development Initiative grants.

[BEDI grantees] Describe accomplishments and program outcomes during the last year.

N/A



APPENDICES



APPENDIX "A"
PUBLIC NOTICE

NOTICE OF PUBLIC HEARING AND 15-DAY PUBLIC REVIEW
FOR THE CITY OF NEWPORT BEACH

NOTICE IS HEREBY GIVEN that on **Tuesday**, **September 10, 2019**, at **7:00 p.m.**, a public hearing will be conducted in the City Council Chambers at 100 Civic Center Drive, Newport Beach. The City Council of the City of Newport Beach will receive public comments and consider the following:

Draft Consolidated Annual Performance and Evaluation Report (CAPER) 2018-2019 – The City prepared the draft CAPER for the Fiscal Year, beginning July 1, 2018, and ending June 30, 2019, as required by the U.S. Department of Housing and Urban Development. The draft CAPER provides a detailed account of how the City utilized its Community Development Block Grant (CDBG) funds in Fiscal Year 2018-19 to pursue the strategies, goals, and objectives proposed in the 2018-2019 Action Plan to address the housing and community development needs identified in the 2015-2019 Consolidated Plan. The purpose of the Public Hearing for the CAPER is to allow the public the opportunity to comment on the draft CAPER.

NOTICE IS HEREBY FURTHER GIVEN that the review and approval of the draft CAPER 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, Chapter 3, because it has no potential for resulting in physical change to the environment, directly or indirectly.

NOTICE IS HEREBY FURTHER GIVEN that the publication of this notice commences a minimum 15-day public review period. Copies of the draft CAPER will be available during the public review and comment period from **August 26, 2019** through **September 10, 2019**. The public is invited to submit written comments on the draft document to the Community Development Department no later than 4:00 p.m. on September 10, 2019. Copies of the 2018-2019 draft CAPER will be available for public review on the City's website at www.newportbeachca.gov/CDBGreports and at the following locations:

City Clerk's Office 100 Civic Center Drive Newport Beach, CA, 92660 (949) 644-3005	Community Development Department 100 Civic Center Drive Newport Beach, CA, 926660 (949) 644-3200	Central Library 1000 Avocado Ave Newport Beach, CA 92660 (949) 717-3800

ACCESSIBILITY TO MEETINGS AND DOCUMENTS
It is the objective of the City to comply with Section 504 of the Rehabilitation Act of 1973, as amended, the Americans with Disabilities Act (ADA) of 1990 and the ADA Amendment Act of 2008, the Fair Housing Act, and the Architectural Barriers Act in all respects. If you require public documents in an accessible format, the City will make reasonable efforts to accommodate your request. If you require a disability-related accommodation to attend or participate in a hearing or meeting, including auxiliary aids or services, please contact the City Clerk's Office at least 72 hours prior to the meeting at (949) 644-3005.

All interested parties may appear and present testimony at the public hearing in regard to this matter. If you challenge this matter in court, you may be limited to raising only those issues you raised at the public hearing or in written correspondence delivered to the City, at, or prior to, the public hearing. The matter may be continued to a specific future meeting date, and if such an action occurs additional public notice of the continuance will not be provided. The immediate Friday prior to the public hearing the agenda, staff report, and documents may be reviewed at the City Clerk's Office, 100 Civic Center Drive, Newport Beach, California, 92660 or at the City of Newport Beach website at www.newportbeachca.gov. Individuals not able to attend the meeting may contact the Community Development Department or access the City's website after the meeting to review the action on this matter.

Questions concerning the draft CAPER or the hearing and written comments may be addressed to Clint Whited, CDBG Consultant, at 100 Civic Center Drive, Newport Beach, CA 92660, or via telephone at 909-476-6006 ext. 115. You may also contact Lauren Wooding Whitlinger, Real Property Administrator, at 100 Civic Center Drive, Newport Beach, CA 92660, or by telephone at 949-644-3236, with any questions concerning this notice.

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

APPENDIX "B"
SUMMARY OF CITIZEN PARTICIPATION COMMENTS

SUMMARY OF CITIZEN PARTICIPATION COMMENTS

In compliance with the City's approved Citizen Participation Plan and implementing regulation 24 CFR 91.105, a public notice was published (see attached proof of publication) to solicit public comments from interested citizens regarding the draft 2018-2019 CAPER. The draft CAPER was made available to the general public for a period of 15 days in order to provide an opportunity for the public to review the document.

The public hearing to solicit public input and comment on the CAPER and the City's performance during PY 2018-2019 was held at the Newport Beach City Council Chambers at 100 Civic Center Drive, Newport Beach, California, on September 10, 2019.

The following is a summary of Citizen Participation comments:

- Comments pending – to be included after City Council Meeting.



APPENDIX "C"
IDIS REPORTS

PR01 - HUD Grants and Program Income Report
PR03 - CDBG Activity Summary Report for PY 2018-2019
PR06 - Summary of Consolidated Plan Projects for PY 2018-2019
PR23 - Summary of Accomplishments for PY 2018-2019
PR26 - CDBG Financial Summary for PY 2018-2019

IDIS

Program	Fund Type	Grantee Name	Grantee State Code	Grant Number	Authorized Amount	Suballocated Amount	Amount Committed to Activities	Net Drawn Amount	FY YTD Net Draw Amount	Available to Commit	Available to Draw	Recapture Amount
CDBG	EN	NEWPORT BEACH	CA	B89MC060546	$423,000.00	$0.00	$423,000.00	$423,000.00	$0.00	$0.00	$0.00	$0.00
				B90MC060546	$406,000.00	$0.00	$406,000.00	$406,000.00	$0.00	$0.00	$0.00	$0.00
				B91MC060546	$453,000.00	$0.00	$453,000.00	$453,000.00	$0.00	$0.00	$0.00	$0.00
				B92MC060546	$469,000.00	$0.00	$469,000.00	$469,000.00	$0.00	$0.00	$0.00	$0.00
				B93MC060546	$472,000.00	$0.00	$472,000.00	$472,000.00	$0.00	$0.00	$0.00	$0.00
				B94MC060546	$513,000.00	$0.00	$513,000.00	$513,000.00	$0.00	$0.00	$0.00	$0.00
				B95MC060546	$534,000.00	$0.00	$534,000.00	$534,000.00	$0.00	$0.00	$0.00	$0.00
				B96MC060546	$520,000.00	$0.00	$520,000.00	$520,000.00	$0.00	$0.00	$0.00	$0.00
				B97MC060546	$515,000.00	$0.00	$515,000.00	$515,000.00	$0.00	$0.00	$0.00	$0.00
				B98MC060546	$492,000.00	$0.00	$492,000.00	$492,000.00	$0.00	$0.00	$0.00	$0.00
				B99MC060546	$495,000.00	$0.00	$495,000.00	$495,000.00	$0.00	$0.00	$0.00	$0.00
				B00MC060546	$498,000.00	$0.00	$498,000.00	$498,000.00	$0.00	$0.00	$0.00	$0.00
				B01MC060546	$518,000.00	$0.00	$518,000.00	$518,000.00	$0.00	$0.00	$0.00	$0.00
				B02MC060546	$490,000.00	$0.00	$490,000.00	$490,000.00	$0.00	$0.00	$0.00	$0.00
				B03MC060546	$426,000.00	$0.00	$426,000.00	$426,000.00	$0.00	$0.00	$0.00	$0.00
				B04MC060546	$437,000.00	$0.00	$437,000.00	$437,000.00	$0.00	$0.00	$0.00	$0.00
				B05MC060546	$412,233.00	$0.00	$412,233.00	$412,233.00	$0.00	$0.00	$0.00	$0.00
				B06MC060546	$373,292.00	$0.00	$373,292.00	$373,292.00	$0.00	$0.00	$0.00	$0.00
				B07MC060546	$370,332.00	$0.00	$370,332.00	$370,332.00	$0.00	$0.00	$0.00	$0.00
				B08MC060546	$355,659.00	$0.00	$355,659.00	$355,659.00	$0.00	$0.00	$0.00	$0.00
				B09MC060546	$357,354.00	$0.00	$357,354.00	$357,354.00	$0.00	$0.00	$0.00	$0.00
				B10MC060546	$385,189.00	$0.00	$385,189.00	$385,189.00	$0.00	$0.00	$0.00	$0.00
				B11MC060546	$323,777.00	$0.00	$323,777.00	$323,777.00	$0.00	$0.00	$0.00	$0.00
				B12MC060546	$350,669.00	$0.00	$350,669.00	$350,669.00	$0.00	$0.00	$0.00	$0.00
				B13MC060546	$367,271.00	$0.00	$367,271.00	$367,271.00	$0.00	$0.00	$0.00	$0.00
				B14MC060546	$366,830.00	$0.00	$366,830.00	$366,830.00	$0.00	$0.00	$0.00	$0.00
				B15MC060546	$361,557.00	$0.00	$361,557.00	$361,557.00	$0.00	$0.00	$0.00	$0.00
				B16MC060546	$359,743.00	$0.00	$359,743.00	$359,743.00	$0.00	$0.00	$0.00	$0.00
				B17MC060546	$319,676.00	$0.00	$239,895.43	$239,895.43	$59,130.00	$79,780.57	$79,780.57	$0.00
				B18MC060546	$358,444.00	$0.00	$297,155.58	$297,155.58	$297,155.58	$61,288.42	$61,288.42	$0.00
				NEWPORT BEACH Subtotal:	**$12,723,026.00**	**$0.00**	**$12,581,957.01**	**$12,581,957.01**	**$356,285.58**	**$141,068.99**	**$141,068.99**	**$0.00**
		EN Subtotal:			**$12,723,026.00**	**$0.00**	**$12,581,957.01**	**$12,581,957.01**	**$356,285.58**	**$141,068.99**	**$141,068.99**	**$0.00**
	SL	NEWPORT BEACH	CA	B00MC060546	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00
				B00MC060546-OLD	$2,400,000.00	$0.00	$0.00	$0.00	$0.00	$2,400,000.00	$2,400,000.00	$0.00
				NEWPORT BEACH Subtotal:	**$2,400,000.00**	**$0.00**	**$0.00**	**$0.00**	**$0.00**	**$2,400,000.00**	**$2,400,000.00**	**$0.00**
		SL Subtotal:			**$2,400,000.00**	**$0.00**	**$0.00**	**$0.00**	**$0.00**	**$2,400,000.00**	**$2,400,000.00**	**$0.00**
	PI	NEWPORT BEACH	CA	B16MC060546	$511,559.79	$0.00	$511,559.79	$511,559.79	$0.00	$0.00	$0.00	$0.00
				B17MC060546	$3,155.49	$0.00	$3,155.49	$3,155.49	$3,155.49	$0.00	$0.00	$0.00
				B18MC060546	$280.44	$0.00	$280.44	$280.44	$280.44	$0.00	$0.00	$0.00
				NEWPORT BEACH Subtotal:	**$514,995.72**	**$0.00**	**$514,995.72**	**$514,995.72**	**$3,435.93**	**$0.00**	**$0.00**	**$0.00**
		PI Subtotal:			**$514,995.72**	**$0.00**	**$514,995.72**	**$514,995.72**	**$3,435.93**	**$0.00**	**$0.00**	**$0.00**
	LA	NEWPORT BEACH	CA	B96MC060546	$7,500.00	$0.00	$7,500.00	$7,500.00	$0.00	$0.00	$0.00	$0.00
				B97MC060546	$394,298.12	$0.00	$394,298.12	$394,298.12	$35.33	$0.00	$0.00	$0.00
				B98MC060546	$18,239.92	$0.00	$18,239.92	$18,239.92	$780.90	$0.00	$0.00	$0.00
				NEWPORT BEACH Subtotal:	**$420,038.04**	**$0.00**	**$420,038.04**	**$420,038.04**	**$816.23**	**$0.00**	**$0.00**	**$0.00**
		LA Subtotal:			**$420,038.04**	**$0.00**	**$420,038.04**	**$420,038.04**	**$816.23**	**$0.00**	**$0.00**	**$0.00**
CDBG-R	EN	NEWPORT BEACH	CA	B09MY060546	$96,603.00	$0.00	$96,603.00	$96,603.00	$0.00	$0.00	$0.00	$0.00
				NEWPORT BEACH Subtotal:	**$96,603.00**	**$0.00**	**$96,603.00**	**$96,603.00**	**$0.00**	**$0.00**	**$0.00**	**$0.00**
		EN Subtotal:			**$96,603.00**	**$0.00**	**$96,603.00**	**$96,603.00**	**$0.00**	**$0.00**	**$0.00**	**$0.00**
GRANTEE					**$16,154,662.76**	**$0.00**	**$13,613,593.77**	**$13,613,593.77**	**$360,537.74**	**$2,541,068.99**	**$2,541,068.99**	**$0.00**

PGM Year: 1994

Project: 0002 - CONVERTED CDBG ACTIVITIES

IDIS Activity: 2 - CDBG COMMITTED FUNDS ADJUSTMENT

Status: Open 6/30/2001 12:00:00 AM
Location: ,

Objective:
Outcome:
Matrix Code: Other Public Improvements Not
National Objective:

Initial Funding Date: 01/01/0001

Description:

FUNDS DRAWN DOWN THROUGH LOCCS.

Financing

	Fund Type	Grant Year	Grant	Funded Amount	Drawn In Program Year	Drawn Thru Program Year
CDBG	EN	Pre-2015		$3,159,877.80	$0.00	$0.00
		1989	B89MC060546		$0.00	$423,000.00
		1990	B90MC060546		$0.00	$406,000.00
		1991	B91MC060546		$0.00	$453,000.00
		1992	B92MC060546		$0.00	$469,000.00
		1993	B93MC060546		$0.00	$472,000.00
		1994	B94MC060546		$0.00	$513,000.00
		1995	B95MC060546		$0.00	$423,877.80
Total	**Total**			**$3,159,877.80**	**$0.00**	**$3,159,877.80**

Proposed Accomplishments

Actual Accomplishments

Number assisted:	Owner		Renter		Total		Person	
	Total	Hispanic	Total	Hispanic	Total	Hispanic	Total	Hispanic
White:					0	0		
Black/African American:					0	0		
Asian:					0	0		
American Indian/Alaskan Native:					0	0		
Native Hawaiian/Other Pacific Islander:					0	0		
American Indian/Alaskan Native & White:					0	0		

Asian White:					0	0		
Black/African American & White:					0	0		
American Indian/Alaskan Native & Black/African American:					0	0		
Other multi-racial:					0	0		
Asian/Pacific Islander:					0	0		
Hispanic:					0	0		
Total:	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**

Female-headed Households: 0

Income Category:

	Owner	Renter	Total	Person
Extremely Low			0	
Low Mod			0	
Moderate			0	
Non Low Moderate			0	
Total	0	0	0	0
Percent Low/Mod				

Annual Accomplishments

No data returned for this view. This might be because the applied filter excludes all data.

PGM Year: 2017

Project: 0006 - Public Facility Improvements

IDIS Activity: 264 - Public Facility/Infrastructure ADA Imp.

Status: Completed 6/30/2019 12:00:00 AM
Location: 100 Civic Center Dr Newport Beach, CA 92660-3267

Objective: Create suitable living environments
Outcome: Availability/accessibility
Matrix Code: Sidewalks (03L)
National Objective: LMC

Initial Funding Date: 11/21/2017

Description:

This project provides CDBG funds for the installation of ADA curb ramps at intersections throughout the City to improve accessibility.
The work will be performed by private contractors.

Financing

	Fund Type	Grant Year	Grant	Funded Amount	Drawn In Program Year	Drawn Thru Program Year
CDBG	EN	Pre-2015		$95,471.79	$0.00	$0.00
		2014	B14MC060546		$0.00	$95,471.79
		2015	B15MC060546	$63,725.94	$0.00	$63,725.94
		2016	B16MC060546	$176,547.57	$0.00	$176,547.57
		2017	B17MC060546	$239,895.43	$59,130.00	$239,895.43
	LA	1997	B97MC060546	$107,948.45	$0.00	$107,948.45
	PI			$511,559.79	$0.00	$511,559.79
Total	**Total**			**$1,195,148.97**	**$59,130.00**	**$1,195,148.97**

Proposed Accomplishments

People (General) : 8,595

Actual Accomplishments

Number assisted:	Owner		Renter		Total		Person	
	Total	Hispanic	Total	Hispanic	Total	Hispanic	Total	Hispanic
White:	0	0	0	0	0	0	7,660	454
Black/African American:	0	0	0	0	0	0	90	5
Asian:	0	0	0	0	0	0	358	21
American Indian/Alaskan Native:	0	0	0	0	0	0	80	5
Native Hawaiian/Other Pacific Islander:	0	0	0	0	0	0	23	1
American Indian/Alaskan Native & White:	0	0	0	0	0	0	0	0
Asian White:	0	0	0	0	0	0	0	0
Black/African American & White:	0	0	0	0	0	0	0	0
American Indian/Alaskan Native & Black/African American:	0	0	0	0	0	0	0	0
Other multi-racial:	0	0	0	0	0	0	384	23
Asian/Pacific Islander:	0	0	0	0	0	0	0	0
Hispanic:	0	0	0	0	0	0	0	0
Total:	**0**	**0**	**0**	**0**	**0**	**0**	**8,595**	**509**

Female-headed Households:	0	0	0

Income Category:

	Owner	Renter	Total	Person
Extremely Low	0	0	0	0
Low Mod	0	0	0	8,595
Moderate	0	0	0	0
Non Low Moderate	0	0	0	0
Total	0	0	0	8,595
Percent Low/Mod				100.0%

Annual Accomplishments

Years	Accomplishment Narrative	# Benefitting
2017	During the 3th quarter of this fiscal year, the City conducted the bid phase and awarded a contract to Victor Concreate. During the 4th quarter the construction was at 85% completion and the City anticipates the completion of the Citywide ADA Improvement project during the first quarter of the FY 2018-2019.	
2018	Construction of the Public Facilities/Infrastructure ADA Improvements project was completed by June 30, 2018; however, the retention payment to the construction contractor was paid in September 2018 and as such is being reported as complete this year.	

PGM Year: 2018

Project: 0001 - CDBG Administration

IDIS Activity: 265 - CDBG Administration

Status: Completed 6/30/2019 12:00:00 AM

Location: ,

Objective:

Outcome:

Matrix Code: General Program Administration (21A)

National Objective:

Initial Funding Date: 10/12/2018

Description:

Administration services of the CDBG Program.

Financing

	Fund Type	Grant Year	Grant	Funded Amount	Drawn In Program Year	Drawn Thru Program Year
CDBG	EN	2018	B18MC060546	$55,436.64	$55,436.64	$55,436.64
	LA	1997	B97MC060546	$35.33	$35.33	$35.33
		1998	B98MC060546	$780.90	$780.90	$780.90
	PI			$3,435.93	$3,435.93	$3,435.93
Total	**Total**			**$59,688.80**	**$59,688.80**	**$59,688.80**

Proposed Accomplishments

Actual Accomplishments

Number assisted:	Owner		Renter		Total		Person	
	Total	Hispanic	Total	Hispanic	Total	Hispanic	Total	Hispanic
White:					0	0		
Black/African American:					0	0		
Asian:					0	0		
American Indian/Alaskan Native:					0	0		
Native Hawaiian/Other Pacific Islander:					0	0		
American Indian/Alaskan Native & White:					0	0		
Asian White:					0	0		
Black/African American & White:					0	0		
American Indian/Alaskan Native & Black/African American:					0	0		
Other multi-racial:					0	0		
Asian/Pacific Islander:					0	0		
Hispanic:					0	0		
Total:	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**

Female-headed Households: 0

Income Category:

	Owner	Renter	Total	Person
Extremely Low			0	
Low Mod			0	
Moderate			0	
Non Low Moderate			0	
Total	0	0	0	0
Percent Low/Mod				

Annual Accomplishments

No data returned for this view. This might be because the applied filter excludes all data.

PGM Year: 2018

Project: 0002 - Fair Housing Services

IDIS Activity: 266 - Fair Housing Services

Status: Completed 6/30/2019 12:00:00 AM

Location: ,

Objective:

Outcome:

Matrix Code: Fair Housing Activities (subject to 20% Admin Cap) (21D)

National Objective:

Initial Funding Date: 10/12/2018

Description:

Affirmatively further fair housing choice through the provision of fair housing education, counseling, anti-discrimination and landlord-tenant mediation services.

Financing

	Fund Type	Grant Year	Grant	Funded Amount	Drawn In Program Year	Drawn Thru Program Year
CDBG	EN	2018	B18MC060546	$12,000.00	$12,000.00	$12,000.00
Total	**Total**			**$12,000.00**	**$12,000.00**	**$12,000.00**

Proposed Accomplishments

Actual Accomplishments

Number assisted:	**Owner**		**Renter**		**Total**		**Person**	
	Total	Hispanic	Total	Hispanic	Total	Hispanic	Total	Hispanic
White:					0	0		
Black/African American:					0	0		
Asian:					0	0		
American Indian/Alaskan Native:					0	0		
Native Hawaiian/Other Pacific Islander:					0	0		
American Indian/Alaskan Native & White:					0	0		
Asian White:					0	0		
Black/African American & White:					0	0		
American Indian/Alaskan Native & Black/African American:					0	0		
Other multi-racial:					0	0		
Asian/Pacific Islander:					0	0		
Hispanic:					0	0		
Total:	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**

Female-headed Households: 0

Income Category:

	Owner	Renter	Total	Person
Extremely Low			0	
Low Mod			0	
Moderate			0	
Non Low Moderate			0	
Total	0	0	0	0
Percent Low/Mod				

Annual Accomplishments

No data returned for this view. This might be because the applied filter excludes all data.

PGM Year: 2018

Project: 0003 - Public Services

IDIS Activity: 267 - Age Well Senior Services: Home Delivered Meals

Status: Completed 6/30/2019 12:00:00 AM
Location: 24461 Ridge Route Dr Ste 220 Laguna Hills, CA 92653-1686

Objective: Create suitable living environments
Outcome: Availability/accessibility
Matrix Code: Senior Services (05A)
National Objective: LMC

Initial Funding Date: 10/12/2018

Description:

Provide public services for low- and moderate-income residents including senior citizens, families and youth including but not limited to those concerned with food, essential services, transportation, health, recreation and employment.

Financing

	Fund Type	Grant Year	Grant	Funded Amount	Drawn In Program Year	Drawn Thru Program Year
CDBG	EN	2018	B18MC060546	$25,000.00	$25,000.00	$25,000.00
Total	**Total**			**$25,000.00**	**$25,000.00**	**$25,000.00**

Proposed Accomplishments

People (General) : 92

Actual Accomplishments

Number assisted:	Owner		Renter		Total		Person	
	Total	Hispanic	Total	Hispanic	Total	Hispanic	Total	Hispanic
White:	0	0	0	0	0	0	94	2
Black/African American:	0	0	0	0	0	0	2	0
Asian:	0	0	0	0	0	0	0	0
American Indian/Alaskan Native:	0	0	0	0	0	0	0	0
Native Hawaiian/Other Pacific Islander:	0	0	0	0	0	0	0	0
American Indian/Alaskan Native & White:	0	0	0	0	0	0	0	0
Asian White:	0	0	0	0	0	0	0	0
Black/African American & White:	0	0	0	0	0	0	0	0
American Indian/Alaskan Native & Black/African American:	0	0	0	0	0	0	0	0
Other multi-racial:	0	0	0	0	0	0	5	0
Asian/Pacific Islander:	0	0	0	0	0	0	0	0
Hispanic:	0	0	0	0	0	0	0	0
Total:	**0**	**0**	**0**	**0**	**0**	**0**	**101**	**2**

Female-headed Households:	0	0	0

Income Category:

	Owner	Renter	Total	Person
Extremely Low	0	0	0	0
Low Mod	0	0	0	101
Moderate	0	0	0	0
Non Low Moderate	0	0	0	0
Total	0	0	0	101
Percent Low/Mod				100.0%

Annual Accomplishments

Years	Accomplishment Narrative	# Benefitting
2018	Age Well provided home delivered meals to Newport Beach residents. - For the first quarter the agency assisted 60 persons, and provided them with 7,959 home delivered meals - For the second quarter the agency assisted 17 additional persons, and provided them with 7,887 home delivered meals - For the third quarter the agency assisted 17 additional persons, and provided them with 7,713 home delivered meals - For the fourth quarter the agency assisted 7 additional persons, and provided them with 7,665 home delivered meals In sum, from July 1, 2018 to June 30, 2019 the agency delivered 31,728 meals to 101 residents.	

PGM Year: 2018

Project: 0003 - Public Services

IDIS Activity: 268 - Council on Aging of OC

Status: Completed 6/30/2019 12:00:00 AM
Location: 2 Executive Cir Ste 175 Irvine, CA 92614-6773

Objective: Create suitable living environments
Outcome: Availability/accessibility
Matrix Code: Senior Services (05A)
National Objective: LMC

Initial Funding Date: 10/12/2018

Description:

Provide public services for low- and moderate-income residents including senior citizens, families and youth including but not limited to those concerned with food, essential services, transportation, health, recreation and employment.

Financing

	Fund Type	Grant Year	Grant	Funded Amount	Drawn In Program Year	Drawn Thru Program Year
CDBG	EN	2018	B18MC060546	$5,892.04	$5,892.04	$5,892.04
Total	**Total**			**$5,892.04**	**$5,892.04**	**$5,892.04**

Proposed Accomplishments

People (General) : 40

Actual Accomplishments

Number assisted:	Owner		Renter		Total		Person	
	Total	Hispanic	Total	Hispanic	Total	Hispanic	Total	Hispanic
White:	0	0	0	0	0	0	44	6
Black/African American:	0	0	0	0	0	0	1	0
Asian:	0	0	0	0	0	0	5	0
American Indian/Alaskan Native:	0	0	0	0	0	0	1	0
Native Hawaiian/Other Pacific Islander:	0	0	0	0	0	0	2	0
American Indian/Alaskan Native & White:	0	0	0	0	0	0	0	0
Asian White:	0	0	0	0	0	0	0	0
Black/African American & White:	0	0	0	0	0	0	0	0
American Indian/Alaskan Native & Black/African American:	0	0	0	0	0	0	0	0
Other multi-racial:	0	0	0	0	0	0	1	0
Asian/Pacific Islander:	0	0	0	0	0	0	0	0
Hispanic:	0	0	0	0	0	0	0	0
Total:	**0**	**0**	**0**	**0**	**0**	**0**	**54**	**6**

Female-headed Households:	0	0	0

Income Category:

	Owner	Renter	Total	Person
Extremely Low	0	0	0	8
Low Mod	0	0	0	46
Moderate	0	0	0	0
Non Low Moderate	0	0	0	0
Total	0	0	0	54
Percent Low/Mod				100.0%

Annual Accomplishments

Years	Accomplishment Narrative	# Benefitting
2018	Council on Aging provided services and training to Newport Beach residents - For the first quarter the agency addressed 21 complaints or concerns - For the second quarter the agency addressed 10 complaints or concerns - For the third quarter the agency addressed 13 complaints or concerns - For the fourth quarter the agency addressed 10 complaints or concerns In sum, the agency addressed 54 complaints or concerns.	

PGM Year: 2018

Project: 0004 - Special Needs Services

IDIS Activity: 269 - Second Chance Orange County

Status: Completed 6/30/2019 12:00:00 AM
Location: 2618 San Miguel Dr Newport Beach, CA 92660-5437

Objective: Create suitable living environments
Outcome: Availability/accessibility
Matrix Code: Substance Abuse Services (05F)
National Objective: LMC

Initial Funding Date: 10/12/2018

Description:

Provide special needs services including, but not limited, to those concerned with disabilities, domestic violence, substance abuse and HIVAIDS.
The Second Chance Orange County will provide supportive services to recovering addicts in Newport Beach.
Supportive mentorship and counseling services are designed to help individuals for a period of one year to maintain sobriety, secure employment andor further their education.

Financing

	Fund Type	Grant Year	Grant	Funded Amount	Drawn In Program Year	Drawn Thru Program Year
CDBG	EN	2018	B18MC060546	$6,266.00	$6,266.00	$6,266.00
Total	**Total**			**$6,266.00**	**$6,266.00**	**$6,266.00**

Proposed Accomplishments

People (General) : 3

Actual Accomplishments

Number assisted:	Owner		Renter		Total		Person	
	Total	Hispanic	Total	Hispanic	Total	Hispanic	Total	Hispanic
White:	0	0	0	0	0	0	4	1
Black/African American:	0	0	0	0	0	0	0	0
Asian:	0	0	0	0	0	0	1	0
American Indian/Alaskan Native:	0	0	0	0	0	0	0	0
Native Hawaiian/Other Pacific Islander:	0	0	0	0	0	0	0	0
American Indian/Alaskan Native & White:	0	0	0	0	0	0	0	0
Asian White:	0	0	0	0	0	0	0	0
Black/African American & White:	0	0	0	0	0	0	0	0
American Indian/Alaskan Native & Black/African American:	0	0	0	0	0	0	0	0
Other multi-racial:	0	0	0	0	0	0	0	0
Asian/Pacific Islander:	0	0	0	0	0	0	0	0
Hispanic:	0	0	0	0	0	0	0	0
Total:	**0**	**0**	**0**	**0**	**0**	**0**	**5**	**1**

Female-headed Households:	0	0	0

Income Category:

	Owner	Renter	Total	Person
Extremely Low	0	0	0	5
Low Mod	0	0	0	0
Moderate	0	0	0	0
Non Low Moderate	0	0	0	0
Total	0	0	0	5
Percent Low/Mod				100.0%

Annual Accomplishments

Years	Accomplishment Narrative	# Benefitting
2018	Second Chance provided addiction recovery services to Newport Beach residents. - For the first quarter the agency assisted 2 persons - For the second quarter the agency assisted 3 persons - For the third quarter the agency assisted 0 persons - For the fourth quarter the agency assisted 0 persons In sum, the agency assisted 5 persons	

PGM Year: 2018

Project: 0005 - Homelessness Prevention Services

IDIS Activity: 270 - Families Forward: Housing Program

Status: Completed 6/30/2019 12:00:00 AM
Location: 8 Thomas Irvine, CA 92618-2763

Objective: Create suitable living environments
Outcome: Availability/accessibility
Matrix Code: Operating Costs of Homeless/AIDS Patients Programs (03T)
National Objective: LMC

Initial Funding Date: 10/12/2018

Description:

Support a continuum of services in Orange County to prevent and eliminate homelessness including, but not limited to, homelessness prevention programs, emergency shelter programs and transitional housing.

Financing

	Fund Type	Grant Year	Grant	Funded Amount	Drawn In Program Year	Drawn Thru Program Year
CDBG	EN	2018	B18MC060546	$15,000.00	$15,000.00	$15,000.00
Total	**Total**			**$15,000.00**	**$15,000.00**	**$15,000.00**

Proposed Accomplishments

People (General) : 240

Actual Accomplishments

Number assisted:	Owner		Renter		Total		Person	
	Total	Hispanic	Total	Hispanic	Total	Hispanic	Total	Hispanic
White:	0	0	0	0	0	0	257	148
Black/African American:	0	0	0	0	0	0	73	8
Asian:	0	0	0	0	0	0	4	0
American Indian/Alaskan Native:	0	0	0	0	0	0	2	2
Native Hawaiian/Other Pacific Islander:	0	0	0	0	0	0	1	0
American Indian/Alaskan Native & White:	0	0	0	0	0	0	0	0
Asian White:	0	0	0	0	0	0	2	1
Black/African American & White:	0	0	0	0	0	0	0	0
American Indian/Alaskan Native & Black/African American:	0	0	0	0	0	0	0	0
Other multi-racial:	0	0	0	0	0	0	4	1
Asian/Pacific Islander:	0	0	0	0	0	0	0	0
Hispanic:	0	0	0	0	0	0	0	0
Total:	**0**	**0**	**0**	**0**	**0**	**0**	**343**	**160**

Female-headed Households:	0	0	0

Income Category:

	Owner	Renter	Total	Person
Extremely Low	0	0	0	343
Low Mod	0	0	0	0
Moderate	0	0	0	0
Non Low Moderate	0	0	0	0
Total	0	0	0	343
Percent Low/Mod				100.0%

Annual Accomplishments

Years	Accomplishment Narrative	# Benefitting
2018	Families Forward provided supportive services to Newport Beach residents. - For the first quarter the agency assisted 58 persons - For the second quarter the agency assisted 92 persons - For the third quarter the agency assisted 94 persons - For the fourth quarter the agency assisted 99 persons In sum, the agency assisted 343 persons	

PGM Year: 2018

Project: 0006 - Section 108 Loan Repayment

IDIS Activity: 271 - Section 108 Loan Repayment

Status: Completed 6/30/2019 12:00:00 AM

Location: ,

Objective:

Outcome:

Matrix Code: Planned Repayment of Section 108 Loan Principal (19F)

National Objective:

Initial Funding Date: 10/12/2018

Description:

Section 108 Loan Repayment.

Financing

	Fund Type	Grant Year	Grant	Funded Amount	Drawn In Program Year	Drawn Thru Program Year
CDBG	EN	2018	B18MC060546	$177,560.90	$177,560.90	$177,560.90
Total	**Total**			**$177,560.90**	**$177,560.90**	**$177,560.90**

Proposed Accomplishments

Actual Accomplishments

Number assisted:	Owner		Renter		Total		Person	
	Total	Hispanic	Total	Hispanic	Total	Hispanic	Total	Hispanic
White:					0	0		
Black/African American:					0	0		
Asian:					0	0		
American Indian/Alaskan Native:					0	0		
Native Hawaiian/Other Pacific Islander:					0	0		
American Indian/Alaskan Native & White:					0	0		
Asian White:					0	0		
Black/African American & White:					0	0		
American Indian/Alaskan Native & Black/African American:					0	0		
Other multi-racial:					0	0		
Asian/Pacific Islander:					0	0		
Hispanic:					0	0		
Total:	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**

Female-headed Households: 0

Income Category:

	Owner	Renter	Total	Person
Extremely Low			0	
Low Mod			0	
Moderate			0	
Non Low Moderate			0	
Total	0	0	0	0
Percent Low/Mod				

Annual Accomplishments

No data returned for this view. This might be because the applied filter excludes all data.

Total Funded Amount:	**$4,656,434.51**
Total Drawn Thru Program Year:	**$4,656,434.51**
Total Drawn In Program Year:	**$360,537.74**

IDIS

Plan Year	IDIS Project	Project Title and Description		Program	Project Estimate	Commited Amount	Amount Drawn Thru Report Year	Amount Available to Draw	Amount Drawn in Report Year
2018	1	CDBG Administration	Administration services of the CDBG Program.	CDBG	$61,487.00	$59,688.80	$59,688.80	$0.00	$59,688.80
	2	Fair Housing Services	Affirmatively further fair housing choice through the provision of fair housing education, counseling, anti-discrimination and landlord-tenant mediation services.	CDBG	$12,000.00	$12,000.00	$12,000.00	$0.00	$12,000.00
	3	Public Services	Provide public services for low- and moderate-income residents including senior citizens, families and youth including but not limited to those concerned with food, essential services, transportation, health, recreation and employment.	CDBG	$40,115.00	$30,892.04	$30,892.04	$0.00	$30,892.04
	4	Special Needs Services	Provide special needs services including, but not limited, to those concerned with disabilities, domestic violence, substance abuse and HIV/AIDS. The Second Chance Orange County - More Second Chances for those in Recovery activity will provide supportive services to recovering addicts in Newport Beach. Supportive mentorship and counseling services are designed to help individuals for a period of one year to maintain sobriety, secure employment and / or further their education.	CDBG	$6,266.00	$6,266.00	$6,266.00	$0.00	$6,266.00
	5	Homelessness Prevention Services	Support a continuum of services in Orange County to prevent and eliminate homelessness including, but not limited to, homelessness prevention programs, emergency shelter programs and transitional housing.	CDBG	$15,000.00	$15,000.00	$15,000.00	$0.00	$15,000.00
	6	Section 108 Loan Repayment	Improve public facilities and infrastructure and economic opportunity.	CDBG	$185,890.00	$177,560.90	$177,560.90	$0.00	$177,560.90
	7	Public Facility Improvements	The 2019-2020 amount of $52,942 may be combined with future funds to provide an appropriate level of funding for a public facilities and infrastructure improvements activity.	CDBG	$52,942.00	$0.00	$0.00	$0.00	$0.00

NEWPORT BEACH

Count of CDBG Activities with Disbursements by Activity Group & Matrix Code

Activity Group	Activity Category	Open Count	Open Activities Disbursed	Completed Count	Completed Activities Disbursed	Program Year Count	Total Activities Disbursed
Public Facilities and Improvements	Sidewalks (03L)	0	$0.00	1	$59,130.00	1	$59,130.00
	Other Public Improvements Not Listed in 03A-03S (03Z)	1	$0.00	0	$0.00	1	$0.00
	Total Public Facilities and Improvements	**1**	**$0.00**	**1**	**$59,130.00**	**2**	**$59,130.00**
Public Services	Operating Costs of Homeless/AIDS Patients Programs (03T)	0	$0.00	1	$15,000.00	1	$15,000.00
	Senior Services (05A)	0	$0.00	2	$30,892.04	2	$30,892.04
	Substance Abuse Services (05F)	0	$0.00	1	$6,266.00	1	$6,266.00
	Total Public Services	**0**	**$0.00**	**4**	**$52,158.04**	**4**	**$52,158.04**
General Administration and Planning	General Program Administration (21A)	0	$0.00	1	$59,688.80	1	$59,688.80
	Fair Housing Activities (subject to 20% Admin Cap) (21D)	0	$0.00	1	$12,000.00	1	$12,000.00
	Total General Administration and Planning	**0**	**$0.00**	**2**	**$71,688.80**	**2**	**$71,688.80**
Repayment of Section 108 Loans	Planned Repayment of Section 108 Loan Principal (19F)	0	$0.00	1	$177,560.90	1	$177,560.90
	Total Repayment of Section 108 Loans	**0**	**$0.00**	**1**	**$177,560.90**	**1**	**$177,560.90**
Grand Total		**1**	**$0.00**	**8**	**$360,537.74**	**9**	**$360,537.74**

NEWPORT BEACH

CDBG Sum of Actual Accomplishments by Activity Group and Accomplishment Type

Activity Group	Matrix Code	Accomplishment Type	Open Count	Completed Count	Program Year Totals
Public Facilities and Improvements	Sidewalks (03L)	Persons	0	8,595	8,595
	Total Public Facilities and Improvements		**0**	**8,595**	**8,595**
Public Services	Operating Costs of Homeless/AIDS Patients Programs (03T)	Persons	0	343	343
	Senior Services (05A)	Persons	0	155	155
	Substance Abuse Services (05F)	Persons	0	5	5
	Total Public Services		**0**	**503**	**503**
Grand Total			**0**	**9,098**	**9,098**

NEWPORT BEACH

CDBG Beneficiaries by Racial / Ethnic Category

Housing-Non Housing	Race	Total Persons	Total Hispanic Persons	Total Households	Total Hispanic Households
Non Housing	White	8,059	611	0	0
	Black/African American	166	13	0	0
	Asian	368	21	0	0
	American Indian/Alaskan Native	83	7	0	0
	Native Hawaiian/Other Pacific Islander	26	1	0	0
	Asian & White	2	1	0	0
	Other multi-racial	394	24	0	0
	Total Non Housing	**9,098**	**678**	**0**	**0**
Grand Total	White	8,059	611	0	0
	Black/African American	166	13	0	0
	Asian	368	21	0	0
	American Indian/Alaskan Native	83	7	0	0
	Native Hawaiian/Other Pacific Islander	26	1	0	0
	Asian & White	2	1	0	0
	Other multi-racial	394	24	0	0
	Total Grand Total	**9,098**	**678**	**0**	**0**

NEWPORT BEACH

CDBG Beneficiaries by Income Category

	Income Levels	Owner Occupied	Renter Occupied	Persons
Non Housing	Extremely Low (<=30%)	0	0	356
	Low (>30% and <=50%)	0	0	147
	Mod (>50% and <=80%)	0	0	0
	Total Low-Mod	0	0	503
	Non Low-Mod (>80%)	0	0	0
	Total Beneficiaries	0	0	503

PART I: SUMMARY OF CDBG RESOURCES	
01 UNEXPENDED CDBG FUNDS AT END OF PREVIOUS PROGRAM YEAR	142,882.29
02 ENTITLEMENT GRANT	358,444.00
03 SURPLUS URBAN RENEWAL	0.00
04 SECTION 108 GUARANTEED LOAN FUNDS	0.00
05 CURRENT YEAR PROGRAM INCOME	280.44
05a CURRENT YEAR SECTION 108 PROGRAM INCOME (FOR SI TYPE)	0.00
06 FUNDS RETURNED TO THE LINE-OF-CREDIT	0.00
06a FUNDS RETURNED TO THE LOCAL CDBG ACCOUNT	0.00
07 ADJUSTMENT TO COMPUTE TOTAL AVAILABLE	0.00
08 TOTAL AVAILABLE (SUM, LINES 01-07)	501,606.73
PART II: SUMMARY OF CDBG EXPENDITURES	
09 DISBURSEMENTS OTHER THAN SECTION 108 REPAYMENTS AND PLANNING/ADMINISTRATION	111,288.04
10 ADJUSTMENT TO COMPUTE TOTAL AMOUNT SUBJECT TO LOW/MOD BENEFIT	0.00
11 AMOUNT SUBJECT TO LOW/MOD BENEFIT (LINE 09 + LINE 10)	111,288.04
12 DISBURSED IN IDIS FOR PLANNING/ADMINISTRATION	71,688.80
13 DISBURSED IN IDIS FOR SECTION 108 REPAYMENTS	177,560.90
14 ADJUSTMENT TO COMPUTE TOTAL EXPENDITURES	0.00
15 TOTAL EXPENDITURES (SUM, LINES 11-14)	360,537.74
16 UNEXPENDED BALANCE (LINE 08 - LINE 15)	141,068.99
PART III: LOWMOD BENEFIT THIS REPORTING PERIOD	
17 EXPENDED FOR LOW/MOD HOUSING IN SPECIAL AREAS	0.00
18 EXPENDED FOR LOW/MOD MULTI-UNIT HOUSING	0.00
19 DISBURSED FOR OTHER LOW/MOD ACTIVITIES	111,288.04
20 ADJUSTMENT TO COMPUTE TOTAL LOW/MOD CREDIT	0.00
21 TOTAL LOW/MOD CREDIT (SUM, LINES 17-20)	111,288.04
22 PERCENT LOW/MOD CREDIT (LINE 21/LINE 11)	100.00%
LOW/MOD BENEFIT FOR MULTI-YEAR CERTIFICATIONS	
23 PROGRAM YEARS(PY) COVERED IN CERTIFICATION	PY: 2018 PY: 2019 PY: 2020
24 CUMULATIVE NET EXPENDITURES SUBJECT TO LOW/MOD BENEFIT CALCULATION	0.00
25 CUMULATIVE EXPENDITURES BENEFITING LOW/MOD PERSONS	0.00
26 PERCENT BENEFIT TO LOW/MOD PERSONS (LINE 25/LINE 24)	0.00%
PART IV: PUBLIC SERVICE (PS) CAP CALCULATIONS	
27 DISBURSED IN IDIS FOR PUBLIC SERVICES	52,158.04
28 PS UNLIQUIDATED OBLIGATIONS AT END OF CURRENT PROGRAM YEAR	0.00
29 PS UNLIQUIDATED OBLIGATIONS AT END OF PREVIOUS PROGRAM YEAR	0.00
30 ADJUSTMENT TO COMPUTE TOTAL PS OBLIGATIONS	0.00
31 TOTAL PS OBLIGATIONS (LINE 27 + LINE 28 - LINE 29 + LINE 30)	52,158.04
32 ENTITLEMENT GRANT	358,444.00
33 PRIOR YEAR PROGRAM INCOME	3,155.49
34 ADJUSTMENT TO COMPUTE TOTAL SUBJECT TO PS CAP	0.00
35 TOTAL SUBJECT TO PS CAP (SUM, LINES 32-34)	361,599.49
36 PERCENT FUNDS OBLIGATED FOR PS ACTIVITIES (LINE 31/LINE 35)	14.42%
PART V: PLANNING AND ADMINISTRATION (PA) CAP	
37 DISBURSED IN IDIS FOR PLANNING/ADMINISTRATION	71,688.80
38 PA UNLIQUIDATED OBLIGATIONS AT END OF CURRENT PROGRAM YEAR	0.00
39 PA UNLIQUIDATED OBLIGATIONS AT END OF PREVIOUS PROGRAM YEAR	0.00
40 ADJUSTMENT TO COMPUTE TOTAL PA OBLIGATIONS	0.00
41 TOTAL PA OBLIGATIONS (LINE 37 + LINE 38 - LINE 39 +LINE 40)	71,688.80
42 ENTITLEMENT GRANT	358,444.00
43 CURRENT YEAR PROGRAM INCOME	280.44
44 ADJUSTMENT TO COMPUTE TOTAL SUBJECT TO PA CAP	0.00
45 TOTAL SUBJECT TO PA CAP (SUM, LINES 42-44)	358,724.44
46 PERCENT FUNDS OBLIGATED FOR PA ACTIVITIES (LINE 41/LINE 45)	19.98%

LINE 17 DETAIL: ACTIVITIES TO CONSIDER IN DETERMINING THE AMOUNT TO ENTER ON LINE 17

Report returned no data.

LINE 18 DETAIL: ACTIVITIES TO CONSIDER IN DETERMINING THE AMOUNT TO ENTER ON LINE 18

Report returned no data.

LINE 19 DETAIL: ACTIVITIES INCLUDED IN THE COMPUTATION OF LINE 19

Plan Year	IDIS Project	IDIS Activity	Voucher Number	Activity Name	Matrix Code	National Objective	Drawn Amount
2017	6	264	6211726	Public Facility/Infrastructure ADA Imp.	03L	LMC	$59,130.00
					03L	**Matrix Code**	**$59,130.00**
2018	5	270	6211726	Families Forward: Housing Program	03T	LMC	$2,704.20
2018	5	270	6234539	Families Forward: Housing Program	03T	LMC	$5,866.77
2018	5	270	6275310	Families Forward: Housing Program	03T	LMC	$5,415.48
2018	5	270	6294551	Families Forward: Housing Program	03T	LMC	$1,013.55
					03T	**Matrix Code**	**$15,000.00**
2018	3	267	6211726	Age Well Senior Services: Home Delivered Meals	05A	LMC	$4,879.25
2018	3	267	6234539	Age Well Senior Services: Home Delivered Meals	05A	LMC	$6,337.35
2018	3	267	6275310	Age Well Senior Services: Home Delivered Meals	05A	LMC	$6,330.38
2018	3	267	6294551	Age Well Senior Services: Home Delivered Meals	05A	LMC	$7,453.02
2018	3	268	6211726	Council on Aging of OC	05A	LMC	$1,803.92
2018	3	268	6234539	Council on Aging of OC	05A	LMC	$1,328.71
2018	3	268	6275310	Council on Aging of OC	05A	LMC	$1,928.99
2018	3	268	6294551	Council on Aging of OC	05A	LMC	$830.42
					05A	**Matrix Code**	**$30,892.04**
2018	4	269	6211726	Second Chance Orange County	05F	LMC	$3,950.80
2018	4	269	6234539	Second Chance Orange County	05F	LMC	$2,315.20
					05F	**Matrix Code**	**$6,266.00**
Total							**$111,288.04**

LINE 27 DETAIL: ACTIVITIES INCLUDED IN THE COMPUTATION OF LINE 27

Plan Year	IDIS Project	IDIS Activity	Voucher Number	Activity Name	Matrix Code	National Objective	Drawn Amount
2018	5	270	6211726	Families Forward: Housing Program	03T	LMC	$2,704.20
2018	5	270	6234539	Families Forward: Housing Program	03T	LMC	$5,866.77
2018	5	270	6275310	Families Forward: Housing Program	03T	LMC	$5,415.48
2018	5	270	6294551	Families Forward: Housing Program	03T	LMC	$1,013.55
					03T	**Matrix Code**	**$15,000.00**
2018	3	267	6211726	Age Well Senior Services: Home Delivered Meals	05A	LMC	$4,879.25
2018	3	267	6234539	Age Well Senior Services: Home Delivered Meals	05A	LMC	$6,337.35
2018	3	267	6275310	Age Well Senior Services: Home Delivered Meals	05A	LMC	$6,330.38
2018	3	267	6294551	Age Well Senior Services: Home Delivered Meals	05A	LMC	$7,453.02
2018	3	268	6211726	Council on Aging of OC	05A	LMC	$1,803.92
2018	3	268	6234539	Council on Aging of OC	05A	LMC	$1,328.71
2018	3	268	6275310	Council on Aging of OC	05A	LMC	$1,928.99
2018	3	268	6294551	Council on Aging of OC	05A	LMC	$830.42
					05A	**Matrix Code**	**$30,892.04**
2018	4	269	6211726	Second Chance Orange County	05F	LMC	$3,950.80
2018	4	269	6234539	Second Chance Orange County	05F	LMC	$2,315.20
					05F	**Matrix Code**	**$6,266.00**
Total							**$52,158.04**

LINE 37 DETAIL: ACTIVITIES INCLUDED IN THE COMPUTATION OF LINE 37

Plan Year	IDIS Project	IDIS Activity	Voucher Number	Activity Name	Matrix Code	National Objective	Drawn Amount
2018	1	265	6203497	CDBG Administration	21A		$7,261.25
2018	1	265	6211726	CDBG Administration	21A		$2,292.50
2018	1	265	6234539	CDBG Administration	21A		$7,595.00
2018	1	265	6275310	CDBG Administration	21A		$19,730.00
2018	1	265	6294551	CDBG Administration	21A		$22,810.05
					21A	**Matrix Code**	**$59,688.80**
2018	2	266	6211726	Fair Housing Services	21D		$3,011.47
2018	2	266	6234539	Fair Housing Services	21D		$2,584.63
2018	2	266	6275310	Fair Housing Services	21D		$4,463.13
2018	2	266	6294551	Fair Housing Services	21D		$1,940.77
					21D	**Matrix Code**	**$12,000.00**
Total							**$71,688.80**

Current CDBG Timeliness Report
Grantee : NEWPORT BEACH, CA

PGM YEAR	PGM YEAR START DATE	TIMELINESS TEST DATE	CDBG GRANT AMT	--- LETTER OF CREDIT BALANCE --- UNADJUSTED	ADJUSTED FOR PI	DRAW RATIO UNADJ	ADJ	MINIMUM DISBURSEMENT TO MEET TEST UNADJUSTED	ADJUSTED
2018	07-01-18	05-02-19	358,444.00	212,984.78	212,984.78	0.59	0.59		
2019	07-01-19	05-02-20	UNAVAILABLE	141,068.99	141,068.99	******	******	GRANT UNAVAILABLE FOR CALCULATION	

*NOTE: If ****** appears in place of ratio, then ratio cannot be calculated because either the grantee's current year grant has not been obligated in LOCCS or the current program year start and end dates have not been entered in IDIS.*

CITY OF

NEWPORT BEACH

City Council Staff Report

September 10, 2019
Agenda Item No. 22

TO:	HONORABLE MAYOR AND MEMBERS OF THE CITY COUNCIL
FROM:	David A. Webb, Public Works Director - 949-644-3311, dawebb@newportbeachca.gov
PREPARED BY:	Micah Martin, Deputy Public Works Director, mmartin@newportbeachca.gov
PHONE:	949-644-3055
TITLE:	Resolution No. 2019-81: Proposed Revisions to City Council Policy B-17 – *Parks, Facilities and Recreation Program Donations*

ABSTRACT:

Council Policy B-17 promotes community involvement and active participation in quality of life components throughout the community. This policy establishes criteria for donations to assure area compatibility, attractiveness, usefulness, and ability to be maintained. Each donation considered for inclusion within the City public parks and streets system will be subject to established limitations and guidelines for the particular area. Suggested revisions to this policy were reviewed by the Parks, Beaches and Recreation Commission (PB&R) on April 2, 2019 and August 6, 2019, and recommended for Council approval.

RECOMMENDATION:

a) Determine this action is exempt from the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(2) and 15060(c)(3) of the CEQA Guidelines because this action will not result in a physical change to the environment, directly or indirectly;

b) Consider the recommendation from the Parks, Beaches, and Recreation Commission, and approve revisions to Council Policy B-17; and

c) Adopt Resolution 2019-81, *A Resolution of the City Council of the City of Newport Beach, California, Amending City Council Policy B-17 "Parks, Facilities, and Recreation Program Donations."*

FUNDING REQUIREMENTS:

There is no current identified fiscal impact related to this item.

DISCUSSION:

Council Policy B-17 "Parks, Facilities and Recreation Program Donations" establishes procedures and guidelines to staff and the public on how City Council desires to handle donations to the City. This policy was last amended on August 8, 2017. Based on staff interactions with the policy, as well as several public comments, staff undertook a more thoughtful review of the portions of the Council Policy pertaining to applications for donations of trees, benches or other tangible street or park furniture. Staff identified several areas of concern with the current policy:

1) Unanticipated large amounts of time associated with the management and maintenance of the program (particularly associated with donated benches);
2) Donor expectation levels;
3) Donation amounts not covering the actual cost to implement, install and maintain the donated items;
4) Overcrowding of some areas (particularly associated with donated benches);
5) Growing memorialization of our public rights-of-way, parks and spaces; and
6) No clear defined lifespan or sunset on bench and/or plaque removals.

On July 10, 2018, City Council reviewed City Council Policy B-17 – Parks, Facilities, and Recreation Program Donations and staff's concerns. At that meeting, City Council took an action to suspend the policy and directed staff to work with the PB&R Commission to review, refine, and ultimately make a recommendation on revised language back to City Council for final review and approval.

At the August 7, 2018, PB&R meeting, the Commission established an Ad Hoc Donations Program Committee to review Council Policy B-17 and appointed Chair Howald, and Commissioners Granoff and Daruty to the Ad Hoc Committee. This Ad Hoc Committee met with staff on September 24, 2018, December 4, 2018, and January 16, 2019. Based on committee discussions, revised language was presented to the full PB&R Commission for review and consideration. At the April 2, 2019 PB&R meeting, the Commission considered the proposed changes to the policy which included: changes to the donation and maintenance period, increase the maintenance fee to recover costs, standardization of types of benches used throughout the city, disallowance of memorial language, and elimination of plaques for donated trees. The PB&R Commission voted to support these changes to Council Policy B-17 and recommended it be submitted to Council for their review and approval (Attachment B).

At the May 14, 2019, City Council meeting, staff presented these changes to Council for review and approval upon which Council directed staff to remove all donation plaques and offer first right of refusal after the ten-year donation period. Council also directed these changes back to the PB&R Commission for review and comment.

After revising the policy further to address City Council's additional direction, the suggested changes were presented to the PB&R Commission and subsequently approved at their August 6, 2019 Commission meeting. The PB&R Commission requested the policy be brought back to the City Council for final review and approval.

Attachment A is the current Council Policy B-17, Attachment B are the proposed changes to the policy and Attachment C is the Resolution and clean version of the proposed changes.

ENVIRONMENTAL REVIEW:

Staff recommends the City Council find this action 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, Chapter 3, because it has no potential for resulting in physical change to the environment, directly or indirectly.

NOTICING:

The agenda item has been noticed according to the Brown Act (72 hours in advance of the meeting at which the City Council considers the item).

ATTACHMENTS:

Attachment A – Existing City Council Policy B-17
Attachment B – Proposed City Council Policy B-17
Attachment C – Resolution No. 2019-81

PARKS, FACILITIES, AND RECREATION PROGRAM DONATIONS

Purpose

The City Council recognizes the need to promote community involvement and active participation in quality of life components throughout the community, and the need to establish a fair, equitable, and uniform procedure for which gifts may be donated to the City. This policy establishes criteria for donations to assure area compatibility, attractiveness, usefulness, and the capability to be maintained. Each donation considered for inclusion in the City park public improvement and street system will be subject to established limitations and guidelines for the particular area.

Policy

A. Acceptance of donations of cash or tangible items

1. Based on the value of the donation, appropriate City staff will review the acceptability of any donation and determine if the benefits to be derived warrant acceptance of the donation.

2. Criteria for evaluation includes consideration of any immediate or initial expenditure required in order to accept the donation, the potential and extent of the City's obligation to maintain the donation, and the community benefit to be derived from the donation.

3. The cost of a tangible donation shall include a 10% maintenance fee paid for in full by the donor. This maintenance fee is in addition to any other fees or charges.

B. Types of Donations

Donations may be received in the form of cash, real, or personal property. Restricted donations are those donations that the donor specifies for a particular City location or purpose. Unrestricted donations are those donations that are given to the City for unspecified use.

1. Cash Gifts

a. Donation of cash or items valued at or below the amount set in City Council Policy F-3 may be accepted by the City Manager. However, any donation considered a park facility improvement that would result in an installation of a permanent fixture in the parks must be in compliance with subsection 4 of this policy, *Park, Public Improvement, and Street Amenities.*

b. Donations above the amount set in City Council Policy F-3 for the City Manager may be accepted by the Parks, Beaches and Recreation Commission.

c. Gifts of funds may be designated for restricted or unrestricted use. Gifts of cash or items that have a restriction must first be approved by the City Council.

d. Gifts of funds accepted by the City imply no other obligation besides using donated funds for the specified purpose.

2. Trees

Tree donations add beauty to City parks and facilities. Trees may be donated and installed at parks and parkway locations recommended by the Municipal Operations Director and approved by the Parks, Beaches and Recreation Commission. The minimum size of tree donations must be 36" boxed containers unless waived by the Commission. Tree donations are limited to specific species listed on the Parkway Tree Designation List and/or matching the landscape in park locations.

3. Benches

Bench donations may be donated and installed in different areas of placement including parks, streets, along the beachfront, within villages, commercial districts, neighborhoods, on a specific island, etc. The Parks, Beaches, and Recreation Commission, with the assistance of Municipal Operations staff, shall designate the type, style, design, and placement of City-owned benches on City property.

a. An inventory of designated benches and available bench locations will be maintained in the City Donation Catalog.

b. Donation requests must be submitted to the Municipal Operations Department and meet the following requirements:

i. Bench donations along a city street, beachfront or other public right of way will require the approval of the Municipal Operations Director.

ii. Bench donations within a commercial district will require notification of, and an endorsement from, the local business association, if applicable.

iii. Bench donations for parks and facilities within a residential community will require notification of residents and an established homeowners association or common interest development, when applicable, within 300 feet of placement.

4. Park, Public Improvement, and Street Amenities

Other amenities such as drinking fountains, tables, and other equipment that will improve public places in parks, in and/or around public buildings, streets, walkways, and trails may be donated to the City.

a. Other amenities that may be donated will be identified in the City Donation Catalog.

b. Donation of public amenities valued at or below the amount set forth in City Council Policy F-3 may be accepted by the City Manager.

c. Donation of public amenities valued at the amount set forth in City Council Policy F-3 and above may be accepted or declined by the Parks, Beaches and Recreation Commission.

d. Donations to be installed on public sidewalks shall meet the criteria described in Policy L-15 Encroachments on Public Sidewalks and approved by the Public Works Director and Municipal Operations Director.

C. Naming Rights

Donors may receive naming rights on capital improvement projects for which any donation matches or exceeds 75% of the total budgeted cost for the area benefiting from the donation. All such donations will be submitted to the City Council for acceptance of the donation and the name to be applied to the project in keeping with City Council Policy B-9 – *Naming of City Parks & Facilities.*

D. Sponsorships

Special Events are recognized as fundraising activities. Where donations or sponsorship of a special event will require some form of recognition, and, in order to provide recreational opportunities, corporate or organizational sponsors may be recognized by use of logos and name on event banners and signage. Signs and literature at all such special events would be at the discretion of the appropriate Department Director. The size, scale and location of corporate logos and names should not dominate the event facilities or area. Corporate logos and/or names should not be displayed in a manner that would, in any way, suggest the

endorsement of the Department or the City. All signs must comply with the City's existing sign code and Council Policies B-3 and B-8.

E. Right to Decline

The City of Newport Beach reserves the right to decline any donation if, upon review, acceptance of the donation is determined to be not in the best interest of the City.

F. Special Privileges

Making a donation or co-sponsoring a special event does not entitle a sponsor/donor to any special privileges other than those stated in this policy such as recognition, plaques or displays at events, unless otherwise agreed upon and approved by the Department Director or the City Council when appropriate.

G. Reserved

H. Acknowledgements

1. Letter of acceptance of donation will be sent to donor.

2. In some cases, recognition of donations may be given at Commission or Council Meetings.

3. Plaques are reserved for donations meeting the following criteria:

   a. Donors providing donations valued at $1,000 to less than $4,000 may elect to provide a dedicatory plaque not exceeding 2" x 6" with a name designated by the donor preceded by one of the following: "Donated by", "Donated for", "In recognition of", "In Loving Memory" or "In Memory of".

   b. Donors providing donations valued at $4,000 or greater may elect to provide a dedicatory plaque not exceeding 5"x7" with name, date and dedication wording not exceeding 25 words. Plaque content must be approved by the Parks, Beaches & Recreation Commission.

   c. Donors providing donations valued at least $1,000 that recognize individuals or organizations that have provided distinguished long term and/or significant service to the City may include a dedicatory plaque not exceeding 5"x7" with name, date and dedication wording not exceeding 25 words. Individuals can include City employees with 25 or more years of distinguished service, as determined by the PB&R Commission.

d. Plaques are at the expense of the donor, the City will assume ownership and maintenance of the donated item and plaque however, the City does not assume replacement costs due to vandalism or theft. Plaques will remain on a donated item during its useful life. The City reserves the right to remove and/or relocate the donated item.

e. Plaque information will be entered on the Gift Donation Catalog application form and ordered by the City.

History

Adopted I-15 - 7-22-1991 ("Park Improvement Donation")
Amended I-15 - 1-24-1994 (changed to G-5)
Amended G-5 - 6-27-1994
Amended G-5 - 6-24-1996
Adopted B-17 - 5-9-2006 ("Park, Facilities, & Recreation Donations", incorporation G-5)
Amended B-17 - 2-24-2009
Amended B-17 - 6-26-2012
Amended B-17 - 8-8-2017

PARKS, FACILITIES, AND RECREATION PROGRAM DONATIONS

Purpose

The City Council recognizes the need to promote community involvement and active participation in quality of life components throughout the community, and the need to establish a fair, equitable, and uniform procedure ~~for~~ by which gifts may be donated to the City. This policy establishes criteria for donations to assure area compatibility, attractiveness, usefulness, and ~~the capability~~ sustainability ~~to be maintained~~of maintenance. Each donation considered for inclusion in the City's parks ~~public improvement~~ and streets system will be subject to established limitations and guidelines for ~~the~~ each particular area.

Policy

A. Acceptance of ~~d~~Donations ~~of cash or tangible items~~

1. Based on the value of the donation, appropriate City staff will review the acceptability of any donation and determine if the benefits to be derived warrant acceptance of the donation.

2. Criteria for evaluation includes consideration of any ~~immediate or~~ initial expenditure required in order to accept the donation, the potential and extent of the City's obligation to maintain the donation for a minimum~~aximum~~ of 10 years, and the community benefit to be derived from the donation. After 10 years, or at the end of the donated item's useful life, the donated item may be removed or replaced by the City.

3. The cost of a tangible donation shall also include a ~~10%~~ maintenance fee equal to 50% of the estimated 10-year maintenance cost of the donated item, paid for in full by the donor at the time of the donation, and at renewal if the donor elects to renew the donation as part of the first right of refusal process, per section G. This maintenance fee is in addition ~~to any other fees or charges.~~ the cost and installation of the donated item.

B. Types of Donations

Donations may only be received in the form of ~~cash, real, or personal property~~a check. Restricted donations are those donations that the donor specifies for a particular City location or purpose. Unrestricted donations are those donations that are given to the City for unspecified use.

~~1. Cash Gifts~~

~~a. Donation of cash or items valued at or below the amount set in City Council Policy F-3 may be accepted by the City Manager. However, any donation considered a park facility improvement that would result in an installation of a permanent fixture in the parks must be in compliance with subsection 4 of this policy, *Park, Public Improvement, and Street Amenities.*~~

~~b. Donations above the amount set in City Council Policy F-3 for the City Manager may be accepted by the Parks, Beaches and Recreation Commission.~~

~~c. Gifts of funds may be designated for restricted or unrestricted use. Gifts of cash or items that have a restriction must first be approved by the City Council. Gifts of funds designated for unrestricted use shall be programed and spent on City parks as determined by the City.~~

~~d. Gifts of funds accepted by the City imply no other obligation besides using donated funds for the specified purpose.~~

~~2.~~1. Trees

~~Tree d~~Donations for trees add beauty to City parks and facilities. ~~Trees~~ Donations for trees may be ~~donated~~ used to install a tree or trees~~and installed~~ at parks ~~and parkway locations~~ recommended by the Deputy Public Works ~~Municipal Operations~~ Director, Municipal Operations and approved by the Parks, Beaches and Recreation Commission. ~~The~~ Depending on availability, the minimum ~~size~~cost of tree donations must be ~~36~~equal to the price of a ***48***" boxed ~~containers~~container plus maintenance costs, unless waived by the Commission. Tree donations are limited to specific species ~~listed on the Parkway Tree Designation List and/or matching~~that match the landscape in park locations.

~~3~~2. Benches

~~Bench d~~Donations for a bench will be used to ~~may be donated and~~ install~~ed~~ a bench in different areas ~~of placement~~ including parks, streets, along the beachfront, within villages, commercial districts, neighborhoods, on a specific island, etc. The Parks, Beaches, and Recreation Commission, with

the assistance of Public Works Department ~~Municipal Operations~~ staff, shall designate the type, style, design, and placement of City-owned benches on City property.

a. An inventory of designated benches and available bench locations will be maintained ~~in~~ by the City ~~Donation Catalog~~.

b. Donation requests must be submitted to the Public Works - Municipal Operations ~~Department~~ Division and meet the following requirements:

i. Bench donations along a city street, beachfront or other public right of way will require the approval of the Deputy Public Works Director. ~~Municipal Operations Director.~~

ii. ~~Bench~~ D~~d~~onations for a bench within a commercial district will require notification of, and an endorsement from, the local business association, if applicable.

iii. ~~Bench d~~Donations for a bench to be located at a park or facility ~~for parks and facilities~~ within a residential community will require notification of residents and any established homeowners association or common interest development, when applicable, within 300 feet of the proposed location for placement.

iv. Donations for four types of benches, and any exception to the following, must be approved by the Parks, Beaches and Recreation Commission. Donors can choose from the following:

1. Santa Monica Style – Standard Park Bench with concrete legs and composite bench seat slats;

2. Huntington Beach Style - Standard Concrete Park Bench;

3. Victoria Style – Backless Standard Concrete Park Bench; or

4. Infinity Style – Standard Park Bench with metal legs and composite bench slats. Comes in standard or backless.

43. Park, Public Improvement, and Street Amenities

Donations for ~~O~~other amenities such as drinking fountains, tables, and other equipment that will improve public places in parks, in and/or around public buildings, streets, walkways, and trails may be ~~donated~~ offered to the City.

a. Donations for ~~O~~other amenities ~~that may be donated~~ will be identified and approved~~in the City~~ by City Staff~~Donation Catalog~~.

b. Donation of funds for public amenities valued at or below the amount set forth in City Council Policy F-3 may be accepted by the City Manager.

c. Donation of funds for public amenities valued at the amount set forth in City Council Policy F-3, and above, ~~may be accepted or declined by the Parks, Beaches and Recreation Commission~~requires City Council approval.

d. Donations of funds for public amenities to be installed on public sidewalks shall meet the criteria described in Policy L-~~15~~ 6 Encroachments ~~on~~ in Public ~~Sidewalks~~ Rights-of-Way and be approved by the Public Works Director. ~~and Municipal Operations Director.~~

C. Naming Rights

Donors may receive naming rights on capital improvement projects for which any donation matches or exceeds 75% of the total budgeted cost for the area benefiting from the donation. All such donations will be submitted to the City Council for acceptance of the donation and the name to be applied to the project in keeping with City Council Policy B-9 — *Naming of City Parks & Facilities*.

D. Sponsorships

Special Events are recognized as fundraising activities. Where donations or sponsorship of a special event will require some form of recognition, and, in order to provide recreational opportunities, corporate or organizational sponsors may be recognized by use of logos and name on event banners and signage. Signs and literature at all such special events ~~would be~~is at the discretion of the appropriate Department Director. The size, scale and location of corporate logos and names should not dominate the event facilities or area. Corporate logos and/or names

should not be displayed in a manner that would, in any way, suggest ~~–~~the endorsement of the Department or the City. All signs must comply with the City's existing sign code and Council Policies B-3 and B-8.

E. Right to Decline

The City of Newport Beach reserves the right to decline any donation if, upon review, acceptance of the donation is determined to ~~be~~ not be in the best interest of the City.

F. Special Privileges

Making a donation or co-sponsoring a special event does not entitle a sponsor/donor to any special privileges other than those stated in this policy such as recognition~~, plaques~~ or displays at events, unless otherwise agreed upon and approved by the Department Director or the City Council when appropriate.

G. ~~Reserved~~Timeliness

All donations are limited to a period of 10 years or until the end of the useful life of the item. After 10 years, or the end of the useful life of the item, whichever comes first, reasonable effort will be made to contact the original donor (City will attempt to make contact for no more than 30 days if donor is unable to be reached) for a right of first refusal to keep the donation in their name. If denied, or the donor is unable to be reached, the location may become available for a new donation.

H. Acknowledgements

1. Letter of acceptance of donation will be sent to the donor.

2. In some cases, recognition of donations may be given at Commission or Council Meetings.

3. A donor will receive a certificate of acknowledgement for the donation and their name will be placed on the GIS Donation map, with coordinates of the location of their donation.

4. Donations are not eligible for donation plaques, however the donor will be provided with a certificate acknowledging the donation and the location of the donated item.

~~3. Plaques are reserved for donations meeting the following criteria:~~

a. Donors providing donations valued at $15,000 to less than $410,000 may elect to provide a dedicatory plaque not exceeding 2" x 6" with a name designated by the donor preceded by one of the following: "Donated by" or , "Donated for.", "In recognition of", "In Loving Memory" or "In Memory of". Trees are not eligible for donation plaques.

b. Donors providing donations valued at $410,000 or greater may elect to provide a dedicatory plaque not exceeding 5"x7" with name, date and dedication wording not exceeding 25 words. Plaque content must be approved by the Parks, Beaches & Recreation Commission. Trees are not eligible for donation plaques.

c. Donors providing donations valued at least $1,000 that recognize individuals or organizations that have provided distinguished long term and/or significant service to the City may include a dedicatory plaque not exceeding 5"x7" with name, date and dedication wording not exceeding 25 words. Individuals can include City employees with 25 or more years of distinguished service, as determined by the PB&R Commission.

d. Plaques are at the expense of the donor and, the City will assume ownership and maintenance of both the donated item and plaque however, the City does not assume replacement costs due to vandalism or theft. Plaques will remain on a donated item during its useful life, or up to 10 yearsrs. If the donated item becomes unusable or unsightly within the 10-year period due to natural causes, the City does not assume responsibility to keep and/or maintain the item. The City reserves the right, without permission of the donor, to remove and/or relocate the donated item. for any reason. The year of the donation will be included on all plaques.

e. Plaque information will be entered on the Gift Donation Catalog application form and ordered by the City.

History

Adopted I-15 – 7-22-1991 ("Park Improvement Donation")
Amended I-15 – 1-24-1994 (changed to G-5)
Amended G-5 – 6-27-1994
Amended G-5 – 6-24-1996
Adopted B-17 – 5-9-2006 ("Park, Facilities, & Recreation Donations", incorporation G-5)
Amended B-17 – 2-24-2009

Amended B-17 – 6-26-2012
Amended B-17 – 8-8-2017
Amended B-17 – 9-10-2019

ATTACHMENT C

RESOLUTION NO. 2019-81

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF NEWPORT BEACH, CALIFORNIA, AMENDING CITY COUNCIL POLICY B-17 "PARKS, FACILITIES, AND RECREATION PROGRAM DONATIONS"

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

WHEREAS, at its July 10, 2018 meeting, the City Council directed the Parks, Beaches and Recreation Commission to review City Council Policy B-17 (Parks, Facilities and Recreation Program Donations) for future Council consideration;

WHEREAS, the Parks, Beaches and Recreation Commission formed an ad hoc committee to review City Council Policy B-17 with interested parties and present recommendations to the entire Parks, Beaches and Recreation Commission regarding revisions to improve readability and efficiency of City Council Policy B-17;

WHEREAS, on April 2, 2019, the Parks, Beaches and Recreation Commission approved for submission to the City Council proposed revisions to City Council Policy B-17;

WHEREAS, the City Council reviewed the proposed revisions at its May 14, 2019, meeting and requested further revisions to City Council Policy B-17;

WHEREAS, on August 6, 2019, the Parks, Beaches and Recreation Commission approved for re-submission to City Council proposed revisions to City Council Policy B-17, as shown in the revised policy attached to this resolution as Exhibit 1, which is incorporated herein by reference; and

WHEREAS, the City Council desires to amend City Council Policy B-17 to increase the maintenance fee related to donations, include options for bench donations, and provide a clear and uniform procedure by which gifts may be donated to the City.

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

Section 1: The City Council hereby amends City Council Policy B-17 (Parks, Facilities and Recreation Program Donations) as provided in Exhibit 1, attached hereto and incorporated herein by reference.

Section 2: All prior versions of City Council Policy B-17 that are in conflict with the revisions adopted by this resolution are hereby repealed.

Section 3: 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 4: The recitals provided in this resolution are true and correct and are incorporated into the substantive portion of this resolution.

Section 5: Except as expressly modified in this resolution, all other City Council Policies, sections, subsections, terms, clauses and phrases set forth in the Council Policy Manual shall remain unchanged and shall be in full force and effect.

Section 6: The City Council finds the adoption of this resolution and the amendment of Council Policy B-17 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 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 10th day of September, 2019.

Diane B. Dixon
Mayor

ATTEST:

Leilani I. Brown
City Clerk

APPROVED AS TO FORM:
CITY ATTORNEY'S OFFICE

Aaron C. Harp,
City Attorney

Attachment: Exhibit 1 – Revised City Council Policy B-17

PARKS, FACILITIES, AND RECREATION PROGRAM DONATIONS

Purpose

The City Council recognizes the need to promote community involvement and active participation in quality of life components throughout the community, and the need to establish a fair, equitable, and uniform procedure by which gifts may be donated to the City. This policy establishes criteria for donations to assure area compatibility, attractiveness, usefulness, and sustainability of maintenance. Each donation considered for inclusion in the City's parks and streets system will be subject to established limitations and guidelines for each particular area.

Policy

A. Acceptance of Donations

1. Based on the value of the donation, appropriate City staff will review the acceptability of any donation and determine if the benefits to be derived warrant acceptance of the donation.

2. Criteria for evaluation includes consideration of any initial expenditure required in order to accept the donation, the potential and extent of the City's obligation to maintain the donation for a minimum of 10 years, and the community benefit to be derived from the donation. After 10 years, or at the end of the donated item's useful life, the donated item may be removed or replaced by the City.

3. The cost of a tangible donation shall also include a maintenance fee equal to 50% of the estimated 10-year maintenance cost of the donated item, paid for in full by the donor at the time of the donation, and at renewal if the donor elects to renew the donation as part of the first right of refusal process, per section G. This maintenance fee is in addition the cost and installation of the donated item.

B. Types of Donations

Donations may only be received in the form of a check. Restricted donations are those donations that the donor specifies for a particular City location or purpose. Unrestricted donations are those donations that are given to the City for unspecified use.

1. Trees

Donations for trees add beauty to City parks and facilities. Donations for trees may be used to install a tree or trees at parks recommended by the Deputy Public Works Director, Municipal Operations and approved by the Parks, Beaches and Recreation Commission. Depending on availability, the minimum cost of tree donations must be equal to the price of a ***48"*** boxed container plus maintenance costs, unless waived by the Commission. Tree donations are limited to specific species that match the landscape in park locations.

2. Benches

Donations for a bench will be used to install a bench in different areas including parks, streets, along the beachfront, within villages, commercial districts, neighborhoods, on a specific island, etc. The Parks, Beaches, and Recreation Commission, with the assistance of Public Works Department staff, shall designate the type, style, design, and placement of City-owned benches on City property.

a. An inventory of designated benches and available bench locations will be maintained by the City.

b. Donation requests must be submitted to the Public Works - Municipal Operations Division and meet the following requirements:

i. Bench donations along a city street, beachfront or other public right of way will require the approval of the Deputy Public Works Director.

ii. Donations for a bench within a commercial district will require notification of, and an endorsement from, the local business association, if applicable.

iii. Donations for a bench to be located at a park or facility within a residential community will require notification of residents and any established homeowners association or common interest development, when applicable, within 300 feet of the proposed location for placement.

iv. Donations for four types of benches, and any exception to the following, must be approved by the Parks, Beaches and Recreation Commission. Donors can choose from the following:

1. Santa Monica Style – Standard Park Bench with concrete legs and composite bench seat slats;

2. Huntington Beach Style - Standard Concrete Park Bench;

3. Victoria Style – Backless Standard Concrete Park Bench; or

4. Infinity Style – Standard Park Bench with metal legs and composite bench slats. Comes in standard or backless.

3. Park, Public Improvement, and Street Amenities

Donations for other amenities such as drinking fountains, tables, and other equipment that will improve public places in parks, in and/or around public buildings, streets, walkways, and trails may be offered to the City.

a. Donations for other amenities will be identified and approved by City Staff.

b. Donation of funds for public amenities valued at or below the amount set forth in City Council Policy F-3 may be accepted by the City Manager.

c. Donation of funds for public amenities valued at the amount set forth in City Council Policy F-3, and above, requires City Council approval.

d. Donations of funds for public amenities to be installed on public sidewalks shall meet the criteria described in Policy L-6 Encroachments in Public Rights-of-Way and be approved by the Public Works Director.

C. Naming Rights

Donors may receive naming rights on capital improvement projects for which any donation matches or exceeds 75% of the total budgeted cost for the area benefiting from the donation. All such donations will be submitted to the City Council for acceptance of the donation and the name to be applied to the project in keeping with City Council Policy B-9 – *Naming of City Parks & Facilities.*

D. Sponsorships

Special Events are recognized as fundraising activities. Where donations or sponsorship of a special event will require some form of recognition, and, in order to provide recreational opportunities, corporate or organizational sponsors may be recognized by use of logos and name on event banners and signage. Signs and literature at all such special events is at the discretion of the appropriate Department Director. The size, scale and location of corporate logos and names should not dominate the event facilities or area. Corporate logos and/or names should not be displayed in a manner that would, in any way, suggest the endorsement of the Department or the City. All signs must comply with the City's existing sign code and Council Policies B-3 and B-8.

E. Right to Decline

The City of Newport Beach reserves the right to decline any donation if, upon review, acceptance of the donation is determined to not be in the best interest of the City.

F. Special Privileges

Making a donation or co-sponsoring a special event does not entitle a sponsor/donor to any special privileges other than those stated in this policy such as recognition or displays at events, unless otherwise agreed upon and approved by the Department Director or the City Council when appropriate.

G. Timeliness

All donations are limited to a period of 10 years or until the end of the useful life of the item. After 10 years, or the end of the useful life of the item, whichever comes first, reasonable effort will be made to contact the original donor (City will attempt to make contact for no more than 30 days if donor is unable to be reached) for a right of first refusal to keep the donation in their name. If denied, or the donor is unable to be reached, the location may become available for a new donation.

H. Acknowledgements

1. Letter of acceptance of donation will be sent to the donor.

2. In some cases, recognition of donations may be given at Commission or Council Meetings.

3. A donor will receive a certificate of acknowledgement for the donation and their name will be placed on the GIS Donation map, with coordinates of the location of their donation.

4. Donations are not eligible for donation plaques, however the donor will be provided with a certificate acknowledging the donation and the location of the donated item.

History

Adopted I-15 - 7-22-1991 ("Park Improvement Donation")
Amended I-15 - 1-24-1994 (changed to G-5)
Amended G-5 - 6-27-1994
Amended G-5 - 6-24-1996
Adopted B-17 - 5-9-2006 ("Park, Facilities, & Recreation Donations", incorporation G-5)
Amended B-17 - 2-24-2009
Amended B-17 - 6-26-2012
Amended B-17 - 8-8-2017
Amended B-17 - 9-10-2019

CITY OF

NEWPORT BEACH

City Council Staff Report

September 10, 2019
Agenda Item No. 23

TO:	HONORABLE MAYOR AND MEMBERS OF THE CITY COUNCIL
FROM:	David A. Webb, Public Works Director - 949-644-3311, dawebb@newportbeachca.gov
PREPARED BY:	Micah Martin, Deputy Director of Public Works – Municipal Operations Division mmartin@newportbeachca.gov
PHONE:	949-644-3059
TITLE:	Ordinance No. 2019-15: Amending Newport Beach Municipal Code Chapter 6.04 – *Garbage, Refuse and Cuttings* and Adding Chapter 6.06 – *State Mandated Municipal Solid Waste Diversion Programs*

ABSTRACT:

California's Department of Resources Recycling and Recovery (CalRecycle) enforces standards established by the state legislature for solid waste diversion in California in an effort to restore, protect and enhance the environment to ensure public health, environmental quality and economic viability. To succeed in their mission, CalRecycle requires local jurisdictions to implement programs that reduce the amount of solid waste going to landfills. The State of California has passed several laws to mandate commercial recycling and the diversion of organic materials from the waste stream by businesses throughout the state. These laws put the responsibility on each local jurisdiction to ensure these programs are in place and to complete significant reports and documentation for CalRecycle on an annual basis. As such, the City is required to update its Municipal Code in order to successfully implement these programs and be in compliance with this legislation.

RECOMMENDATION:

a) Determine this action is exempt from the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(2) and 15060(c)(3) of the CEQA Guidelines because this action will not result in a physical change to the environment, directly or indirectly; and

b) Waive full reading, direct the City Clerk to read by title only, introduce Ordinance No. 2019-15, *An Ordinance of the City Council of the City of Newport Beach, California, Amending Portions of Chapter 6.04 and Other Related Provisions of the Newport Beach Municipal Code and Adding Chapter 6.06 to Title 6 of the Newport Beach Municipal Code to Incorporate State Mandates on the Diversion of Municipal Solid Waste,* and pass to second reading on September 24, 2019.

FUNDING REQUIREMENTS:

Although there is no direct fiscal impact to the City with regard to approval of these Municipal Code modifications, there will eventually be increased cost to the City as well as commercial and residential customers for increased refuse handling, processing and disposal costs in order to comply with these recent state law changes.

DISCUSSION:

In early 2017, California's Department of Resources Recycling and Recovery (CalRecycle), the state agency that oversees compliance with waste reduction mandates in California, nearly initiated enforcement action against the City for low compliance rates with regard to Assembly Bill 341 (AB 341) and Assembly Bill 1826 (AB 1826). AB 341 requires businesses and multifamily complexes of five units or more to implement a recycling program for dry recyclables (paper plastic, glass, aluminum, cardboard, etc.) on or before July 1, 2012. AB 341 requires the City to provide a recycling program for these materials (either directly or through the City's franchisees) on or before July 1, 2012. AB 1826, effective January 2016, requires certain businesses to recycle organic waste, defined as food waste, green waste, wood waste, and food-soiled paper. AB 1826 also requires multifamily complexes of five units or more to recycle green and wood waste. AB 1826 requires the City to provide recycling programs for organic waste by the same date. In order to avoid referral to CalRecycle's Jurisdiction Compliance Unit (JCU), the City committed, in a letter to CalRecycle dated March 21, 2017, to take following actions:

1) Revise its solid waste franchise agreement to require franchise haulers to conduct AB 341 and AB 1826 outreach and recycling program implementation.
2) Notify all non-compliant businesses annually via direct mail of their requirements to comply with AB 341 and AB 1826.
3) Revise the City municipal code to require businesses and multifamily complexes of five units or larger to comply with AB 341 and AB 1826 or face penalties.

The above written commitments from the City were sufficient to avoid further compliance action from CalRecycle to date because the City has been making adequate progress toward fulfilling each of these commitments. City staff has prepared a draft set of more detailed requirements for the commercial franchise holders regarding program implementation for both dry recyclables and organic waste. This will soon be brought to the City Council for approval, in order to fulfil the City's commitment in item #1 above. The City has completed item #2 above by notifying non-compliant businesses and multifamily complexes of the requirements to comply with AB 341 and AB 1826. The Municipal Code revision that is now being presented to the City Council will honor the City's commitment to CalRecycle for item #3 above and will move the City significantly closer to compliance with AB 341 and AB 1826.

Staff has completed a draft municipal code revision that mirrors the requirements of AB 341 and AB 1826 and would require certain businesses and multifamily complexes of five units or more to implement recycling programs or face administrative penalties.

Specifically, the proposed new Chapter 6.06 of the municipal code would require the following:

1. **AB 341 Compliance:**
    a. Requires commercial and multi-family customers that generate four or more cubic yards of waste per week to implement programs to recycle paper, plastic, glass, aluminum, etc. per AB 341.
    b. Compliance pathways include implementing an internal recycling program (i.e. bottle and can recycling, paper shredding, etc.), subscribing to a franchise hauler-provided recycling program or mixed-waste processing program, self-hauling recyclables, or donating recyclables.
2. **AB 1826 Compliance**:
    a. Requires commercial customers that generate four or more cubic yards of waste per week to implement recycling programs for food waste, green waste, food soiled paper, and wood waste.
    b. Multi-family customers are required to implement programs to recycle green and wood waste but not food waste or food soiled paper.
    c. Compliance pathways include implementing an internal organics recycling program (i.e. onsite composting, landscaper hauls green waste to a composting facility, etc.), subscribing to a franchise hauler-provided organics recycling program, self-hauling organics to an organics recycling facility, and/or donating edible food waste.
3. **Special events**
    a. All Level 2 and 3 special events (1,000+ attendees) will be required to have AB 341 and AB 1826 recycling programs in place for attendees.
    b. The ordinance establishes a modest security deposit that is refunded upon demonstration the special event complied with the ordinance.
4. **Waivers**
    a. The City has the ability to grant exemptions for 1) businesses and multifamily complexes that demonstrate there is insufficient space to house the additional container(s) (carts or bins) needed to comply with AB 341 and AB 1826; and 2) for businesses that generate very small quantities of organic waste.
5. **Enforcement**
    a. The City may assess administrative penalties to businesses and multifamily complexes that do not have the required recycling programs in place after a 30-day notice of violation.
    b. Per the City's existing commercial non-exclusive franchises, franchisees will report non-compliant accounts to the City on a monthly basis.

When Section 6.04 of the City's code was originally adopted, it applied to all types of properties and recycling requirements were not yet anticipated. With the revisions to Section 6.06 related to commercial and multifamily properties, Section 6.04 required updates to remove conflicting language with the new diversion requirements.

Therefore, the Municipal Code has been updated to reflect these diversion requirements and to ensure all code sections are consistent with this amendment. This includes updating definitions, eliminating outdated definitions and provisions, and updating requirements for solid waste, recyclable materials and organics storage, collection and related health and safety issues.

ENVIRONMENTAL REVIEW:

Staff recommends the City Council find this action 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, Chapter 3, because it has no potential for resulting in physical change to the environment, directly or indirectly.

NOTICING:

The agenda item has been noticed according to the Brown Act (72 hours in advance of the meeting at which the City Council considers the item).

ATTACHMENTS:

Attachment A – Ordinance No. 2019-15 (clean version)
Attachment B – Ordinance No. 2019-15 (redline version)

ATTACHMENT A

ORDINANCE NO. 2019-15

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF NEWPORT BEACH, CALIFORNIA, AMENDING PORTIONS OF CHAPTER 6.04 AND OTHER RELATED PROVISIONS OF THE NEWPORT BEACH MUNICIPAL CODE AND ADDING CHAPTER 6.06 TO TITLE 6 OF THE NEWPORT BEACH MUNICIPAL CODE TO INCORPORATE STATE MANDATES ON THE DIVERSION OF MUNICIPAL SOLID WASTE

WHEREAS, Assembly Bill 939 ("AB 939"), codified in Public Resources Code Section 40000 *et. seq.*, requires the City of Newport Beach ("City") to divert a minimum of fifty percent (50%) of the municipal solid waste generated from landfill disposal;

WHEREAS, AB 939 was amended by Assembly Bill 341 ("AB 341"), as codified in Public Resources Code Section 41780.01, in 2011 to establish a statewide goal of diverting seventy-five percent (75%) of all municipal solid waste from landfill by 2020 and to require all local government jurisdictions to provide a commercial recycling program to businesses and to multi-family developments of five (5) units or larger by July 1, 2012;

WHEREAS, AB 341 also required all businesses generating more than four (4) cubic yards per week of commercial municipal solid waste and all multi-family dwellings of five (5) units or more, to arrange for recycling services by July 1, 2012;

WHEREAS, AB 939 was further amended by Assembly Bill 1826 ("AB 1826"), codified in Public Resources Code Section 42649.82, in 2014 to require the City to provide a diversion program for collection and diversion of food scraps (including food-soiled paper mixed in with food scraps), green waste and non-hazardous wood, on or before January 1, 2016;

WHEREAS, AB 1826 also required businesses generating certain quantities of food scraps, green waste and wood to participate in a diversion program according to a specified schedule beginning with participation by the largest generators of these materials on or before April 1, 2016; and participation by additional generators of these materials by January 1, 2017, and by January 1, 2019, depending upon the quantity of food scraps, green waste and wood generated (Public Resources Code Section 42649.81);

WHEREAS, AB 939 was amended by Assembly Bill 1594, codified in Public Resources Code Section 41781.3, in 2014 to phase out the use of green waste as alternative daily cover at landfills and no longer allow the City to receive diversion credit for such use on or after January 1, 2020;

WHEREAS, adoption of a program for the diversion of municipal solid waste is essential for the City to comply with Public Resources Code Section 40000 *et. seq.* and failure to comply can result in fines, penalties and compliance orders assessed against local agencies; and

WHEREAS, it is in the best interest of the City to adopt amendments to Chapter 6.04 and other related provisions of the Newport Beach Municipal Code and add Chapter 6.06 to Title 6 of the Newport Beach Municipal Code to incorporate state mandates for the diversion of municipal solid waste.

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

Section 1: Section 1.12.020(B) of Chapter 1.12 of Title 1 of the Newport Beach Municipal Code is hereby amended to read as follows:

B. The Fire Chief, Public Works Director and Harbormaster, and members of the staff designated by the Fire Chief, Public Works Director and Harbormaster, shall have the power to issue citations for any violation of Titles 11 and 17, Chapters 7.04, 7.16 and 7.20, Sections 6.04.050, 6.04.190 and 10.06.010, the Fish and Game Code of the State of California, Title 14 of the California Code of Regulations, the provisions of the Health and Safety Code of the State of California that pertain to animals and the provisions of Chapter 5 of Division 3 of the Harbors and Navigation Code of the State of California.

Section 2: Section 1.12.020(D) of Chapter 1.12 of Title 1 of the Newport Beach Municipal Code is hereby amended to read as follows:

D. The Public Works Director and department staff designated by the director shall have the power to issue citations for any violation of Chapters 6.04 and 6.06 of this Code.

Section 3: The Table of Contents for Chapter 2.08 of Title 2 of the Newport Beach Municipal Code titled "City Manager" is hereby amended to read as follows:

Chapter 2.08
CITY MANAGER*

Sections:

2.08.010 Establishment Authority.

2.08.020 Bond for Manager Pro Tempore.

2.08.030 Compensation—Expenses.

2.08.040 Powers and Duties.

2.08.050 Removal.

2.08.060 Subject to Civil Service Provisions.

* Responsibilities and duties for civil service—See Section 2.24.060.

Amount of bond—See Chapter 2.16.

Power and duty to restrict water use—See Chapter 14.16.

Administrative authority over department heads—See Chapter 2.12.

Business licensing and regulation duties—See Title 5.

Administration of garbage collection service—See Chapters 6.04 and 6.06.

Water shortage duties—See Chapter 14.16.

Section 4: Chapter 6.04 of Title 6 of the Newport Beach Municipal Code titled "Garbage, Refuse and Cuttings" is hereby amended in its entirety to read as follows:

Chapter 6.04

GARBAGE, REFUSE AND CUTTINGS*

Sections:

6.04.010 Purpose and Intent.

6.04.020 Definitions.

6.04.030 Nuisance Declared.

6.04.040 Leaf Blowers.

6.04.050 Disposal on Public Property Prohibited.

6.04.060 Collection of Solid Waste.

6.04.070 Containers.

6.04.080 Solid Waste and Divertible Material Container and Bulky Item Requirements.

6.04.090 Commercial and Multi-Family Bin and Wheeled Cart Requirements.

6.04.100 Prohibited Materials.

6.04.110 Accumulation Limitation.

6.04.120 Storage and Placement of Containers, Boxes, Bags or Bulky Items for Collection.

6.04.130 Administration of Collection Service.

6.04.140 Costs Defrayed From Ad Valorem Tax Revenue.

6.04.150 Removal of Construction and Demolition Debris.

6.04.160 Public Solid Waste and Public Recyclable Material Containers.

6.04.170 Prohibition of Commercial Use of Public Solid Waste or Public Recyclable Material Containers.

6.04.180 Prohibition on Private Use of Public Solid Waste or Public Recyclable Material Containers on Balboa Island.

6.04.190 Tampering with Public Solid Waste or Public Recyclable Material Containers.

6.04.200 Prohibited Disposal.

6.04.210 Persons Required to Clean Sidewalks.

6.04.220 Burying of Solid Waste or Recyclable Material Prohibited.

6.04.230 Violation, Penalties and Enforcement.

* Water and sewers—See Title 14.

6.04.010 Purpose and Intent.

The City Council finds and declares that the regulations contained in this chapter are necessary and appropriate to protect the health, safety and welfare of the citizens of the City by providing minimum standards for the safe and sanitary collection, storage, transportation and solid waste, green waste, and recyclable material generated within the City.

6.04.020 Definitions.

For the purposes of this chapter, the following words, terms, phrases, and their derivations have the meanings given herein. Terms defined in Chapter 6.06 shall have the same meanings herein unless expressly defined in this chapter. When consistent with the context, words used in the present tense include the future tense, and words in the singular number include the plural number.

"Beach" means and includes all the shore of the Pacific Ocean lying southerly of the most southerly line of the public street nearest and parallel to the ocean and all the shore of the harbor, and any bay or channel in the City.

"Bin" means an open top metal wheeled rectangular container with attached plastic or metal lid(s), used for storage of solid waste, recyclables, green waste, wood, food scraps, construction and demolition debris or other materials.

"Cart" means a container with a hinged lid and wheels collected by an automated or semi-automated truck, which come in a variety of sizes including, but not limited, a capacity of 22-25 gallons, 32-35 gallons, 62-65 gallons and 90-95 gallons.

"Garbage, refuse, and cuttings" shall have the same definition as set forth in the applicable portions of Ordinance 1403, adopted on November 8, 1971 and Ordinance 1508 adopted March 25, 1974.

"Green waste" means trimmings from trees or shrubs, plants, grass cuttings, or removed or discarded branches, shrubs, plants, leaves or other materials generated from landscapes or gardens.

"Municipal solid waste" or "solid waste" means all discarded putrescible and nonputrescible solid, and semi-solid waste generated in or related to the occupancy of, remaining or emanating from any premises within City including, but not limited to, garbage, trash, rubbish, refuse, ashes, discarded home and industrial appliances, manure, vegetable or animal solid or semi-solid wastes, and other solid and semi-solid wastes, but does not include (i) recyclables, food scraps, green waste, wood waste or construction and demolition debris that have been separated and segregated from municipal solid waste for diversion; or (ii) liquid wastes, abandoned vehicles, auto parts, hazardous, biohazardous or biomedical wastes.

"Public solid waste container" and "public recyclable material container" shall mean all solid waste and divertible/recyclable material containers suitable for the storage and collection of solid waste or divertible/recyclable material which are procured, placed and maintained on public property in accordance with this chapter.

"Recyclable material" or "recyclables" means items in the solid waste stream which can be reused or processed into a form suitable for reuse consistent with the requirements of State law including, but not limited to, aluminum and tin cans, glass bottles, plastic bottles, plastic containers, newspaper, paper, printed materials, paper containers, cardboard and textiles. Recyclable material does not include green waste, wood waste, food scraps or construction and demolition debris.

6.04.030 Nuisance Declared.

The accumulation and existence of solid waste or divertible material on any private premises, on, in, or upon any beach, street, alley or other public place within the City is hereby declared to be a public nuisance. No person who owns, leases, controls, occupies or has charge of any premises in the City shall cause, permit or allow any public nuisance to exist thereon.

6.04.040 Leaf Blowers.

A. Definitions.

1. "Leaf blowers" shall mean any air blowing machine that uses a concentrated stream of air to push, propel or blow dirt, dust, leaves, grass clippings, trimmings, green waste, solid waste or debris. This definition shall include "mechanical blowers" as that term is used in Chapter 10.28. "Leaf blowers" shall not include any leaf or refuse vacuum.

2. "Common interest development" and "association" shall be defined as those terms are defined in California Civil Code Section 1351 or any successor statute.

B. Use of Leaf Blowers.

1. Leaf blowers may be used and operated to sweep or clean any surface of dirt, dust, leaves, grass clippings, trimmings, or debris only if the green waste, solid waste or debris so swept or blown are not left in or upon any adjacent or other parcel, any street, public place or right-of-way, public beach, or on the shore, or in the waters of Newport Bay.

2. The hours of operation and maximum noise levels shall be subject to the provisions of Chapter 10.28.

3. Operation of Gas Powered Leaf Blowers in Residential Districts Prohibited. Gas powered leaf blowers shall not be operated in any district identified in Title 20 of this Code as a district zoned for residential use or areas designated for residential use as part of a Planned Community (PC) or Specific Area Plan, with the exception of operations or locations described in subsections (B)(3)(a) through (e) of this section:

a. Residential common interest developments of five (5) or more dwelling units with an association responsible for establishing regulations or operating rules controlling the management and maintenance of their exterior residential environment may, by the method set out in their association's rules and regulations, choose to be exempt from the restrictions contained in this section. The Office of the City Manager shall establish procedures through which such residential common interest developments may demonstrate their decision to be exempt from this section.

b. The maintenance, repair or improvement of any public work or facility by public employees, by any person or persons acting pursuant to a public works contract, or by any person or persons performing such work or pursuant to the direction of, or on behalf of, any public agency.

c. Maintenance of golf courses and golf practice facilities conducted between the hours of 6:00 a.m. and 8:00 p.m., and maintenance of other nonresidential uses appurtenant to golf course uses between the hours of 7:00 a.m. and 8:00 p.m.

d. Areas designated for nonresidential uses located in a Planned Community (PC) or Specific Area Plan.

e. Operation on parcels zoned for nonresidential use that may be adjacent to or surrounded by a district otherwise zoned for residential use (including but not limited to parcels zoned for public or private institutional uses, park and recreation uses, open space uses, or other similar nonresidential uses).

C. Violations. Any person who uses a gas powered leaf blower in a residential zone, and/or causes or permits cuttings, refuse or debris swept or blown by any leaf blower to be left in places contrary to the provisions of subsection (B) of this section, is guilty of an infraction.

6.04.050 Disposal on Public Property Prohibited.

No person who is in possession or otherwise controls solid waste or divertible material, shall throw, deposit or leave any solid waste or divertible material, or permit the same to be thrown, deposited or left, in or upon any street, public beach or other public place, or on the shore, or in the waters of Newport Bay.

6.04.060 Collection of Solid Waste.

A. All solid waste placed in the vicinity of any curb or alley for collection purposes shall become the property of the City, a sanitary district, or a private collector licensed or contracted by the City.

B. No person, except an individual acting within the course and scope of their agency or employment with the City, a sanitary district, or a private collector licensed or contracted by the City, shall remove from any place or premises in the City, or transport over public streets, any solid waste.

C. No person shall enter onto private property for the purpose of collecting or inspecting solid waste or divertible material except the owner, occupant, manager, person in control of the premises, or a person employed to do so by the City, a sanitary district, or private collector licensed or contracted by the City to perform this service who is then acting within the course and scope of their agency or employment.

D. No person shall knowingly aid and abet another person in committing a violation of subsection (A), (B), or (C) of this section. A person is guilty of aiding and abetting another person in committing a violation of subsection (A), (B), or (C) of this section if the person knows of the other person's unlawful purpose and the person specifically intends to, and does in fact, aid, facilitate, promote, encourage, or instigate the other person's commission of a violation of subsection (A), (B), or (C) of this section.

E. The provisions of this section shall not prohibit:

1. Any person, with the permission and consent of the property owner, from gathering and removing solid waste, construction and demolition debris, green waste and/or wood waste generated by construction, landscaping or gardening on the property when the solid waste and/or divertible material have not been set out for collection by the City, a sanitary district, or a private collector licensed or contracted by the City, provided that such activities are in compliance with all provisions of this Code including, but not limited to, the provisions of Chapter 6.06;

2. Any person from removing solid waste generated on property owned or controlled by that person;

3. The immediate removal by any person of solid waste, food scraps, and other divertible material which the Health Officer, Code Enforcement Supervisor, City Manager or his/her designee, Fire Chief, Building Official or their agents have determined to constitute a nuisance or an immediate threat to the public health, safety and welfare;

4. Any entity, person or organization from collecting recyclables that have been donated or sold to such entity by the person owning or controlling the premises where the recyclables were generated, in any manner which does not conflict with this chapter or any other provision of this Code; or

5. Any person engaged in the business of destruction of secret, confidential or sensitive documents from collecting, shredding, destroying, recycling and/or disposing of those documents, provided the transport of the documents is incidental to the document destruction or disposal service.

6.04.070 Containers.

A. Except as provided in subsection (B) of this section, every owner and tenant of any dwelling unit or units, or any place of business or institution within the City where solid waste and/or divertible material accumulate, shall have a sufficient number of containers to accommodate all solid waste and divertible material accumulated on the premises between collection days.

B. The owner and tenant are each responsible for having the required number of containers; provided, however, the occupant of any dwelling unit for which a short-term lodging permit has been issued by the City shall not be responsible for compliance with this section.

6.04.080 Solid Waste and Divertible Material Container and Bulky Item Requirements.

A. Container requirements for solid waste and divertible material vary throughout the City depending upon location and the solid waste and divertible material collector servicing the area. If a container is collected by automated equipment, the container shall not exceed the weight limit provided on the container, including contents. If a container is collected without automated equipment, the container shall not exceed fifty (50) pounds in weight, including contents. All solid waste and divertible material set out for collection shall satisfy one or more of the following requirements:

1. Solid waste or divertible material shall be placed in a container provided by, or allowed by, the City, a sanitary district or a permitted contractor, for use in the specific area the container is provided or used;

2. If allowed by the solid waste or divertible material collector servicing an area, persons may use sturdy, grease-resistant, waterproof nonreturnable bags which are specifically designed for solid waste provided that each filled bag, including contents, is no greater than fifty (50) pounds, the opening is secured, and the weight does not cause the bag to tear when handled;

3. If allowed by the solid waste or divertible waste collector servicing an area, solid waste may be placed within a cardboard box and other similar disposable container (collectively, "box") weighing fifty (50) pounds or less, including contents;

4. If allowed by the solid waste or divertible material collector servicing an area, a business owner or operator may place solid waste and/or divertible material in separate thirty-five (35) gallon containers; or

5. Bulky item collection (e.g., an item that does not fit within an approved container, box or bag) varies according to the agreement the City, a sanitary district, or a private community has with a private collector licensed or contracted by the City. Bulky items shall be placed in accordance with the bulky item collection rules and regulations specific to the various areas of the City, which shall be posted on the City's website.

B. No person shall place any solid waste, divertible material or bulky item on public property for collection unless the solid waste and/or divertible material are in a container, box, or bag that fully complies with subsection (A) of this section.

6.04.090 Commercial and Multi-Family Bin and Wheeled Cart Requirements.

Any person who owns, leases, controls, or has charge of any business or multi-family dwelling, which utilizes commercial solid waste bins or wheeled carts for the storage of solid waste, recyclables, green waste, wood waste, food scraps and/or construction and demolition debris shall ensure:

A. The bin and/or wheeled cart is equipped with a lid or cover sufficient to prevent:

1. Odor from escaping the container;

2. Flies and other insects from coming into contact with the contents of the container;

3. The contents from leaving the interior of the container; and

4. Rain or water from entering the interior of the container.

B. The solid waste, green waste, wood waste and food scraps accumulated in the bins and wheeled carts are picked up a minimum of one time per week and recyclable material are picked up at least one time per month.

C. Each bin and cart is maintained in a clean and sanitary manner.

D. The lids to the bin or wheeled carts are closed at all times except when solid waste or divertible material is being deposited, the storage area is clean and free of trash and debris, and all oil, grease, fluid and other items are contained within the bin or wheeled cart storage area.

E. The storage area is cleaned or power washed, as needed, to keep the area free of grease, oils, fluids, stains or odors.

6.04.100 Prohibited Material.

A. No person shall set out for collection any solid waste or divertible material which contains any of the following:

1. Ammunition or explosives;

2. Industrial wastes, or caustic or hazardous chemicals or acids;

3. Pathological, toxic and radioactive waste;

4. Drugs or medicines;

5. Human feces, unwrapped animal feces or dead animals;

6. Liquids, paints or any substance the disposal of which is regulated by the Hazardous Substances Act, or regulations adopted pursuant thereto;

7. Any material, the disposal of which is prohibited within County landfills, including, but not limited to, items longer than four feet in length or items more than eighteen (18) inches in diameter;

8. Lube oils and used oil filters;

9. Items which are too large for, or which may damage, the collection equipment or machinery such as large pieces of metal, machine parts, logs and tree stumps; or

10. Hypodermic needles and lancets.

B. Sod, building scraps, bricks, concrete and other building or construction debris may be refused at the discretion of the collector.

6.04.110 Accumulation Limitation.

No person who owns, leases, controls, occupies or has charge of any premises shall permit solid waste, green waste, wood waste or food scraps to accumulate for a period in excess of one calendar week, or recyclables to accumulate for a period in excess of one calendar month.

No person shall fail, refuse or neglect to place such solid waste and divertible material for collection in accordance with schedules established therefor, the provisions of this chapter, the provisions of Chapter 6.06, and rules and regulations established pursuant thereto.

6.04.120 Storage and Placement of Containers, Boxes, Bags or Bulky Items for Collection.

A. Storage of Containers, Boxes, Bags or Bulky Items. Containers, boxes, bags or bulky items shall be stored in a garage, carport, trash enclosure, or in the sideyard, and beyond a line drawn parallel to the alley from the corner of the building closest to the alley to the adjacent property line except when the containers, boxes, bags or bulky items are placed out for collection.

B. Placement for Collection.

1. Containers, boxes, bags or bulky items shall be placed for collection in a location easily accessible to the solid waste and divertible material collector such as the streetside of the adjacent sidewalk, in the parkway, or in driveways and adjacent to the curb line. Containers, boxes, bags or bulky items shall be placed in the street in a manner that does not impede traffic.

2. If solid waste is collected from an alley abutting the premises, containers, boxes, bags or bulky items shall be placed for collection as close to the alley property line as feasible and on private property. In any alley where a yellow line has been painted by City to demarcate private from public property, containers, boxes, bags or bulky items shall be placed adjacent to the yellow line on the private property side. Containers, boxes, bags or bulky items shall not be placed more than eight feet onto private property as measured from the alley property line or placed in a manner which could obstruct vehicular travel through the alley.

3. Unless an exception applies or other arrangements have been made with the solid waste and divertible material collector serving an area, containers, boxes, bags or bulky items shall not be considered placed for collection and solid waste and divertible material will not be collected unless the containers, boxes, bags or bulky items are removed from any enclosure, structure, cabinet, cart or shelf.

4. Containers, boxes, bags or bulky items shall be placed for collection at residences before 7:00 a.m. on collection days and at businesses before 5:00 a.m. Containers, boxes, bags or bulky items shall not be placed for collection at residences or businesses earlier than 7:00 p.m. the day preceding the collection day, and containers, boxes or bags shall be relocated to their required storage place as soon as possible after collection, but no later than 7:00 p.m. of the day of collection.

C. The owner and tenant shall be responsible for the placement of containers, boxes, bags or bulky items; provided, however, the occupant of any dwelling unit for which a short-term lodging permit has been issued by the City shall not be responsible for compliance with this section.

6.04.130 Administration of Collection Service.

The City Manager or designated representatives shall administer the provisions of this chapter. In carrying out this responsibility, he or she shall have the following powers and duties:

A. Establish the routes, hours and days of collection and he or she may change the same as he or she deems necessary, and shall give notice of such routes, hours, days and changes as seems advisable.

B. Establish rules and regulations consistent with this chapter governing storage, collection and disposal of solid waste and collection and diversion of recyclables, green waste, wood, food scraps and other material including the determination of standards and specifications for approved containers, boxes or bags and the placement of containers, boxes or bags. The rules may permit special containers or bins when the quantity or the nature of the material to be collected so requires.

C. Establish additional rules and regulations consistent with this chapter as may be necessary, reasonable and proper to effect the sanitary, expedient, economical and efficient collection, removal and disposal of solid waste and diversion of recyclables, green waste, wood, food scraps and other materials.

6.04.140 Costs Defrayed From Ad Valorem Tax Revenue.

The cost and expense of collecting, hauling away and disposing of garbage, refuse and cuttings, as those terms are defined by Sections 6.04.010, 6.04.020 and 6.04.030 for any dwelling or dwelling unit, existing or future, within the boundaries of the City as of November 1, 1996, that receives curbside container refuse collection service from the City, shall be defrayed exclusively from the ad valorem tax revenues of the City.

[Note: The definition of "garbage, refuse and cuttings" referred to in Ordinance 96-46 adopted by the voters, is now set forth in Section 6.04.020.]

6.04.150 Removal of Construction and Demolition Debris.

All owners, contractors and builders of structures shall, at their sole cost and expense, comply with all requirements of Section 15.11.010 of this Code to divert construction and demolition debris from disposal. All construction and demolition debris shall be removed from the lot and all nearby premises utilized in such construction within ten (10) calendar days of demolition and said lot and premises shall be left in a sightly condition.

6.04.160 Public Solid Waste and Public Recyclable Material Containers.

The City Manager or designated representative shall procure, place and maintain at suitable places on certain business sidewalks, the public beaches, piers and bay and ocean front street ends a sufficient number of public solid waste and public recyclable material containers to receive and hold solid waste and divertible material generated by the general public at those locations. The Public Works Director shall at all times keep public solid waste and public recyclable material containers in a clean and sightly condition and in good order and repair; provided, that the failure of the Public Works Director to furnish and provide such containers shall not be held or construed to relieve any person from the penalties of this Code.

6.04.170 Prohibition of Commercial Use of Public Solid Waste or Public Recyclable Material Containers.

No person who owns, leases, operates, manages or is employed by a business, as that term is defined in Section 5.04.010, shall deposit, or cause to be deposited, any solid waste or divertible material generated by the business into any public solid waste or divertible material container unless otherwise authorized by resolution of the City Council of the City of Newport Beach.

6.04.180 Prohibition on Private Use of Public Solid Waste or Public Recyclable Material Containers on Balboa Island.

No person who resides, leases, rents or occupies property located on Balboa Island, and no person who owns, leases, rents, operates, manages or is employed by any business located on Balboa Island, shall deposit, or cause to be deposited, any solid waste or divertible material into any public solid waste or public recyclable material container located on Balboa Island.

6.04.190 Tampering with Public Solid Waste or Public Recyclable Material Containers.

No person shall remove, without lawful authority, any public solid waste or public recyclable material container from the place where it is placed and maintained by the Public Works Director, or willfully deface, injure, damage or destroy, or use any public solid waste container or public recyclable material container for any purpose other than the authorized placing of solid waste or divertible material therein by the general public.

6.04.200 Prohibited Disposal.

A. On Another's Property. No person who is in possession or otherwise controls solid waste or divertible material, shall throw, deposit or leave any solid waste or divertible material, or permit the same to be thrown, deposited or left, in or upon the property or premises of another person without the knowledge and prior permission of the owner thereof.

B. On Own Property. No owner of real property shall throw, deposit or leave, or knowingly permit another to throw, deposit or leave, solid waste or divertible material on such real property, nor shall he or she fail, neglect or refuse to wholly remove solid waste or divertible material from such real property, within three (3) days after receipt of written notice by this Code Enforcement Supervisor, Public Works Director or their designee to do so.

C. By Tenants. No owner of real property located in the City shall knowingly permit tenants while in occupation of such real property to throw, deposit or leave any solid waste or divertible material upon the property or premises of another.

6.04.210 Persons Required to Clean Sidewalks.

The occupant, tenant, owner, lessee, or proprietor of any real estate in this City in front of which there is a paved sidewalk shall cause said sidewalk to be swept or otherwise cleaned as frequently as necessary to maintain said sidewalks reasonably free of leaves, dirt, paper, litter or rubbish of any kind. Sweepings from said sidewalk shall not be swept, or otherwise made or allowed to go into the street or gutter, but shall be disposed of by being placed in a solid waste or divertible material container by the person responsible for the cleanliness of said sidewalk.

6.04.220 Burying of Solid Waste or Recyclable Material Prohibited.

No person shall dispose of, or attempt to dispose of, any solid waste or recyclable material by burying it in or underneath the surface of the earth in the City of Newport Beach.

6.04.230 Violation, Penalties and Enforcement.

A. It shall be unlawful for any person to violate any provisions or to fail to comply with any of the requirements of this chapter.

B. Any person violating any of the provisions or failing to comply with any of the requirements of Section 6.04.050 shall be guilty of a misdemeanor pursuant to the provisions of Section 1.04.010(C); however, the violation may be prosecuted as an infraction pursuant to the provisions of Section 1.04.010(A).

C. Except for Section 6.04.050, any person violating any of the provisions or failing to comply with any of the requirements of this chapter shall be guilty of an infraction pursuant to the provisions of Section 1.04.010(A).

D. In addition to, or separate from, the foregoing criminal penalties, any person violating any of the provisions or failing to comply with any of the requirements of this chapter is subject to the issuance of an administrative citation pursuant to the provisions of Section 1.04.010(E) and Chapter 1.05.

Section 5: The Table of Contents for Title 6 of the Newport Beach Municipal Code is hereby amended as follows:

Title 6
HEALTH AND SANITATION

Chapters:

6.04 Garbage, Refuse and Cuttings

6.05 Use of Expanded Polystyrene Disposable Food Service Ware

6.06 State Mandated Municipal Solid Waste Diversion Programs

6.08 Food Handling Services

6.25 Regulation of Smoking in Public Areas and Work Places

Section 6: Chapter 6.06 titled "State Mandated Municipal Solid Waste Diversion Programs" is hereby added to Title 6 of the Newport beach Municipal Code to read as follows:

Chapter 6.06

STATE MANDATED MUNICIPAL SOLID WASTE DIVERSION PROGRAMS

Sections:

6.06.005 Purpose and Intent.

6.06.010 Definitions.

6.06.020 Diversion of Recyclable Materials.

6.06.030 Diversion of Food Scraps.

6.06.040 Diversion of Green Waste and Wood Waste.

6.06.050 Use of Green Waste and/or Wood Waste as Alternative Daily Cover Prohibited.

6.06.060 Green Waste and Wood Waste Diversion Required in Landscaping and Gardening Contracts.

6.06.070 Full Participation in Diversion Programs Required.

6.06.080 Reporting, Inspections, and Compliance Verification.

6.06.090 Tenant Participation in Diversion Programs.

6.06.100 Diversion Programs Required at Special Events.

6.06.110 Waivers.

6.06.120 Enforcement.

6.06.130 Disclaimer of Liability.

6.06.005 Purpose and Intent.

The City Council finds and declares that the regulations contained in this chapter are necessary and appropriate to protect the health, safety and welfare of the citizens of the City by providing minimum standards for the safe and sanitary collection, storage, and transportation of solid waste, food scraps, green waste, wood and recyclable materials generated within the City and the diversion of food scraps, green waste, wood and recyclable materials from the landfill.

6.06.010 Definitions.

For the purposes of this chapter, the following words, terms, phrases, and their derivations have the meanings given herein. Terms defined in Chapter 6.04 shall have the same meanings herein unless expressly defined in this chapter. When consistent with the context, words used in the present tense include the future tense, and words in the singular number include the plural number.

"Alternative daily cover" or "ADC" means cover material other than earthen material placed on the surface of the active face of a municipal solid waste landfill at the end of each operating day to control vectors, flies, fires, odors, blowing litter and scavenging.

"AB 341 dirty materials recovery facility" or "AB 341 dirty MRF" means a facility, or that certain portion of a facility, that processes municipal solid waste to separate recyclable materials for sale to end users.

"AB 341 Generator" means all municipal solid waste generators required by AB 341 (Public Resources Code Section 41780.01) to divert recyclable materials generated on-site from disposal, including: (A) all businesses located and operating within the City, and the responsible party, property owners, owners, operators, property managers, tenants and lessees of same, that generate four (4) or more cubic yards of municipal solid waste per week; including but not limited to, retail stores, restaurants, offices, supermarkets, convenience stores, malls, strip malls, service businesses, hospitals, assisted living facilities, and federal, state and local government facilities; (B) multi-family dwellings consisting of five (5) units or more regardless of the amount of municipal solid waste generated; (C) the City, its facilities, and its non-residential properties; and (D) special events that take place within the City that generate four (4) or more cubic yards of municipal solid waste per event, whether or not sponsored by the City.

"AB 1826 Generator" means: (A) all food-generating businesses within the City, and the responsible parties, property owners, owners, operators, property managers, tenants and lessees of same, that generate four (4) or more cubic yards of municipal solid waste per week and are required by AB 1826, as codified in Public Resources Code Section 42649.82, to divert all food scraps generated on site from disposal; including but not limited to, all restaurants, cafeterias, hospitals, and supermarkets; (B) all non-food-generating businesses, and the responsible parties, property owners, owners, operators, property managers, tenants and lessees of same, that generate four (4) or more cubic yards of solid waste per week and that generate green waste and/or wood; (C) all multi-family dwellings consisting of five (5) units or more, regardless of the amount of municipal solid waste generated; (D) the City, its facilities, and non-residential properties; and (E) special events that take place within the City that generate four (4) or more cubic yards of municipal solid waste per event, whether or not sponsored by the City. As of the effective date of this ordinance, the threshold amount of municipal solid waste provided for in Public Resources Code Section 42649.81 is four (4) or more cubic yards of municipal solid waste which may be reduced by CalRecycle to two (2) cubic yards of municipal solid waste per week on or after January 1, 2020. If CalRecyle changes the quantities of solid waste necessary to be considered an AB 1826 generator, the definition of an AB 1826 generator shall be automatically amended to reflect these new quantities.

"AB 1826 green waste and/or wood waste dirty materials recovery facility" or "AB 1826 dirty MRF" means a facility, or that certain portion of a facility, that processes municipal solid waste to separate green waste, and/or wood waste.

"CalRecycle" means the California Department of Resources Recycling and Recovery or any successor agencies.

"Compost appliance" means an enclosed on-site device that utilizes aerobic microbial digestion of food scraps.

"Contamination" means materials not designated to be placed in a particular container or, with regard to processing, at a permitted processing facility that would interfere with such processing and/or reduce the quality and value of divertible material. Examples include recyclable materials placed in a green waste container or food scraps placed in a recyclable materials container and includes municipal solid waste placed in any container designated for divertible materials and any divertible materials placed in a container designated for municipal solid waste.

"Construction and demolition debris" means all inert material of every nature description or kind, which has resulted from the building or demolition of a structure, pavements, sidewalks, curbs, gutters and other concrete structures, including all lumber scraps, shingles plaster, sheetrock, packaging, rubble, brick, stone, concrete, asphalt, dirt, rock and other building materials.

"Container" means any object designed and used to hold or store municipal solid waste, recyclable materials, food scraps, green waste, or construction and demolition debris. Container includes, but is not limited to, carts, bins open top roll off boxes, and compactors.

"Director" means the Director of the Public Works Department or his or her designee.

"Diversion" or "divert" means any combination of recycling, sorting, composting and other processing activities conducted at a clean materials recovery facility, a mixed waste processing facility (dirty MRF), a compost facility, an anaerobic digestion facility, a bioengineered feedstock facility, and/or at a construction and demolition debris processing facility to use or market the materials for re-use, remanufacture, reconstitution or otherwise return the materials to the economic marketplace and to prevent the materials from being disposed of in a landfill.

"Divertible materials" or "divertible" means recyclable materials, food scraps, green waste, and/or construction and demolition debris, electronic waste, universal waste, and all other materials that may be diverted from landfill disposal and includes, but is not limited to, all materials required to be diverted from landfill disposal by the City, CalRecycle or any state or federal agency.

"Edible food for human consumption" or "edible food" means food that has been prepared but not served, and includes but is not limited to: any appetizer, soup, salad, entree, dessert, raw fruit and vegetable, that may or may not have been sliced, grated, cooked, baked or otherwise prepared for consumption but not served; any packaged sandwich, salad, fruit and fruit salad; and other non-served food that meets state and local requirements as being edible for human consumption.

"Food scraps" means discarded material resulting from the production, processing, preparation or cooking of food for human consumption that is separated from municipal solid waste and includes surplus or unsold edible food, raw food left over after food preparation, leftover cooked food, as well as spoiled food such as vegetables, culls, and plate scrapings. For purposes of this chapter, "food scraps" does not include edible food for human consumption that is donated or sold.

"Food soiled paper" means paper towels, tissue products, paper napkins, paper plates and cups, coffee filters, tea bags, waxed paper, butcher paper, paper take-out boxes and containers, greasy pizza boxes, paper bags, cardboard and wax-coated cardboard produce boxes that are contaminated with food scraps. For purposes of this chapter "food soiled paper" does not include aluminum foil, foil-lined wrap, plastic wrap, polystyrene, expanded polystyrene or diapers.

"Generator" means both an AB 341 generator and AB 1826 generator.

"Multi-family dwelling" means a building, dwelling unit or complex containing multiple dwelling units that house five (5) residences or more and that utilize centralized municipal solid waste collection service from bins, wheeled carts, compactors and/or roll off boxes located in enclosures or other designated areas and includes any apartment complex, condominium, townhouse, gated development, homeowner's association, mobile home park and similarly configured housing complexes that utilize centralized service. For purposes of this chapter "multi-family dwelling" does not include single-family residences, duplexes, triplexes, fourplexes or any residences that have individual wheeled cart municipal solid waste collection service at each unit or residence.

"Municipal solid waste" or "MSW means putrescible and non-putrescible solid and semi-solid wastes generated in or upon, related to the occupancy of, remaining or emanating from any premises within City including, but not limited to, garbage, trash, rubbish, refuse, ashes, discarded home and industrial appliances, manure, vegetable or animal solid or semi-solid wastes, and other solid and semi-solid wastes. For purposes of this chapter, "municipal solid waste" does not include recyclable materials, food scraps, green waste, wood waste or construction and demolition debris that have been separated and segregated from municipal solid waste for diversion and/or liquid waste, abandoned vehicles, auto parts, hazardous, biohazardous and biomedical waste.

"Permitted processing facility" means a processing facility for diverted materials that holds all required federal, state, and local permits and is operating in accordance with all permit requirements including, but not be limited to, materials recovery facilities (clean MRF's), mixed waste processing materials recovery facilities (dirty MRF's), composting facilities, anaerobic digestion facilities, publicly owned treatment works that accept food scraps and/or bioengineered feedstock for digestion, and processing facilities for construction and demolition debris.

"Recyclable materials" shall have the same definition as set forth in Section 6.04.020 of this Code.

"Responsible party" means property owners, business owners, property managers, property management firms and business managers as well as the person(s) that subscribes to and pays for municipal solid waste and/or divertible materials collection service for a premises or business located within the City, or that otherwise arranges for removal of municipal solid waste and/or divertible material from the business premises and that has the legal authority to compel generators to comply with the requirements of this chapter.

"Self-haul" means the transport of municipal solid waste and/or divertible materials by the person who generated the municipal solid waste and/or divertible materials, or by the owner or manager of a premises at which the materials and/or municipal solid waste were generated and whose primary business is not the collection and transport of municipal solid waste or divertible materials. Self-haul includes backhauling of divertible materials generated on the self-hauler's premises using the generator's own employees and equipment. For example, a supermarket backhauls spoiled fruits and vegetables to its central distribution facility for consolidation and transport to a composting facility.

"Special event" means a temporary gathering for a specific event or purpose such as concerts, fairs, festivals, swap meets, athletic events, boat shows, fireworks displays, and outdoor weddings, which requires a Level 2 or Level 3 City permit pursuant to Chapter 11.03 of this Code.

"Wood waste" or "wood" means all non-hazardous wood material that is not painted with lead-based or other paints containing materials identified as hazardous, or treated with creosote or other hazardous materials and includes, but is not limited to, tree branches and other wood trimmings, dimensional lumber and other pieces of wood generated during the manufacture or processing of wood products, and the wood debris from construction and demolition activities.

6.06.020 Diversion of Recyclable Materials.

A. An AB 341 generator shall divert all recyclable materials generated at their premises by one or more of the following methods, and shall fully participate in the method(s) selected:

1. Separate all recyclable materials from other municipal solid waste and subscribe to a recyclable materials collection service a minimum of once a week from a City-authorized franchisee and fully participate in the diversion program provided by the franchisee;

2. Separate recyclable materials from other municipal solid waste, and

a. Self-haul the recyclable materials to a permitted recycling center or a permitted processing facility for diversion, or

b. Donate or sell the recyclable materials to a recycling business that collects and/or accepts the materials for recycling as described in Section 12.63.150(B) of this Code; and/or

3. Subscribe to a recycling service offered by a City-authorized franchisee that uses a City-approved AB 341 dirty MRF to separate recyclable materials from other municipal solid waste that yields diversion results comparable to source separation.

B. For purposes of this section, to be considered as fully participating while utilizing a City-authorized franchisee, an AB 341 generator shall comply with all requirements in Section 6.06.070 or subscribe to a recycling service offered by a City-authorized franchisee that uses a City-approved AB 341 dirty MRF to separate recyclable materials from other municipal solid waste that yields diversion results comparable to source separation.

6.06.030 Diversion of Food Scraps.

A. An AB 1826 generator, other than a multi-family dwelling, shall divert all food scraps and food soiled paper generated at their premises by one or more of the following methods and shall fully participate in the method(s) selected:

1. Source separate all food scraps and food soiled paper from other municipal solid waste and subscribe to a source separated collection service a minimum of once a week from a City-authorized franchisee;

2. Separate food scraps from other municipal solid waste and donate or sell the food scraps for use as animal feed;

3. Separate food scraps and food soiled paper from other municipal solid waste and compost the food scraps and food soiled paper onsite using a compost appliance, backyard compost unit, compost pile, or in a community garden in compliance with all other applicable provisions of this Code;

4. Self-haul the food scraps and food soiled paper to a permitted processing facility for diversion; and/or

5. Donate or sell the food scraps to a for-profit or non-profit business that utilizes food scraps as an input for food and beverage manufacturing processes. For example, spent grain from beer brewing process used to make cereal bars or stale bread donated for use in a beer brewing process.

B. To be considered fully participating in any of the above-listed methods (1) through (5), AB 341 generators shall comply with all requirements in Section 6.06.070.

6.06.040 Diversion of Green Waste and Wood Waste.

A. An AB 1826 generator shall divert all green waste and wood waste generated at their premises by one or more of the following methods and shall fully participate in the method(s) selected:

1. Separate all green waste and wood waste from other municipal solid waste and subscribe to a green waste and/or wood waste collection service a minimum of once a week from a City-authorized franchisee;

2. Separate green waste and/or wood waste from other municipal solid waste and compost the green waste and/or wood waste onsite in a backyard compost unit, compost pile, or community garden in compliance with all other applicable provisions of this Code;

3. Self-haul the green waste and/or wood waste to a permitted processing facility for diversion;

4. Subscribe to a recycling service offered by a City-authorized franchisee that uses a City-approved AB 1826 dirty MRF that is compliant with all CalRecycle standards and requirements for a "high diversion organic waste processing facility" to separate green waste and/or wood waste from other municipal solid waste; and/or

5. Contract with a gardening or landscaping service and include in the contract the provisions of Section 6.06.060.

B. To be considered fully participating while using methods (A)(1), (2), and/or (3), referenced above, AB 1826 generators of green waste and/or wood waste shall comply with all requirements in Section 6.06.070. AB 1826 generators of green waste and/or wood waste using only methods (4) and/or (5) are not required to comply with the requirements in Section 6.06.070. AB 1826 generators of green waste and/or wood waste using method (5) shall only be considered as fully participating if they have a written contract with a gardening or landscaping service, the written contract contains the provisions listed in Section 6.06.060, and the gardening or landscaping service is fully complying with the terms of the contract.

C. All owners, contractors and builders of construction projects and demolition projects in the City shall comply with the requirements of Section 15.11.010 of this Code for diversion of wood waste and all other construction and demolition waste generated by such projects. For such projects, the requirements of Section 15.11.010 shall take precedence over the requirements of this Section 6.06.040.

6.06.050 Use of Green Waste and/or Wood Waste as Alternative Daily Cover Prohibited.

A. Any person collecting green waste or wood waste in City shall compost the green waste and/or wood waste on site or deliver the green waste and/or wood waste to a permitted green waste and/or wood waste processing facility for diversion.

B. No generator of green waste and/or wood waste shall permit any green waste or wood waste collected in City to be used as alternative daily cover at a landfill as an end use including, but not limited to, green waste and wood waste processed at a permitted processing facility.

6.06.060 Green Waste and Wood Waste Diversion Required in Landscaping and Gardening Contracts.

An AB 1826 generator contracting for gardening or landscaping services shall require written contracts which contain the following provisions:

A. All green waste and wood waste generated at the premises by the landscaping or gardening service shall be diverted from disposal by one or more of the methods in Section 6.06.040.

B. A prohibition on the use of green waste or wood waste, or processed green or wood waste as alternative daily cover at a landfill.

C. A requirement that the landscaper or gardener certify that the requirements set forth in subsection (A) and (B), are being met and that all green waste and wood waste handled by the landscaper or gardener is not being used as alternative daily cover.

D. A requirement that the landscaper or gardener annually, on or before July 1, certify that it is compliant with this section by completing and submitting a City-provided reporting form.

E. A requirement that the landscaper of gardener provide copies of weight tickets from the permitted processing facility(ies) where the green waste and/or wood waste from premises within City were delivered by the landscaper or gardener, as required by Section 6.06.080(C) and (E).

6.06.070 Full Participation in Diversion Programs Required.

A generator shall fully participate in the diversion program(s) the generator selects for their premises such that all the following requirements are met:

A. The generator shall provide appropriately sized and labeled containers for divertible materials wherever municipal solid waste containers are provided for use by employees, customers and tenants, excluding restrooms and:

1. An AB 341 generator shall provide containers for recyclable materials;

2. An AB 1826 generator, other than a multi-family dwelling, shall provide containers for food scraps, green waste and wood; and

3. An AB 1826 multi-family dwelling shall provide containers for green waste and wood but shall not be required to provide containers for, or to divert, food scraps.

B. The generator shall prohibit the generator's employees and tenants from placing divertible materials in a container not designated to receive said material.

C. The generator shall periodically inspect municipal solid waste containers and divertible materials containers for contamination and inform employees and tenants if containers are contaminated and of the requirement to only use the specified container for each type of divertible material.

D. The generator shall ensure the generator's municipal solid waste carts and bins do not contain AB 341 or AB 1826 divertible materials (except multi-family dwellings' municipal solid waste containers may contain food scraps).

E. The generator shall ensure the generator's divertible materials carts and bins contain no municipal solid waste.

F. The generator shall use appropriately sized lidded, wheeled cart(s) and/or lidded bin(s) provided by a franchisee for storage of all divertible materials or, if other types of containers are used, the generator shall ensure the containers are in compliance with this Code.

G. The generator shall place out for collection AB 341 and AB 1826 divertible materials at the designated collection location on the designated day and at the designated time.

H. The generator shall subscribe to adequate levels of service such that AB 341 and AB 1826 divertible materials are collected a minimum of one time per week or more frequently if required to prevent overflow of the carts and/or bins and to prevent placement of divertible materials in the municipal solid waste containers or in containers designated for other divertible materials.

I. If a generator is self-hauling divertible materials to a permitted processing facility or donation location the generator shall ensure that:

1. Food scraps and green waste are self-hauled a minimum of once a week or more frequently if required to prevent: a. overflow of the carts and/or other containers, b. odors, vectors or creation of a nuisance, and/or c. placement of divertible materials in the

municipal solid waste containers or in containers designated for other divertible materials; and

2. Other divertible materials are self-hauled a minimum of once a month or more frequently if required to prevent: a. overflow of the carts and/or bins, b. odors, vectors or creation of a nuisance, and/or c. placement of divertible materials in the municipal solid waste containers or in containers designated for other divertible materials.

J. If a generator is donating or selling divertible materials to a third party that collects the divertible materials, the generator shall ensure that:

1. Donated food scraps and green waste are collected a minimum of once a week and more frequently if required to prevent: a. overflow of the carts and/or other containers, b. odors, vectors or creation of a nuisance, and/or c. placement of divertible materials in the municipal solid waste containers or in containers designated for other divertible materials; and

2. Other donated divertible materials are collected a minimum of once a month or more frequently if required to prevent: a. overflow of the carts and/or other containers, b. odors, vectors or creation of a nuisance, and/or c. placement of divertible materials in the municipal solid waste containers or in containers designated for other divertible materials.

6.06.080 Reporting, Inspections, and Compliance Verification.

Generators that donate, sell, or self-haul AB 341 and/or AB 1826 divertible materials shall comply with the following requirements:

A. Annually, on or before July 1, generator shall submit to the City, a fully completed City-provided compliance reporting form either in hard copy or electronically.

B. Within thirty (30) calendar days of a request by the City, the generator shall obtain and provide copies of weight tickets or receipts from the recycling center(s) and/or permitted processing facility(ies) where the divertible materials were delivered by the generator or by a third party to whom divertible materials were donated or sold.

C. On or before July 1 of each year, AB 1826 generators that contract with a landscaping or gardening service shall complete and submit a compliance reporting form as provided by the City with the following items attached:

1. Copies of the generator's contract(s) with the landscaping or gardening service(s) that comply with Section 6.06.060.

2. Copies of landscaper and gardener certification(s) that green waste and wood waste were not used as alternative daily cover during the preceding twelve (12) months.

D. Within thirty (30) calendar days of a request by the City, the generator shall provide the City with any relevant information necessary to verify the end use of recyclable materials, green

waste, wood waste and food scraps to ensure the materials were diverted from landfill and/or were processed at permitted facilities and diverted from landfill.

E. Upon request by the City, an AB 1826 generator contracting for gardening or landscaping services shall provide copies of the contracts, certifications, receipts and/or weight tickets from the permitted processing facility(ies) to the City within thirty (30) calendar days of service of the request in accordance with Section 1.08.080.

F. During regular business hours, generators shall allow the City access to properties to check containers for contamination and to verify compliance with the requirements of Section 6.06.070.

G. Generators shall not submit any report to the City that contains false or misleading information.

6.06.090 Tenant Participation in Diversion Programs.

A property owner of a multi-family residential dwelling, mall, strip mall or other commercial building shall require tenants and lessees to separate the divertible materials generated in the unit or space they occupy from municipal solid waste and place the divertible materials in designated containers described in Sections 6.06.070(A) and 6.06.070(F) for each type of material to aid in compliance with this chapter.

6.06.100 Diversion Programs Required at Special Events.

A. The promoter, coordinator or responsible party for a Level 2 or 3 special event pursuant to Chapter 11.03 of this Code shall provide sufficient containers to handle all municipal solid waste, recyclable material and food scraps from the event and shall ensure the proper storage, collection and diversion of recyclable materials and food scraps.

B. The responsible party shall, as part of the application for a Level 2 or 3 special event permit, submit an implementation plan for the handling and diversion of recyclable materials and food scraps generated at the event that meets the requirements of this section and submit a deposit of $250 for a Level 2 event or a deposit of $500 for a Level 3 event with the application.

C. The promoter, coordinator or responsible party shall provide three (3) types of containers at appropriate locations at the special event to facilitate the source separation of municipal solid waste, recyclable materials and food scraps by event employees, vendors and attendees. The three (3) types of containers shall:

1. Be appropriate in number and size with respect to the quantity of municipal solid waste, recyclable materials, and food scraps anticipated to be generated at the special event;

2. Bear appropriate signage to identify the type of materials to be contained and meet any additional design criteria established by the City; and

3. Be placed together as municipal solid waste, recyclable materials and food scrap stations throughout the special event venue to provide equally convenient access to users for disposal of municipal solid waste and diversion of recyclable materials and food scraps.

D. If the promoter or coordinator determines that vendor booths at the special event will require municipal solid waste containers, the coordinator, promoter or responsible party shall provide the vendor with a set of the three (3) containers bearing appropriate signage to identify the type of material to be contained in each container.

E. The use of public municipal solid waste containers or pubic recyclable material or food scraps containers at special events is prohibited. The promoter, coordinator or responsible party shall remove or cover all public municipal solid waste, recycling and food scraps receptacles to prevent their use during the special event.

F. The promoter, coordinator or responsible party shall arrange for collection of all municipal solid waste, recyclable materials and food scraps at frequencies that prevent the overflow of said materials from storage containers at the special event. For special events of more than one day in duration, all municipal solid waste, recyclable materials and food scraps shall be either collected and transported off site at the end of each day, or emptied into interim containers (lidded wheeled carts, lidded bins or covered roll off boxes) at the end of each day as required to prevent odors, vectors and blowing litter.

G. The promoter, coordinator or responsible party shall arrange for collection and transport of all municipal solid waste to a fully permitted landfill or other fully permitted disposal site, and shall arrange for collection and transport of all recyclable materials and food scraps to permitted processing facilities for these materials to be diverted.

H. The promoter, coordinator or responsible party shall obtain weight tickets from the disposal site and all permitted processing facilities showing the date and weight of the materials delivered to the facility from the special event.

I. The promoter, coordinator or responsible party shall submit the following information to the City within thirty (30) calendar days of the end of the special event:

1. Name and date(s) of the special event;

2. Contact information for the responsible party, promoter or coordinator;

3. Address of location where event was held;

4. Number of attendees for each day of the event;

5. Quantity of municipal solid waste collected and disposed;

6. Quantity of recyclable materials collected and diverted;

7. Quantity of food scraps collected and diverted; and

8. Copies of weight tickets from municipal solid waste disposal facility and all permitted processing facilities where recyclable materials and food scraps were delivered.

J. The deposit paid by the promoter, coordinator or responsible party shall be returned upon City verification that the diversion program was carried out in compliance with this Section 6.06.100. The deposit shall be retained by the City in the event the Director determines that the solid waste diversion program was not implemented in compliance with this section.

6.06.110 Waivers.

A. The Director may waive all or some of the requirements of this chapter and exempt a generator from such specified requirements for up to a one (1) year period, per request, based upon a upon a finding that:

1. The premises lacks adequate space for containers for the specified recyclable materials, food scraps, green waste and/or wood and that space physically does not exist and cannot be created for same.

2. The generator's total solid waste collection service is adequate for the quantities generated at the premises, and consists of four (4) cubic yards or more per week of service; and the combination of food scraps, green waste and wood waste taken together, equals less than one-half (1/2) of one (1) cubic yard per week of the businesses' total municipal solid waste.

B. An application for a waiver shall be submitted on a form provided by the Director, with the application fee, and include all information necessary for the Director to make his/her decision, including but not limited to documentation showing the factual support for the requested waiver. The Director may require the applicant to provide additional information to permit the Director to determine facts regarding the waiver application.

C. The City will, upon receipt of the request for a waiver from a generator, conduct a site visit to evaluate the request and assess possible alternative container and service configurations for the premises.

D. The Director may approve, conditionally approve, or deny the waiver application, in whole or in part.

E. The Director's decision shall be final thirty (30) calendar days after notice is provided to the applicant in accordance with Section 1.08.080, unless appealed to the Assistant City Manager within that timeframe. Any appeal shall be submitted to the Assistant City Manager on a form approved by the Assistant City Manager along with the appeal fee. If appealed, the Assistant City Manager shall complete his/her review and issue a written decision upholding, overturning or modifying the decision of the Director within thirty (30) calendar days. The decision of the Assistant City Manager shall be final.

F. A generator granted a waiver by the City is required to reapply prior to the end of the waiver period and demonstrate continued conditions that warrant the granting of another waiver for a period of up to one (1) year.

G. The City Council shall adopt, by resolution, a fee to recover costs associated with processing the waiver application and an appeal fee.

6.06.120 Enforcement.

A. Violations of this chapter shall be enforced in accordance with the provisions of Chapter 1.04 and Chapter 1.05 of this Code.

B. To the extent permitted by law, the Director may inspect any container, collection vehicle load, permitted processing facility and/or disposal site for collected municipal solid waste, recyclable materials, food scraps, green waste, wood waste, construction and demolition debris and other materials generated within the City of Newport Beach.

6.06.130 Disclaimer of Liability.

The degree of protection required by this chapter is considered to be reasonable for regulatory purposes. The standards set forth in this chapter are minimal standards and do not imply that compliance will ensure safe handling of recyclable materials, food scraps, green waste, wood waste or municipal solid waste. This chapter shall not create liability on the part of the City, or any of its officers or employees for any damages that result from reliance on this chapter or any administrative decision lawfully made in accordance with this chapter. All persons handling discarded materials within the City should be and are advised to conduct their own inquiry as to the handling of such materials. In undertaking the implementation of this chapter, the City is assuming an undertaking to comply with state law and to promote the general welfare. It is not assuming, nor is it imposing on its officers and employees, an obligation for breach of which it is liable in money damages to any person who claims that such breach proximately caused injury.

Section 7: Section 10.28.045(D) of Chapter 10.28 of Title 10 of the Newport Beach Municipal Code is hereby amended to read as follows:

D. Mechanical blowers, as defined in Section 6.04.040, shall not be operated at a noise level that exceeds an A-weighted sound pressure level of sixty-five (65) dBA, as measured from a distance of fifty (50) feet.

Section 8: The Table of Contents for Chapter 11.08 of Title 11 of the Newport Beach Municipal Code titled "Conduct on Beaches and Piers" is hereby amended to read as follows:

Chapter 11.08
CONDUCT ON BEACHES AND PIERS*

Sections:

11.08.010 Obstructions on Public Beaches Prohibited.

11.08.020 Use of Shade Coverings.

11.08.030 Use of Beaches at Night.

11.08.040 Sleeping in Vehicles or on Beaches and Piers.

11.08.050 Disposal of Noncombustible Refuse.

11.08.055 Dangerous Articles—Glass Containers on Beach.

11.08.060 Use of Beach Fire Rings.

11.08.070 Removal of Beach Sand.

11.08.090 Vehicle Restrictions on Public Piers and Plazas.

* Removal of refuse required—See Section 6.04.050.

Section 9: The Table of Contents for Title 14 of the Newport Beach Municipal Code titled "Water and Sewers" is hereby amended to read as follows:

Title 14
WATER AND SEWERS*

Chapters:

14.04 Utilities Department—General Regulations

14.08 Water Connections

14.10 Cross-Connection Control Program

14.12 Water Rates and Charges

14.13 Recycled Water Rates

14.16 Water Conservation and Supply Level Regulations

14.17 Water-Efficient Landscaping

14.20 Water Meters

14.24 Sewer Connection, Permits

14.28 Industrial Wastes

14.30 Fats, Oils and Grease (FOG) Control

14.33 Water Capital Improvement Charges

14.34 Water Well Standards

14.36 Water Quality

* Garbage, refuse and cutting regulations - See Chapter 6.04. State Mandated Municipal Solid Waste Diversion Programs - See Chapter 6.06.

Section 10: Section 20.30.120(A) of Chapter 20.30 of Title 20 of the Newport Beach Municipal Code is hereby amended to read as follows:

A. Purpose. This section provides standards for the provision of solid waste (refuse) and recyclable material storage areas in compliance with State law (California Solid Waste Reuse and Recycling Access Act, Public Resources Code Section 42900) and Chapter 6.04 (Garbage Refuse and Cuttings) and Chapter 6.06 (State Mandated Municipal Solid Waste Diversion Programs).

Section 11: The recitals provided in this ordinance are true and correct and are incorporated into the substantive portion of this ordinance.

Section 12: 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 13: The action proposed herein is not a project subject to the California Environmental Quality Act ("CEQA") in accordance with Sections 15060 (c)(2), 15060 (c)(3), 15061(b)(3) and 15308 of the California Code of Regulations Title 14, Division 6, Chapter 3 ("CEQA Guidelines"). The proposed action is not a project under CEQA, will not result in a direct or reasonably foreseeable indirect change to the environment and does not have the potential for causing a significant effect on the environment. Additionally, the proposed ordinance is categorically exempt in accordance with Section 15308 which exempts actions taken by regulatory agencies, as authorized by state or local ordinance, to assure the maintenance, restoration, enhancement, or protection of the environment where the regulatory process involves procedures for protection of the environment. The City's enactment of the proposed ordinance in accordance with the state mandates on the diversion of solid waste will protect the environment with the reduction in greenhouse gas emissions.

Section 14: Except as expressly modified in this ordinance, all other Sections, Subsections, terms, clauses and phrases set forth in the Newport Beach Municipal Code shall remain unchanged and shall be in full force and effect.

Section 15: The Mayor shall sign and the City Clerk shall attest to the passage of this ordinance. The City Clerk shall cause the ordinance, or a summary thereof, to be published pursuant to City Charter Section 414.

This ordinance was introduced at a regular meeting of the City Council of the City of Newport Beach, California, held on 10th day of September, 2019, and adopted on the 24th day of September, 2019, by the following vote to-wit:

AYES: _____

NAYS: _____

RECUSED: _____

ABSENT: _____

_____
DIANE B. DIXON, MAYOR

ATTEST:

_____
LEILANI BROWN, CITY CLERK

APPROVED AS TO FORM:
CITY ATTORNEY'S OFFICE

_____
AARON C. HARP, CITY ATTORNEY

ATTACHMENT B

Section 1.12.020(B) of Chapter 1.12 of Title 1 of the Newport Beach Municipal Code

B. The Fire Chief, Public Works Director and Harbormaster, and members of the staff designated by the Fire Chief, Public Works Director and Harbormaster, shall have the power to issue citations for any violation of Titles 11 and 17, Chapters 7.04, 7.16 and 7.20, Sections 6.04.050~~060~~, 6.04.190~~200~~ and 10.06.010, the Fish and Game Code of the State of California, Title 14 of the California Code of Regulations, the provisions of the Health and Safety Code of the State of California that pertain to animals and the provisions of Chapter 5 of Division 3 of the Harbors and Navigation Code of the State of California.

Section 1.12.020(D) Chapter 1.12 of Title 1 of the Newport Beach Municipal Code

D. The Municipal Operations Director and department staff designated by the director shall have the power to issue citations for any violation of Chapters 6.04 and 6.06 of this Code.

The Table of Contents of Chapter 2.08 of Title 2 of the Newport Beach Municipal Code

Chapter 2.08
CITY MANAGER*

Sections:

2.08.010 Establishment Authority.

2.08.020 Bond for Manager Pro Tempore.

2.08.030 Compensation—Expenses.

2.08.040 Powers and Duties.

2.08.050 Removal.

2.08.060 Subject to Civil Service Provisions.

* Responsibilities and duties for civil service—See Section 2.24.060.

Amount of bond—See Chapter 2.16.

Power and duty to restrict water use—See Chapter 14.16.

Administrative authority over department heads—See Chapter 2.12.

Business licensing and regulation duties—See Title 5.

Administration of garbage collection service—See Chapters 6.04 and 6.06.

Water shortage duties—See Chapter 14.16.

Chapter 6.04

GARBAGE, REFUSE AND CUTTINGS*

Sections:

6.04.0150 Purpose and Intent.

6.04.0210 ~~Municipal Solid Waste Defined~~Definitions.

~~6.04.020 Recyclables Defined.~~

~~6.04.025 Commercial Solid Waste Bins Defined.~~

~~6.04.030 Green Waste Defined.~~

~~6.04.040 Beach Defined.~~

~~6.04.045 Public Solid Waste Container Defined.~~

6.04.0350 Nuisance Declared.

6.04.04055 Leaf Blowers.

6.04.0560 Disposal on Public Property Prohibited.

6.04.0670 Collection of Solid Waste.

6.04.0780 Containers.

6.04.0890 Solid Waste and Diverti~~a~~able Materials Container and Bulky Item Requirements.

6.04.09100095 Commercial and Multi-Family ~~Solid Waste~~ Bin and Wheeled Cart Requirements.

~~6.04.100 Green Waste.~~

~~6.04.110 Contents of Containers.~~

6.04.1020 Prohibited Materials.

~~6.04.130 Fish and Fish Products.~~

6.04.1140 Accumulation Limitation.

6.04.1250 Storage and Placement of Containers, Boxes, Bags or Bulky Items for Collection.

6.04.1360 Administration of Collection Service.

6.04.1470 Costs Defrayed From Ad Valorem Tax Revenue.

6.04.1580 Removal of ~~Building Scraps~~Construction and Demolition Debris.

6.04.1690 Public Solid Waste and Public Recyclable Material Containers.

6.04.1709~~1~~ Prohibition of Commercial Use of Public Solid Waste or Public Recyclable Material Containers.

6.04.1809~~95~~ Prohibition on Private Use of Public Solid Waste or Public Recyclable Material Containers on Balboa Island.

6.04.190~~200~~ Tampering with Public Solid Waste or Public Recyclable Material Containers.

6.04.201~~0~~0 Prohibited Disposal.

6.04.212~~0~~0 Persons Required to Clean Sidewalks.

6.04.223~~0~~0 Burying of Solid Waste or Recyclable Material Prohibited.

6.04.234~~0~~0 Violation, Penalties and Enforcement.

* Water and sewers—See Title 14.

~~Prior ordinance history—1949 Code §§ 5200—5221, as amended by Ordinances 687, 855, 921, 1164 and 1192.~~

~~1949 Code Section 5212, which was derived from Initiative Ordinance 878 adopted by a vote of the people on June 2, 1959, and became effective on June 19, 1959.~~

6.04.015~~0~~0 Purpose and Intent.

The City Council finds and declares as follows:

A. The regulations contained in this chapter are necessary and appropriate to protect the health, safety and welfare of the citizens of the City by providing minimum standards for the safe and sanitary collection, storage, transportation and solid waste, green waste, and recyclable materials generated within the City.

B. The provisions of this chapter shall regulate all municipal solid waste not covered by Chapter 6.06. ~~Chapter 6.04 was originally adopted x date to provide regulations of all solid waste. That with the passage of time, laws related to solid waste have evolved including state mandated requirements related to diversion of recyclable materials. The City Council adopted Chapter 6.06 in or about November 2019 to comply with state mandates of commercial uses and multifamily residential units of 5 or more units meet requirements for the diversion of solid waste. Chapter 6.04, as amended, is intended to apply to the regulation of solid waste not covered by Chapter 6.06. Unless expressly provided, the definitions in Chapter 6.06 are applicable to Chapter 6.04.~~

6.04.021~~0~~0 ~~Solid Waste Defined~~Definitions.

For the purposes of this chapter, the following words, terms, phrases, and their derivations have the meanings given herein. Terms defined in Chapter 6.06 shall have the same meanings herein unless expressly defined in this chapter. When consistent with the context, words used in the present tense include the future tense, and words in the singular number include the plural number.

"Beach" means and includes all the shore of the Pacific Ocean lying southerly of the most southerly line of the public street nearest and parallel to the ocean and all the shore of the harbor, and any bay or channel in the City.

"Bin" means an open top metal wheeled rectangular containers with attached plastic or metal lids, used for storage of solid waste, recyclables, green waste, wood, food scraps, construction and demolition debris or other materials.

"Cart" means a container with a hinged lid and wheels collected by an automated or semi-automated truck, which come in a variety of sizes including, but not limited, a capacity of 22-25 gallons, 32-35 gallons, 62-65 gallons and 90-95 gallons.

"Garbage, refuse, and cuttings" shall have the same definition as set forth in the applicable portions of Ordinance 1403, adopted on November 8, 1971 and Ordinance 1508 adopted March 25, 1974.

"Green waste" means trimmings from trees or shrubs, plants, grass cuttings, or removed or discarded branches, shrubs, plants, leaves or other materials generated from landscapes or gardens.

~~The term~~ "M~~m~~unicipal solid waste" or "solid waste" ~~shall~~ means all discarded putrescible and nonputrescible solid, ~~semisolid, and liquid wastes,~~ and semi-solid waste~~s~~ generated in or related to the occupancy of, remaining or emanating from any premises within City including, but not limited to, garbage, trash, rubbish, refuse, ashes, discarded home and industrial appliances, manure, vegetable or animal solid or semi-solid wastes, and other solid and semi-solid wastes, but does not include

~~. "Municipal solid waste" does not include~~ (i) recyclables, food scraps, green waste, wood waste or construction and demolition debris that have been separated and segregated from municipal solid waste for diversion; or (ii) ~~. "Municipal solid waste" does not include~~ liquid wastes, abandoned vehicles, auto parts, hazardous, biohazardous or biomedical wastes. ~~including refuse, construction, demolition debris, bulky items, recyclable materials, and green waste or any combination thereof which are permitted to be disposed of in a Class III landfill, and which are included in the definition of "nonhazardous solid waste" as set forth in the California Code of Regulations as it may be amended from time to time. Any reference in this Code to "garbage," "refuse," or "cuttings" shall mean "solid waste." (Ord. 2014-7 § 1, 2014: Ord. 1403 § 1 (part), 1971)~~

"Public solid waste container" and "public recyclable materials container" shall mean all solid waste and divertible/recyclable materials ~~carts~~containers suitable for the storage and collection of solid waste or divertible/recyclable material which are procured, placed and maintained on public property pursuant to Section 6.04.160~~6.04.190~~.

~~6.04.020 Recyclables Defined.~~

~~The term~~ "R~~r~~ecyclable materials" or "recyclables" ~~shall~~ means items in the solid waste stream which can be reused or processed into a form suitable for reuse consistent with the requirements of State law ~~(i.e., AB 939). Recyclable materials include~~ including, but ~~are~~ not limited to, aluminum and tin cans, glass bottles, plastic bottles, plastic containers, newspaper, paper, printed materials, paper containers, cardboard and textiles. Recyclable materials do not

include green waste, wood waste, food scraps or construction and demolition debris. ~~(Ord. 2014-7 § 2, 2014: Ord. 1558 § 1, 1974: Ord. 1403 § 1 (part), 1971)~~

~~6.04.025 Commercial Solid Waste Bins Defined.~~

~~The term "commercial solid waste bin" shall mean any container which requires special collection equipment, and is designed for the storage of solid waste generated by any business~~open top metal wheeled rectangular containers with attached plastic or metal attached lids, used for storage of solid waste, recyclables, green waste, wood, food scraps, construction and demolition debris or other food scraps, construction and demolition debris or other materials.. ~~(Ord. 2014-7 § 3, 2014: Ord. 82-29 § 1, 1982)~~

~~6.04.030 Green Waste Defined.~~

~~The term "green waste" shall mean and include trimmings from trees or shrubs, plants, grass cuttings, or removed or discarded branches, shrubs, plants, leaves or other forms of organic waste materials generated from landscapes or gardens, which are suitable for composting. (Ord. 2014-7 § 4, 2014: Ord. 1403 § 1 (part), 1971)~~

~~6.04.035 Carts Defined.~~

~~The term "carts" shall mean a container with a hinged lid and wheels collected by an automated or semi-automated truck. Carts come in a variety of sizes including a capacity of 22-25 gallons, 32-35 gallons, 62-65 gallons and 90-95 gallons."~~

~~6.04.040 Beach Defined.~~

~~The term "beach" shall mean and include all the shore of the Pacific Ocean lying southerly of the most southerly line of the public street nearest and parallel to the ocean and all the shore of the harbor, and any bay or channel in the City of Newport Beach.(Ord. 1403 § 1 (part), 1971)~~

~~6.04.045 Public Solid Waste Container Defined.~~

~~The term "public solid waste container" and "public recyclable materials container" shall mean all solid waste and recyclable materials containers with a forty-four (44) gallon or one- to three-cubic-yard capacity suitable for the storage and collection of solid waste which are procured, placed and maintained on public property pursuant to Section 6.04.190. (Ord. 2014-7 § 5, 2014: Ord. 97-27 § 1, 1997)~~

6.04.0350 Nuisance Declared.

The accumulation and existence of solid waste orand divertabledivertible material on any private premises, on, in, or upon any beach, street, alley or other public place within the City may beis hereby declared to be a public nuisance. No person who owns, leases, controls, or occupies or has charge of any premises in the City shall cause, permit or allow any publicsuch nuisance to exist thereon. (Ord. 2014-7 § 6, 2014: Ord. 1403 § 1 (part), 1971)

6.04.04055 Leaf Blowers.

A. Definitions.

1. "Leaf blowers" shall mean any air blowing machine that uses a concentrated stream of air to push, propel or blow dirt, dust, leaves, grass clippings, trimmings, green waste, solid waste or debris. This definition shall include "mechanical blowers" as that term is used in Chapter 10.28. "Leaf blowers" shall not include any leaf or refuse vacuum.

2. "Common interest development" and "association" shall be defined as those terms are defined in California Civil Code Section 1351 or any successor statute.

B. Use of Leaf Blowers.

1. Leaf blowers may be used and operated to sweep or clean any surface of dirt, dust, leaves, grass clippings, trimmings, or debris only if the green waste, solid waste or debris so swept or blown are not left in or upon any adjacent or other parcel, any street, public place or right-of-way, public beach, or on the shore, or in the waters of Newport Bay.

2. The hours of operation and maximum noise levels shall be subject to the provisions of Chapter 10.28.

3. Operation of Gas Powered Leaf Blowers in Residential Districts Prohibited. After November 10, 2011, gGas powered leaf blowers shall not be operated in any district identified in Title 20 of this Code as a district zoned for residential use or areas designated for residential use as part of a in Planned Community (PC) or Specific Area Planzoning districts, with the exception of operations or locations described in subsections (B)(3)(a) through (e) of this section:

a. Residential common interest developments of five (5) or more dwelling units with an association responsible for establishing regulations or operating rules controlling the management and maintenance of their exterior residential environment may, by the method set out in their association's rules and regulations, choose to be exempt from the restrictions contained in this section. The Office of the City Manager shall establish procedures through which such residential common interest developments may demonstrate their decision to be exempt from this section.

b. The maintenance, repair or improvement of any public work or facility by public employees, by any person or persons acting pursuant to a public works contract, or by any person or persons performing such work or pursuant to the direction of, or on behalf of, any public agency.

c. Maintenance of golf courses and golf practice facilities conducted between the hours of 6:00 a.m. and 8:00 p.m., and maintenance of other nonresidential uses appurtenant to golf course uses between the hours of 7:00 a.m. and 8:00 p.m.

d. Areas designated for n~~N~~onresidential uses located in a ~~within the boundaries of~~ Planned Community (PC) or Specific Area Plan~~zoning districts~~.

e. Operation on parcels zoned for nonresidential use that may be adjacent to or surrounded by a district otherwise zoned for residential use (including but not limited to parcels zoned for public or private institutional uses, park and recreation uses, open space uses, or other similar nonresidential uses).

C. Violations. Any person who uses a gas powered leaf blower in a residential zone, and/or causes or permits cuttings, refuse or debris swept or blown by any leaf blower to be left in places contrary to the provisions of subsection (B) of this section, is guilty of an infraction. ~~(Ord. 2014-7 §§ 7, 8, 2014; Ord. 2011-12 § 1, 2011: Ord. 95-38 § 2, 1995: Ord. 87-15 § 1, 1987; Ord. 83-23 § 1, 1983; Ord. 1828 § 1, 1979)~~

6.04.0~~56~~0 Disposal on Public Property Prohibited.

No person ~~shall throw, deposit or leave any solid waste or divertable~~ who is in possession or otherwise controls solid waste or divertible ~~-~~material, shall throw, deposit or leave any solid waste or divertible material, or permit the same to be thrown, deposited or left, in or upon~~or, being in possession and control of any solid waste~~the aforementioned, ~~shall permit the same to be thrown, deposited, or left in or upon~~ any street, public beach or other public place, or on the shore, or in the waters of Newport Bay. ~~within the City. (Ord. 2014-7 § 9, 2014: Ord. 1403 § 1 (part), 1971)~~

6.04.0~~67~~0 Collection of Solid Waste.

A. All solid waste placed in the vicinity of any curb or alley for collection purposes shall become the property of the City, a sanitary district, or a private collector licensed or contracted by the City.

B. No person, except an individual acting within the course and scope of their agency or employment with the City, a sanitary district, or a private collector licensed or contracted by the City, shall remove from any place or premises in the City, or transport over public streets, any solid waste.

C. No person shall enter onto private property for the purpose of collecting or inspecting solid waste, or ~~divertable~~divertible material except the owner, occupant, manager, person in control of the premises, or a person employed to do so by the City, a sanitary district, or private collector licensed or contracted by the City to perform this service who is then acting within the course and scope of their agency or employment.

D. No person shall knowingly aid and abet another person in committing a violation of subsection (A), (B), or (C) of this section. A person is guilty of aiding and abetting another person in committing a violation of subsection (A), (B), or (C) of this section if the person knows

of the other person's unlawful purpose and the person specifically intends to, and does in fact, aid, facilitate, promote, encourage, or instigate the other person's commission of a violation of subsection (A), (B), or (C) of this section.

E. The provisions of this section shall not prohibit:

1. Any person, with the permission and consent of the property owner, from gathering and removing solid waste, construction and demolition debris, green waste and/or wood waste generated by construction, landscaping or gardening on the property when the solid waste and/or ~~divertable~~divertible materials have ~~has~~ not been set out for collection by the City, a sanitary district, or a private collector licensed or contracted by the City, provided that such activities are in compliance with all provisions of the Code including, but not limited to, the provisions of Chapter 6.06;

2. Any person from removing solid waste generated on property owned or controlled by that person;

3. The immediate removal by any person of solid waste, food scraps, ~~o~~ and ~~or~~ other diverti~~a~~ble materials which the Health Officer, Code Enforcement Supervisor, City Manager or his/her designee, Fire Chief, Building Official or their agents have determined to constitute a nuisance or an immediate threat to the public health, safety and welfare;

4. Any ~~nonprofit~~ entity, person or organization from collecting recyclables that have been donated or sold to such entity by the person owning or controlling the premises where the recyclables were generated, in any manner which does not conflict with this chapter or any other provision of this Code; or. ~~(Ord. 2014-7 § 10, 2014: Ord. 2011-7 § 1, 2011: Ord. 91-6 § 1, 1991: Ord. 1558 § 2, 1974: Ord. 1403 § 1 (part), 1971)~~

5. Any person engaged in the business of destruction of secret, confidential or sensitive documents from collecting, shredding, destroying, recycling and/or disposing of those documents, provided the transport of the documents is incidental to the document destruction or disposal service.

6.04.0~~7~~80 Containers.

A. Except as provided in subsection (B) of this section, every owner and tenant of any dwelling unit or units, or any place of business or institution within the City where solid waste and/or diverti~~a~~ble materials accumulate~~s~~, shall have a sufficient number of containers ~~carts~~ to accommodate all solid waste and diverti~~a~~ble ~~materials accumulated~~materials accumulated on the premises between collection days.

B. The owner and tenant are each responsible for having the required number of containers; provided, however, the occupant of any dwelling unit for which a short-term lodging permit has been issued by the City shall not be responsible for compliance with this section.

~~C. Failure of the owner or tenant to comply with the provisions of this section shall constitute an infraction. (Ord. 2014-7 § 11, 2014: Ord. 95-25 § 1 (part), 1995: Ord. 1867 § 1, 1980: Ord. 1403 § 1 (part), 1971)~~

6.04.080~~090~~ Solid Waste and Diverti~~a~~able Materials Container and Bulky Item Requirements.

A. ~~Solid waste~~ C~~c~~ontainer requirements for solid waste and diverti~~a~~able materials vary throughout the City depending upon location and the solid waste and diverti~~a~~able materials collector servicing the area. If a container is collected by automated equipment, the container shall not exceed the weight limit provided on the container, including contents. If a container is collected without automated equipment, the container shall not exceed fifty (50) pounds in weight, including contents. All solid waste and diverti~~a~~able materials set out for collection shall satisfy one or more of the following requirements:

1. Solid waste ~~and~~ or diverti~~a~~able materials shall be placed in a container provided by, or allowed by, the City, a sanitary district or a permitted contractor, for use in the specific area the container is provided or used;

2. If allowed by the solid waste or ~~and~~ diverti~~a~~able materials collector servicing an area, persons may use sturdy, grease-resistant, waterproof nonreturnable bags which are specifically designed for solid waste provided that each filled bag, including contents, is no greater than fifty (50) pounds, the opening is secured, and the weight does not cause the bag to tear when handled;

3. If allowed by the solid waste or diverti~~a~~able waste collector servicing an area, solid waste may be placed within a cardboard box and other similar disposable container (collectively, "box") weighing fifty (50) pounds or less, including contents;

4. If allowed by the solid waste ~~and~~ or diverti~~a~~able materials collector servicing an area, a business owner or operator may place solid waste and/or diverti~~a~~able materials~~l~~ in separate ~~use~~ thirty-five (35) gallon containers; or ~~to dispose of solid waste; or~~

5. Bulky item collection (e.g., an item that does not fit within an approved container, box or bag) varies according to the agreement the City, a sanitary district, or a private community has with a private collector licensed or contracted by the City. The City shall post on its website or such other public location a list of the bulky item collection rules and regulations specific to the various areas of the City.

B. No person shall place any solid waste or diverti~~a~~able materials on public property for collection unless the solid waste and/or diverti~~a~~able materials are ~~is~~ in a container, box, or bag that fully complies with subsection (A) of this section. No solid waste or diverti~~a~~able materials will be collected unless the solid waste or diverti~~a~~able materials is placed in a container, box or bag that complies with subsection (A) of this section. No person shall place any bulky item on public property for collection unless the bulky item fully complies with subsection (A) of this section. No bulky item shall~~will~~ be collected unless the bulky item complies with subsection (A) of this section. ~~C. Notwithstanding any other provision of this Code, the violation of this section shall constitute an infraction and shall be punishable as such or in accordance with Chapter 1.05. (Ord. 2014-7 § 12, 2014: Ord. 2000-1 § 1, 2000: Ord. 1403 § 1 (part), 1971)~~

6.04.090~~100095~~ Commercial and Multi-Family ~~Solid Waste~~ Bin and Wheeled Cart Requirements.

Any person who owns, leases, controls, or has charge of any business or multi-family dwelling, which utilizes commercial solid waste bins or wheeled carts for the storage of solid waste, recyclables, green waste, wood, food scraps and/or construction and demolition debris shall ensure:

A. ~~ensure T~~the bin and/or wheeled cart is equipped ~~shall equip the bin~~ with a lid or cover sufficient to prevent:

1. ~~(A) o~~Odor from escaping the container; ~~(~~

~~B)~~2. Fflies and other insects from coming into contact with the contents of the container; ~~,~~

~~(3.C)~~3. Tthe contents from leaving the interior of the container; ~~,~~ and ~~(D)~~

~~4.~~4. Rain or water from entering the interior of the container.

B. ~~Further, any business or multi-family dwelling utilizing bins or wheeled carts any commercial solid waste bins shall ensure that t~~The solid waste, green waste, wood and food scraps ~~-~~accumulated in the bins and wheeled carts ~~is~~are picked up a minimum of one time per week and recyclable materials are picked up at least one time per month.

~~E~~C. Each bin and cart ~~shall be~~ is maintained in a clean and sanitary manner. ~~and disposed of at least once per week and shall maintain each bin in a clean and sanitary manner.~~

D. ~~Any business or multi-family dwelling utilizing commercial solid waste bins and/or wheeled carts shall keep t~~The lids to the bin or wheeled carts are closed at all times except when solid waste is being deposited, ~~shall keep the bins closed,~~ the storage area clean and free of trash and debris, and ensure that all oil, grease, fluid and other items are contained within the bin or~~and~~ wheeled cart storage area.

E. The ~~commercial or multi-family commercial solid waste bin and wheeled cart~~ storage area is ~~shall be~~ cleaned or power washed, as needed, to keep the area free of grease, oils, fluids, stains or odors. ~~(Ord. 2014-7 § 13, 2014: Ord. 82-29 § 2, 1982)~~

~~6.04.100 Green Waste.~~

~~Tree limbs, branches, hedge cuttings, and similar green waste materials may also be disposed of by placing them in a solid waste container, box, or bag compliant with Section 6.04.090. (Ord. 2014-7 § 14, 2014: Ord. 1403 § 1 (part), 1971)~~

~~**6.04.110 Contents of Containers.**~~

~~**Contents of containers shall be limited to solid waste, except as qualified to the extent set forth in this section:**~~

~~A. Food waste or animal feces must be thoroughly drained and securely wrapped to prevent leakage, odor, and access to flies and animals.~~

~~B. Feathers and ashes must be dampened and securely wrapped, and vacuum cleaner sweepings must be securely wrapped.~~

~~C. Grass, tree, shrub and flower trimmings, leaves and weeds must be contained as set forth in Section 6.04.100. (Ord. 2014-7 § 15, 2014: Ord. 1403 § 1 (part), 1971)~~

6.04.1020 Prohibited Materials.

A. No person shall set out for collection ~~any refuse ?solid~~any solid waste or divertiable material ~~which~~ contains any of the following:

1. Ammunition or explosives;

2. Industrial wastes, or caustic or hazardous chemicals or acids;

3. Pathological, toxic and radioactive waste;

4. Drugs or medicines;

5. Human feces, unwrapped animal feces or dead animals;

6. Liquids, paints or any substance the disposal of which is regulated by the Hazardous Substances Act, or regulations adopted pursuant thereto;

7. Any material, the disposal of which is prohibited within County landfills, including, but not limited to, items longer than four feet in length or items more than eighteen (18) inches in diameter;

8. Lube oils and used oil filters;

9. Items which are too large for, or which may damage, the collection equipment or machinery such as large pieces of metal, machine parts, logs and tree stumps; or

10. Hypodermic needles and lancets. ~~unless broken and placed within a plastic container which cannot be pierced by the needle.~~

B. Sod, building scraps, bricks, concrete and other building or construction ~~material~~debris may be refused at the discretion of the collector. ~~(Ord. 94-5 § 1, 1994: Ord. 83-15 § 1, 1983: Ord. 1403 § 1 (part), 1971)~~

~~.s6.04.130 Fish and Fish Products.~~

~~Each wholesale and retail fish business, fish preserving plant, fish cold storage plant, fish market, and each business dealing in fish or fish products, shall dispose of, promptly and in a sanitary and clean manner, and at its sole cost and expense, all garbage accumulations in reference to its respective business, and at all times keep its respective business premises in a sanitary manner free of garbage accumulations and refuse, and shall at all times prevent any odor or smell from escaping from its respective business premises and shall also exclude all flies and other insects from reaching or coming in contact with refuse or garbage accumulations from its respective business premises. (Ord. 1403 § 1 (part), 1971)~~

6.04.1140 Accumulation Limitation.

No person who owns, leases, controls, ~~or~~ occupies or has charge of any premises shall permit ~~garbage~~ solid waste, green waste, wood or food scraps to accumulate for a period in excess of one calendar week, or ~~refuse or cuttings~~recyclables to accumulate for a period in excess of one calendar month. No person shall fail~~of fifteen (15) days, or fail,~~ refuse or neglect to place such ~~garbage and such refuse and cuttings~~solid waste and diverti~~a~~ble materials for collection in accordance with schedules established therefor, the provisions of this chapter, Chapter 6.06, and rules and regulations established pursuant thereto. ~~(Ord. 1879 § 1, 1981: Ord. 1403 § 1 (part), 1971)~~

6.04.1250 Storage and Placement of Containers, Boxes, Bags or Bulky Items for Collection.~~Email Link~~

A. Storage of Containers, Boxes, Bags or Bulky Items. Containers, boxes, bags or bulky items shall be stored in a garage, carport, trash enclosure, or in the sideyard, and beyond a line drawn parallel to the alley from the corner of the building closest to the alley to the adjacent property line except when the containers, boxes, bags or bulky items are placed out for collection.

B. Placement for Collection.

1. Containers, boxes, bags or bulky items shall be placed for collection in a location easily accessible to the solid waste and diverti~~a~~ble materials collector such as the streetside of the adjacent sidewalk, in the parkway, or in driveways and adjacent to the curb line. Containers, boxes, bags or bulky items shall~~may~~ be placed in the ~~gutter or~~ street in a manner that does not impede traffic.

2. If solid waste is collected from an alley abutting the premises, containers, boxes, bags or bulky items shall be placed for collection as close to the alley property line as feasible and on private property. In any alley where a yellow line has been painted by City to demarcate private from public property, containers, boxes, bags or bulky items shall be placed adjacent to the yellow line on the private property side. ~~In no event shall c~~Containers, boxes, bags or bulky items shall not be placed more than eight feet onto private property as measured from the alley property line or placed in a manner which could obstruct vehicular travel through the alley.

3. Unless an exception applies or other arrangements have been made with the solid waste and diverti~~a~~ble materials collector serving an area, containers, boxes, bags or bulky items shall not be considered placed for collection and solid waste and divert~~a~~ible materials will not be collected unless the containers, boxes, bags or bulky items are removed from any enclosure, structure, cabinet, cart or shelf.

4. Containers, boxes, bags or bulky items shall be placed for collection at residences before 7:00 a.m. on collection days and at businesses before 5:00 a.m. Containers, boxes, bags or bulky items shall not be placed for collection at residences or businesses~~, but not~~ earlier than 7:00 p.m. the day preceding the collection day, and containers, boxes or bags

shall be relocated to their required storage place as soon as possible after collection, but no later than 7:00 p.m. of the day of collection.

C. The owner and tenant shall be ~~are each~~ responsible for the placement of containers, boxes, bags or bulky items; provided, however, the occupant of any dwelling unit for which a short-term lodging permit has been issued by the City shall not be responsible for compliance with this section. ~~(Ord. 2014-7 § 16, 2014: Ord. 95-25 § 1 (part), 1995: Ord. 94-5 § 2, 1994: Ord. 1403 § 1 (part), 1971)~~

6.04.1360 Administration of Collection Service.

The City Manager or designated representatives shall administer the provisions of this chapter. In carrying out this responsibility, he or she shall have the following powers and duties:

A. Establish the routes, hours and days of collection and he or she may change the same as he or she deems necessary, and shall give notice of such routes, hours, days and changes as seems advisable.

B. Establish rules and regulations consistent with this chapter governing storage, collection and ~~disposition~~ disposal of solid waste and collection and diversion of recyclables, green waste, wood, food scraps and other materials~~,~~ including the determination of standards and specifications for approved containers, boxes or bags and the placement of containers, boxes or bags. The rules may permit special containers or bins when the quantity or the nature of the material to be collected so requires.

C. Establish additional rules and regulations consistent with this chapter as may be necessary, reasonable and proper to effect the sanitary, expedient, economical and efficient collection, removal and disposal of solid waste and diversion of recyclables, green waste, wood, food scraps and other materiaals. ~~(Ord. 2014-7 § 17, 2014: Ord. 1403 § 1 (part), 1971)~~

6.04.1470 Costs Defrayed From Ad Valorem Tax Revenue.

The cost and expense of collecting, hauling away and disposing of garbage, refuse and cuttings, as those terms are defined by Sections 6.04.20 and ~~s~~ 6.04.0303~~10, 6.04.020 and 6.04.030,~~ for any dwelling or dwelling unit, existing or future, within the boundaries of the City as of November 1, 1996, that receives curbside container refuse collection service from the City, shall be defrayed exclusively from the ad valorem tax revenues of the City.

[Note: The definition of "garbage, refuse and cuttings" referred to in Ordinance 96-46 adopted by the voters, is set forth in Section 6.04.020.]~~(Ord. 96-46 § 1, 1996)~~

6.04.1580 Removal of Construction and Demolition Debris~~Building Scraps~~.

All owners, contractors and builders of structures shall, at their sole cost and expense, comply with all requirements of Section 15.11.010 of the Code to divert construction and demolition debris from disposal. All construction and demolition debris shall be removed from the lot and all nearby premises utilized in such construction within ten (10) calendar days of demolition and said lot and premises shall be left in a ~~slightly~~sightly condition.~~upon the completion or demolition of any such structure, gather up and haul away, at their sole cost and expense, all solid waste of every nature, description or kind, which has resulted from the building or demolition of the structure, including all lumber scraps, shingles, plaster, brick, stone, concrete and other building material, and shall place the lot and all nearby premises utilized in such construction in a sightly condition.~~ ~~(Ord. 2014-7 § 18, 2014: Ord. 1403 § 1 (part), 1971)~~

6.04.16~~090~~ Public Solid Waste and Public Recyclable Material Containers.

The City Manager or designated representative shall procure, place and maintain at suitable places on certain business sidewalks, the public beaches, piers and bay and ocean front street ends a sufficient number of public solid waste and public divertible ~~recyclable~~ material containers to receive and hold solid waste and divertible materials ~~recyclables~~ generated by the general public at those locations. The ~~Municipal Operations~~Public Works Director shall at all times keep public solid waste ~~containers~~ and divertible material containers in a clean and sightly condition and in good order and repair; provided, that the failure of the ~~Municipal Operations~~Public Works Director to furnish and provide such containers shall not be held or construed to relieve any person from the penalties of this Code. ~~(Ord. 2014-7 § 19, 2014: Ord. 2013-11 § 30, 2013: Ord. 1857 § 1, 1980: Ord. 1403 § 1 (part), 1971)~~

6.04.17~~091~~ Prohibition of Commercial Use of Public Solid Waste or Public Recyclable Material Containers.

No person who owns, leases, operates, manages or is employed by a business, as that term is defined in Section 5.04.010, shall deposit, or cause to be deposited, any solid waste or divertiable ~~or recyclable~~ material generated by the business into any public solid waste or divertible material container unless otherwise authorized by resolution of the City Council of the City of Newport Beach. ~~(Ord. 2014-7 § 20, 2014: Ord. 97-27 § 2, 1997)~~

6.04.18~~095~~ Prohibition on Private Use of Public Solid Waste or Public Recyclable Material Containers on Balboa Island.

No person who resides, leases, rents or occupies property located on Balboa Island, and no person who owns, leases, rents, operates, manages or is employed by any business located on Balboa Island, shall deposit, or cause to be deposited, any solid waste or divertible material into any public solid waste or divertible material container located on Balboa Island. ~~(Ord. 2014-7 § 21, 2014: Ord. 82-1 § 1, 1982)~~

6.04.19~~0200~~ Tampering with Public Solid Waste Containers.

No person shall remove, without lawful authority, any public solid waste container from the place where it is placed and maintained by the ~~Municipal Operations~~Public Works Director, or willfully deface, injure, damage or destroy, or use any public solid waste container for any purpose other than the authorized placing of solid waste therein by the general public. ~~(Ord. 2014-7 § 22, 2014: Ord. 2013-11 § 31, 2013: Ord. 1403 § 1 (part), 1971)~~

6.04.2~~0~~10 Prohibited Disposal.

A. On Another's Property. No person who is in possession or otherwise controls solid waste or divertible material, shall throw, deposit or leave any solid waste or divertible material, or permit the same to be thrown, deposited or left, in or upon ~~No person shall throw, deposit or leave any solid waste or divertable material, or who being in possession and control of any solid waste or divertable material, permit it to be thrown, deposited or left on~~ the property or premises of another person ~~located in the City~~ without the knowledge and prior permission of the owner thereof.

B. On Own Property. No owner of real property shall throw, deposit or leave, or knowingly permit another to throw, deposit or leave, solid waste or diverti~~a~~ble material on such real property, nor shall he or she fail, neglect or refuse to wholly remove solid waste or diverti~~a~~ble material from such real property, within three days after receipt of written notice by the Code Enforcement Supervisor, Municipal Operations Director or their designee to do so.

C. By Tenants. No owner of real property located in the City shall knowingly permit ~~or countenance~~ his tenants while in occupation of such real property to throw, deposit or leave any solid waste or diverti~~a~~ble material upon the property or premises of another. ~~(Ord. 2014-7 § 23, 2014: Ord. 2013-11 § 32, 2013; Ord. 1403 § 1 (part), 1971)~~

6.04.2~~1~~20 Persons Required to Clean Sidewalks.

The occupant, tenant, owner, lessee, or proprietor of any real estate in this City in front of which there is a paved sidewalk shall cause said sidewalk to be swept or otherwise cleaned as frequently as necessary to maintain said sidewalks reasonably free of leaves, dirt, paper, litter or rubbish of any kind. Sweepings from said sidewalk shall not be swept, or otherwise made or allowed to go into the street or gutter, but shall be disposed of by being placed in a solid waste divertible ~~or recyclable~~ material container by the person responsible for the cleanliness of said sidewalk. ~~(Ord. 2014-7 § 24, 2014: Ord. 1403 § 1 (part), 1971)~~

6.04.2230 Burying of Solid Waste or Recyclable Material Prohibited.

~~With the exception of green waste, no~~ No person shall dispose of, or attempt to dispose of, any solid waste or recyclable material by burying it in or underneath the surface of the earth in the City of Newport Beach. ~~(Ord. 2014-7 § 25, 2014: Ord. 1403 § 1 (part), 1971)~~

6.04.2340 Violation, Penalties and Enforcement.

A. It shall be unlawful for any person to violate any provisions or to fail to comply with any of the requirements of this chapter.

B. Any person violating any of the provisions or failing to comply with any of the requirements of Section 6.04.0606.04.070 shall be guilty of a misdemeanor pursuant to the provisions of Section 1.04.010(C); however, the violation may be prosecuted as an infraction pursuant to the provisions of Section 1.04.010(A).

C. Except for Section 6.04.0606.04.070, any person violating any of the provisions or failing to comply with any of the requirements of this chapter shall be guilty of an infraction pursuant to the provisions of Section 1.04.010(A).

D. In addition to, or separate from, the foregoing criminal penalties, any person violating any of the provisions or failing to comply with any of the requirements of this chapter is subject to the issuance of an administrative citation pursuant to the provisions of Section 1.04.010(E) and Chapter 1.05. ~~(Ord. 2011-7 § 2, 2011: Ord. 1476 § 1, 1972)~~

Section 10.28.045(D) of Chapter 10.28 of Title 10 of the Newport Beach Municipal Code

D. ~~After January 1, 1996, m~~Mechanical blowers, as defined in Section 6.04.040~~055~~, shall not be operated at a noise level that exceeds an A-weighted sound pressure level of ~~seventy (70) dBA, as measured at a distance of fifty (50) feet. After January 1, 1999, such equipment shall not be operated at a noise level that exceeds an A-weighted sound pressure level of~~ sixty-five (65) dBA, as measured from a distance of fifty (50) feet.

The Table of Contents of Chapter 11.08 of Title 11 of the Newport Beach Municipal Code

Chapter 11.08
CONDUCT ON BEACHES AND PIERS*

Sections:

11.08.010 Obstructions on Public Beaches Prohibited.

11.08.020 Use of Shade Coverings.

11.08.030 Use of Beaches at Night.

11.08.040 Sleeping in Vehicles or on Beaches and Piers.

11.08.050 Disposal of Noncombustible Refuse.

11.08.055 Dangerous Articles—Glass Containers on Beach.

11.08.060 Use of Beach Fire Rings.

11.08.070 Removal of Beach Sand.

11.08.090 Vehicle Restrictions on Public Piers and Plazas.

* Removal of refuse required—See Section 6.04.050~~060~~.

The Table of Contents for Title 14 of the Newport Beach Municipal Code titled "Water and Sewers"

Title 14
WATER AND SEWERS*

Chapters:

14.04 Utilities Department—General Regulations

14.08 Water Connections

14.10 Cross-Connection Control Program

14.12 Water Rates and Charges

14.13 Recycled Water Rates

14.16 Water Conservation and Supply Level Regulations

14.17 Water-Efficient Landscaping

14.20 Water Meters

14.24 Sewer Connection, Permits

14.28 Industrial Wastes

14.30 Fats, Oils and Grease (FOG) Control

14.33 Water Capital Improvement Charges

14.34 Water Well Standards

14.36 Water Quality

* Garbage, refuse and cutting regulations—See Chapter 6.04. State Mandated Municipal Solid Waste Diversion Programs- See Chapter 6.06.

Section 20.30.120(A) of Chapter 20.30 of Title 20 of the Newport Beach Municipal Code

A. Purpose. This section provides standards for the provision of solid waste (refuse) and recyclable material storage areas in compliance with State law (California Solid Waste Reuse and Recycling Access Act, Public Resources Code Section 42900) and Chapter 6.04 (Garbage Refuse and Cuttings) and Chapter 6.06 (State Mandated Municipal Solid Waste Diversion Programs).