

# **Attachment A**

Resolution No. 2022-29

## **RESOLUTION NO. 2022-29**

### **A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF NEWPORT BEACH, CALIFORNIA, INITIATING AMENDMENTS TO TITLE 20 (PLANNING AND ZONING) AND TITLE 21 (LOCAL COASTAL PROGRAM IMPLEMENTATION PLAN) OF THE CITY OF NEWPORT BEACH MUNICIPAL CODE RELATED TO NONCONFORMING RESIDENTIAL USES AND SETBACK CLARIFICATIONS IN THE R-1-6,000 ZONING AND COASTAL ZONING DISTRICTS (PA2022-076)**

**WHEREAS**, Section 20.66.020 (Initiation of Amendment) of the Newport Beach Municipal Code ("NBMC") provides that the City Council of the City of Newport Beach ("City Council") may initiate an amendment to Title 20 (Planning and Zoning) with or without a recommendation from the Planning Commission;

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

**WHEREAS**, Chapters 20.38 (Nonconforming Uses and Structures) and 21.38 (Nonconforming Uses and Structures) of the NBMC distinguish between a nonconforming lot (e.g., a parcel that was legally subdivided, but does not meet current standards for the zone in which it is located), nonconforming structure (e.g., a structure that was lawfully erected, but does not conform to the development standards), and nonconforming use (e.g., the use of a structure or land, which complied with the zoning code at the time of its establishment, but no longer is a permitted use);

**WHEREAS**, Sections 20.38.050 (Nonconforming Uses) and 21.38.050 (Nonconforming Uses) of the NBMC provide that nonconforming residential uses with more units than are permitted within the zoning district may be altered to reduce the number of dwelling units, however, these sections do not articulate the development rights associated with repair and maintenance, alteration, or expansion of the nonconforming use;

**WHEREAS**, redevelopment opportunities are limited for property owners of nonconforming residential uses in light of Senate Bill 330 which temporarily prohibits the City from approving a housing development that results in a net loss of residential density until January 1, 2030;

**WHEREAS**, due to the ambiguity in Sections 20.38.050 (Nonconforming Uses) and 21.38.050 (Nonconforming Uses) of the NBMC, an amendment is necessary to clarify that residential properties that are nonconforming due to density may be maintained, altered, or expanded pursuant to the limitations of Sections 20.38.040 (Nonconforming Structures) and 21.38.040 (Nonconforming Structures) of the NBMC; and

**WHEREAS**, the 2010 comprehensive update to Title 20 (Planning and Zoning) inadvertently omitted a provision that authorized additions to existing dwellings located in the R-1-6000 (Single-Unit Residential zoning districts with minimum lot dimensions of 6,000 square feet) ("R-1-6,000"), formerly classified as the R-1-B Zoning District, to be constructed to the side setback line in effect at the time the dwelling was constructed without being subject to nonconforming side setback restrictions.

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

**Section 1:** The City Council hereby initiates amendments to Title 20 (Planning and Zoning) and Title 21 (Local Coastal Program Implementation Plan) of the NBMC to clarify the regulations applicable to residential uses that are nonconforming due to density and to clarify the side setbacks in the R-1-6,000 zoning and coastal zoning districts.

**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 operative 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 it involves 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 10<sup>th</sup> day of May, 2022.

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Kevin Muldoon  
Mayor

**ATTEST:**

\_\_\_\_\_  
Leilani I. Brown  
City Clerk

**APPROVED AS TO FORM:**  
CITY ATTORNEY'S OFFICE

  
\_\_\_\_\_  
Aaron C. Harp  
City Attorney