

Attachment D

Ordinance No. 2020-19

ORDINANCE NO. 2020-19

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF NEWPORT BEACH, CALIFORNIA, ADOPTING CODE AMENDMENT NO. CA2019-001 TO AMEND TITLE 20 (PLANNING AND ZONING) OF THE CITY OF NEWPORT BEACH MUNICIPAL CODE CORRECTING AND CLARIFYING PROVISIONS RELATED TO OVERLAYS AND PUBLIC HEARING NOTICE REQUIREMENTS (PA2019-055)

WHEREAS, Section 200 of the City of Newport Beach Charter ("Charter") vests the City Council with the authority to make and enforce all laws, rules and regulations with respect to municipal affairs subject only to the restrictions and limitations contained in the Charter and the State Constitution, and the power to exercise, or act pursuant to any and all rights, powers, and privileges, or procedures granted or prescribed by any law of the State of California;

WHEREAS, an amendment to Title 20 (Planning and Zoning) of the Newport Beach Municipal Code ("NBMC") is necessary to provide clarification and corrections related to overlays and public hearing notice requirements ("Code Amendment");

WHEREAS, on April 23, 2019, the City Council adopted Resolution No. 2019-41 initiating the Code Amendment;

WHEREAS, Section 20.28.10 (Purposes of Overlay Zoning Districts) of the NBMC inadvertently states that the more restrictive standard of the underlying zoning district or applicable overlay apply, however, overlays are often a land use tool used to specify a different standard that might be less restrictive than the underlying zone;

WHEREAS, for instance, the Height Overlay District allows a greater building height that is less restrictive if certain conditions are met;

WHEREAS, additionally, the Parking Management Overlay authorizes the establishment of a Parking Management District that allows reduced parking requirements than that of the base zoning standards;

WHEREAS, the Code Amendment will clarify that in cases where standards conflict in an overlay district and the underlying coastal zoning district, the overlay district will control;

WHEREAS, Section 20.62.020 (Notice of Public Hearing) of the NBMC provides noticing requirements for project applications requiring a public hearing including: publication in a newspaper of general circulation, mailing to affected property owners, local agencies, nearby property owners and residents, and persons requesting notice, and posting of notice on or near the subject property;

WHEREAS, in lieu of mailed notice, Subsection 20.62.020(B)(4) (Alternative to Mailing) of the NBMC authorizes the Community Development Director to choose alternative notice specified by State law;

WHEREAS, to eliminate ambiguity and provide clarification of the alternative afforded by State law, the Code Amendment will specify that the alternative to mailing over 1,000 notices, is to publish a larger one-eighth page display advertisement in a newspaper of general circulation within the City;

WHEREAS, in addition, the Code Amendment will specify that the Community Development Director may choose to provide additional notice of a hearing in any other manner deemed necessary;

WHEREAS, Section 20.66 (Amendments) of the NBMC establishes the procedures for amendments to Title 20 (Planning and Zoning);

WHEREAS, the notice procedure for amendments initiated by property owners, refers to Chapter 20.62 (Public Hearings), however, the notice procedure for amendments initiated by the Planning Commission or City Council, are unclear;

WHEREAS, an amendment to Section 20.66.030 (Processing, Notice, and Hearing) is needed to provide clear standards for public hearing noticing related to City-initiated amendments not affiliated with a specific project site;

WHEREAS, a telephonic public hearing was held by the Planning Commission on June 18, 2020, in the Council Chambers located at 100 Civic Center Drive, Newport Beach, California, due to the Declaration of a State Emergency and Proclamation of Local Emergency related to COVID-19. A notice of time, place and purpose of the public hearing was given in accordance with the California Government Code Section 54950 *et seq.* the ("Ralph M. Brown Act") and Chapter 20.62 (Public Hearings) of the NBMC. Evidence, both written and oral, was presented to, and considered by, the Planning Commission at this public hearing;

WHEREAS, at the hearing, the Planning Commission adopted Resolution No. PC2020-024 by a majority vote (6 ayes, 0 nays) recommending to the City Council to adopt Zoning Code Amendment No. CA 2019-001;

WHEREAS, a telephonic public hearing was held by the City Council on July 28, 2020, in the Council Chambers located at 100 Civic Center Drive, Newport Beach, California due to the Declaration of a State Emergency and Proclamation of Local Emergency related to COVID-19. A notice of time, place and purpose of the public hearing was given in accordance with the California Government Code Section 54950 *et seq.* the ("Ralph M. Brown Act") and Chapter 20.62 (Public Hearings) of the NBMC. Evidence, both written and oral, was presented to, and considered by, the City Council at this public hearing.

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

Section 1: Section 20.28.010 (Purposes of Overlay Zoning Districts) of Chapter 20.28 (Overlay Zoning Districts (MHP, PM, B, H)) of Title 20 (Planning and Zoning) of the Newport Beach Municipal Code shall be amended to read as follows:

20.28.010 Purposes of Overlay Zoning Districts.

The purposes of the individual overlay zoning districts and the manner in which they are applied are outlined below. An overlay district may be initiated as a Zoning Map amendment in compliance with Chapter 20.66 (Amendments). All development shall comply with the applicable development standards (e.g., setbacks, height) of the underlying zoning district in addition to the standards provided in this chapter, if any. In situations where an inconsistency occurs between the development standards of the underlying zoning district and the standards in this chapter, the standards of the overlay district shall prevail.

A. MHP (Mobile Home Park) Overlay Zoning District. The MHP Overlay Zoning District is intended to establish a mobile home district on parcels of land developed with mobile home parks. The regulations of this district are designed to maintain and protect mobile home parks in a stable environment with a desirable residential character.

B. PM (Parking Management) Overlay Zoning District. The PM Overlay Zoning District is intended to provide for areas where parking management plans are appropriate to ensure adequate parking.

C. B (Bluff) Overlay Zoning District. The B Overlay District is intended to establish special development standards for areas of the City where projects are proposed on identified bluff areas. The specific areas are identified in Part 8 of this title (Maps).

D. H (Height) Overlay District. The H Overlay District is intended to establish standards for review of increased building height in conjunction with the provision of enhanced project design features and amenities.

Section 2: Subsection 20.62.020(B)(2)(c) (Nearby Property Owners) of Chapter 20.62 (Public Hearings) of Title 20 (Planning and Zoning) of the Newport Beach Municipal Code shall be amended to read as follows:

c. Nearby Property Owners. All owners of property located within a three hundred (300) foot radius, excluding intervening rights-of-way and waterways, of the exterior boundaries of the subject lot, as shown on the last equalized assessment roll or, alternatively, from other records that contain more recent addresses. It shall be the responsibility of the applicant to obtain and provide to the Department the names and addresses of all owners required by this section. If the number of property owners to whom notice would be mailed in compliance with this section is more than one thousand (1,000), in lieu of mailed notice, the Director may choose to publish a one-eighth page display advertisement in a newspaper of general circulation within the City;

Section 3: Subsection 20.62.020(B)(4) (Alternative to Mailing) of Chapter 20.62 (Public Hearings) of Title 20 (Planning and Zoning) of the Newport Beach Municipal Code shall be amended to read as follows:

4. Additional Notice. The Director may provide additional notice of the hearing in any other manner deemed necessary.

Section 4: Section 20.66.030 (Processing, Notice, and Hearing) of Chapter 20.66 (Amendments) of Title 20 (Planning and Zoning) of the Newport Beach Municipal Code shall be amended to read as follows:

20.66.030 Processing, Notice, and Hearing.

A. If initiated by property owner(s) with the filing of an amendment application:

1. Process. The application shall be processed in compliance with Chapter 20.50 (Permit Application Filing and Processing).

2. Notice. Notice of the public hearings shall be provided in compliance with Chapter 20.62 (Public Hearings).

B. If initiated by the City Council or Commission, notice of the public hearings shall be given as specified below:

1. Publication. Notice for all matters shall be published at least once in a newspaper of general circulation in the City at least ten (10) days before the scheduled hearing.

2. Mailing. Notice shall be mailed or delivered at least ten (10) days before the scheduled hearing to all of the following:

a. Property Owners. All owners of property located within a three hundred (300) foot radius, of the amendment excluding intervening rights-of-way and waterways, of the exterior boundaries of the affected property, as shown on the last equalized assessment roll or, alternatively, from other records that contain more recent addresses. If the number of property owners to whom notice would be mailed in compliance with this subsection is more than one thousand (1,000), in lieu of mailed notice, the Director may choose to publish a one-eighth page display advertisement in a newspaper of general circulation within the City;

b. Local Agencies. Each local agency expected to provide schools, water, or other essential facilities or services as a result of the amendment, whose ability to provide the facilities and services may be significantly affected; and

c. Persons Requesting Notice. A person who has filed a written request for notice with the Director and has paid the required fee for the notice.

3. Additional Notice. The Director may choose to provide additional notice of the hearing in any other manner deemed necessary.

4. Failure to Receive Notice. The failure of any person or entity to receive notice given in compliance with this section shall not invalidate the actions of the applicable review authority.

C. Hearing.

1. The applicable review authority shall conduct one or more public hearings regarding the amendment.

2. The public hearings shall be conducted in compliance with Chapter 20.62 (Public Hearings).

Section 5: An amendment to Title 21 (Local Coastal Program Implementation Plan) is also underway pursuant to Resolution 2020-72 to approve LCP Amendment No. LC2019-001. Zoning Code Amendment CA2019-001 shall not apply to projects located in the coastal zone for which Title 21 is applicable until approval of the LCP Amendment No. LC2019-001 by the California Coastal Commission and adoption, including any modifications suggested by the California Coastal Commission, by resolution and/or ordinance of the City Council.

Section 6: The recitals provided in this ordinance are true and correct and are incorporated into the substantive portion of this ordinance.

Section 7: 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 8: The City Council finds the introduction and adoption of this ordinance is exempt from environmental review under the California Environmental Quality Act ("CEQA") pursuant to Section 21065 of the California Public Resources Code and Sections 15060(c)(2), 15060(c)(3), and 15378 of the California Code of Regulations Title 14, Division 6, Chapter 3 ("CEQA Guidelines"). The Code Amendment is also exempt pursuant to CEQA Guidelines Section 15061(b)(3), the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment. The Code Amendment itself does not authorize development that would directly result in physical change to the environment.

Section 9: 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 10: 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 shall become effective thirty (30) days after the adoption of this ordinance.

This ordinance was introduced at a regular meeting of the City Council of the City of Newport Beach held on the 28th day of July, 2020, and adopted on the 25th day of August, 2020, by the following vote, to-wit:

AYES: Mayor O'Neill, Mayor Pro Tem Avery, Council Member Brenner, Council Member Dixon, Council Member Duffield, Council Member Herdman, Council Member Muldoon

NAYS: _____

ABSENT: _____



WILL O'NEILL, MAYOR

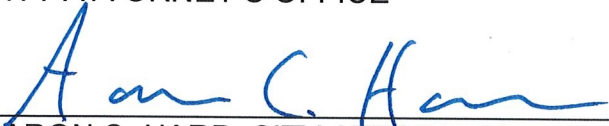
ATTEST:



LEILANI I. BROWN, CITY CLERK



APPROVED AS TO FORM:
CITY ATTORNEY'S OFFICE



AARON C. HARP, CITY ATTORNEY

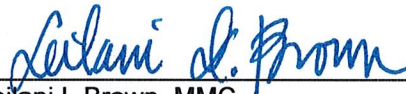
STATE OF CALIFORNIA }
COUNTY OF ORANGE }
CITY OF NEWPORT BEACH } ss.

I, Leilani I. Brown, City Clerk of the City of Newport Beach, California, do hereby certify that the whole number of members of the City Council is seven; that the foregoing ordinance, being Ordinance No. 2020-19 was duly introduced on the 28th day of July, 2020, at a regular meeting, and adopted by the City Council at a regular meeting duly held on the 25th day of August, 2020, and that the same was so passed and adopted by the following vote, to wit:

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

NAYS: None

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed the official seal of said City this 26th day of August, 2020.



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

CERTIFICATE OF PUBLICATION

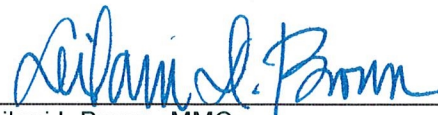
STATE OF CALIFORNIA }
COUNTY OF ORANGE }
CITY OF NEWPORT BEACH } ss.

I, LEILANI I. BROWN, City Clerk of the City of Newport Beach, California, do hereby certify that Ordinance No. 2020-19 has been duly and regularly published according to law and the order of the City Council of said City and that same was so published in *The Daily Pilot*, a newspaper of general circulation on the following dates:

Introduced Ordinance: August 1, 2020
Adopted Ordinance: August 29, 2020

In witness whereof, I have hereunto subscribed my name this 8th day of September, 2020.





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