

Attachment E

July 22, 2021 Planning Commission Minutes

- Ocean Boulevard public right-of-way, contingent upon all conditions of the Encroachment Permit process being met; and
3. Adopt Resolution No. PC2021-017 waiving City Council Policy L-6 and approving Encroachment Permit No. N2021-0197.

Ron Yeo, Corona del Mar Residents Association, indicated that the Corona del Mar Residents Association is preparing a master plan for refurbishing landscaping in the public right-of-way because the existing landscape is not consistent with Council Policy L-6. The Residents Association requests an additional condition of approval for review and approval of a landscape plan that balances visual open space with adjacent homeowners' privacy.

Scott Laidlaw, project architect, reported that the property owners support the Residents Association's direction but are not planning any changes for the right-of-way or their property. The intent of the application is to document the existing conditions. He agreed to the conditions of approval.

Jim Mosher remarked that Finding B4 of the resolution does not appear to be necessary to support the Finding and is incorrect. The activities described in Finding B4 would require a coastal development permit (CDP). He suggested deleting Finding B4.

In response to Commissioner Rosene's questions, Deputy Community Development Director Jim Campbell explained that the finding indicates a CDP is not needed for an agreement that reflects the existing improvements. The improvements were in existence prior to the enactment of the Coastal Act, and the Coastal Act authorizes existing improvements. The agreement reflects the existing improvements and allows them to remain subject to the terms of the agreement. The finding does not control any future improvements. Assistant City Attorney Yolanda Summerhill suggested the motion include language that any future construction or improvements are not subject to the exemption.

In answer to Commissioner Weigand's inquiry, Deputy Community Development Director Campbell advised that the City can require changes to the right-of-way in the future.

Motion made by Secretary Ellmore and seconded by Commissioner Rosene to approve the staff recommendation with a modification to facts in Finding B4 that any future construction or improvements are not subject to the exemption.

AYES: Ellmore, Lowrey, Rosene, and Weigand
NOES:
RECUSED:
ABSENT: Klaustermeier, Kleiman, and Koetting

VII. PUBLIC HEARING ITEMS

ITEM NO. 3 TATTOO ESTABLISHMENT ZONING ORDINANCE UPDATE (PA2020-030) **Site Location: Citywide**

Summary:

Amendments to Sections 20.20.020, 20.70.020 and the addition of Section 20.48.230 of Title 20 (Planning and Zoning) and amendments to Sections 21.20.020 and 21.70.020 of Title 21 (Local Coastal Program Implementation Plan) of the Newport Beach Municipal Code (NBMC) to define tattoo establishments (a previously undefined use) as a land use category and establish objective standards to regulate its use.

Recommended Action:

1. Conduct a public hearing;
2. Find this project categorically exempt from the California Environmental Quality Act ("CEQA") pursuant to Section 15061(b)(3), the general rule that CEQA applies only to projects, which have the potential for causing a significant effect on the environment and pursuant to Section 15265(a)(1), which exempts local governments from the requirements of CEQA in connection with the adoption of a Local Coastal Program;
3. Adopt Resolution No. PC2021-018 recommending the City Council approve Zoning Code Amendment No. CA2020-002 updating development standards related to tattoo establishments; and

4. Adopt Resolution No. PC2021-019 recommending the City Council authorize staff to submit Local Coastal Program Amendment No. LC2020-002 to the California Coastal Commission.

Principal Planner Matt Schneider summarized legal decisions that influence the regulation of tattoo establishments and requests for information discussed at the May 6, 2021 meeting. The Police Department has indicated there is no pattern to calls for service at the five existing tattoo establishments that could inform hours of operation for tattoo establishments. The five existing establishments are not a drain on the Police Department's resources. Staff has revised the proposed ordinance to prohibit smoking by both employees and customers within 20 feet of the establishment. The proposed ministerial permit process does not lend itself to annual reviews, and reviews are typically handled administratively. Through the code enforcement process, establishments that do not comply with the ordinance would face progressive penalties and ultimately could be required to cease operations. Buffer zones around tattoo establishments would limit the number of areas in which tattoo establishments could locate. Staff does not recommend any modifications to the proposed buffers. The Planning Commission suggested limiting tattoo establishments to areas zoned for medical uses, but medical uses are allowed in most commercial and office zones. Staff proposes limiting tattoo establishments to office general, office regional, and commercial general zones because they offer the greatest opportunity for tattoo establishments given the proposed buffer requirements. Staff has modified development standards for tattoo establishments to require service by appointment only and to prohibit smoking within 20 feet of the premises. Tattoo establishments could locate on an estimated 150-200 sites or suites that comply with ordinance requirements. Staff sent notice of the public hearing to property owners and business operators for the existing tattoo establishments. A tattoo business owner called with questions but did not express any concerns after learning about the proposed ordinance. If the Council adopts the proposed ordinance, existing tattoo establishments would become legal nonconforming uses. If the existing establishments subsequently wanted to expand or intensify, they would have to apply for a conditional use permit. If existing establishments discontinue operations for more than 180 days, they lose their privilege to operate.

Commissioner Koetting joined the meeting.

In reply to Commissioner Weigand's queries, Principal Planner Schneider advised that staff would approve applications for new tattoo establishments. The Planning Commission would consider revocation of a use permit for an existing tattoo establishment if there were grounds to do so.

In answer to Commissioner Rosene's inquiry, Principal Planner Schneider indicated new tattoo establishments would not need a conditional use permit.

Chair Lowrey opened the public hearing.

Jim Mosher noted a residential project has been proposed for Anacapa and questioned whether approval of the project would extinguish the ability of tattoo establishments to locate in Newport Center. There may be an existing nonconforming residential use located on Orchard Drive that could affect the second area where tattoo establishments could locate. Limiting tattoo establishments to Newport Center could be considered restrictive. In section 1, paragraph 2 of the proposed resolution, the second court decision is not described correctly. The appeals court ruled on the plaintiff's standing and sent the case back to the trial court. A finding based on a background report and a letter from the Police Department are contradictory.

Principal Planner Schneider reported a portion of the Newport Center area would remain available for tattoo establishments if the property on Anacapa is rezoned for residential use. Staff will confirm whether the use on Orchard Drive is a legal nonconforming residential use or an office use. Conceivably, two tattoo establishments could locate in the area and comply with the proposed 1,000-foot buffer. At the May 6, 2021, hearing, staff noted a higher number of calls for service at personal service uses versus tattoo establishments, but the findings were based on that and peer-reviewed articles discussing secondary effects. Assistant City Attorney Summerhill advised that the court determined the ordinance cited by Mr. Mosher was invalid.

Chair Lowrey closed the public hearing.

Commissioner Weigand related his support for the tattoo industry. Having an ordinance and a ministerial process avoids the need for Commissioners to decide whether they support tattoo establishments. In response to his inquiry,

Principal Planner Schneider indicated a tattoo establishment that received approval prior to a parcel being rezoned for residential use has the right to continue operations.

Motion made by Commissioner Weigand and seconded by Commissioner Rosene to approve the staff recommendation.

Commissioners Rosene and Weigand and Chair Lowrey appreciated the information staff provided in response to Commissioners' requests at the May 6 hearing.

AYES: Ellmore, Koetting, Lowrey, Rosene, and Weigand

NOES:

ABSTAIN:

ABSENT: Klaustermeier and Kleiman

ITEM NO. 4 SETBACK MAP CORRECTIONS ZONING CODE AND LCP AMENDMENT (PA2020-006)
Site Location: Citywide

Summary:

Amendments to the Planning and Zoning Code (Title 20) and Local Coastal Program Implementation Plan (Title 21) of the Newport Beach Municipal Code (NBMC) to correct identified errors in the setback maps contained in NBMC Sections 20.80.040 and 21.80.040 (Setback Maps). These maps provide the minimum distance a primary residential structure must be set back from a property line or other identified line such as a bulkhead or abandoned right-of-way line. These setbacks also establish front yard setback areas regulating accessory structures that differ from side or rear yard setback areas.

Recommended Action:

1. Conduct a public hearing;
2. Find this project statutorily exempt from the California Environmental Quality Act (CEQA) pursuant to Section 21065 of CEQA and State CEQA Guidelines Sections 15060(c)(2), 15060(c)(3) and 15378. The proposed action is also exempt pursuant to State CEQA Guidelines Section 15061(b)(3) because it has no potential to have a significant effect on the environment;
3. Adopt Resolution No. PC2021-020 recommending the City Council approve Code Amendment No. CA2020-001; and
4. Adopt Resolution No. PC2021-021 recommending the City Council authorize staff to submit Local Coastal Program Amendment No. LC2020-001 to the California Coastal Commission.

Secretary Ellmore recused himself from the item due to a conflict of real property interests.

Assistant City Attorney Summerhill noted Vice Chair Kleiman's absence and real property conflicts that recused her from the item.

Principal Planner Jaime Murillo reported the item is intended to correct a number of errors that resulted from the 2010 comprehensive Zoning Code Update. Setback maps began in 1943 as districting maps. Districting maps identified front yard setbacks that differed from the standard 20-foot setback and in some cases used to establish multiple yards that should be treated as a front yard. The maps were modernized in 2010 and incorporated into the Local Coastal Program (LCP) Implementation Plan in 2017. Staff has discovered a number of errors in the maps, and the errors create nonconformities, limit development rights, and create inconsistencies with historical development patterns. He shared examples of two errors and their consequences for property owners. After publication of the staff report, staff found an additional error and distributed a memorandum with proposed modification of Setback Map S-2E. Mr. Mosher submitted written comments regarding another error, and staff requests the motion include correction of that error. Amendments to the LCP will require California Coastal Commission approval.

Chair Lowrey opened and closed the public hearing with no comment from the public.

Commissioner Koetting and Chair Lowrey commended staff for finding and correcting these errors.