



CITY OF

NEWPORT BEACH

City Council Staff Report

May 10, 2022
Agenda Item No. 8

TO: HONORABLE MAYOR AND MEMBERS OF THE CITY COUNCIL

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TITLE: Resolution No. 2022-29: Initiation of Zoning Code and Local Coastal Program Amendments Related to Nonconforming Residential Uses and Setback Clarification (PA2022-076)

ABSTRACT:

For the City Council's consideration is the initiation of amendments to the Newport Beach Municipal Code (NBMC) Title 20 (Planning and Zoning) and NBMC Title 21 (Local Coastal Program Implementation Plan). The amendments are intended to clarify the development allowances for residential uses that are nonconforming due to density and to clarify the side setback allowances for existing residential dwellings in the R-1-6000 zoning and coastal zoning districts.

RECOMMENDATION:

- a) Determine this action 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; and
- b) Adopt 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).*

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 of Newport Beach 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:

Nonconforming Residential Uses. Residential properties that contain more units than permitted under Title 20 and 21 are considered a nonconforming uses due to density. The proposed amendment would revise NBMC Sections 20.38.050 and 21.38.050 (Nonconforming Uses) to clarify that residential properties that are nonconforming due to density may be maintained, altered, or expanded pursuant to the limitations of NBMC Sections 20.38.040 and 21.38.040 (Nonconforming Structures). Absent this amendment, the NBMC does not clearly specify the development rights afforded for these nonconforming uses. With recent changes in State law¹ that encourage the preservation of existing housing units and prohibit property owners from redeveloping housing developments that result in a net loss of units, this amendment is necessary to clarify that property owners have the ability to substantially renovate and enhance the physical quality and character of these nonconforming buildings.

Setback Clarification. The proposed amendment would also provide a minor clean-up to NBMC Sections 20.18.030 and 21.18.030 to clarify the allowable side setback for additions to existing structures located within the R-1-6000 (Single-Unit Residential) zoning and coastal zoning districts. The R-1-6000 districts requires 6-foot minimum side setbacks; however, many of the developments in this zone were originally constructed with 5-foot side setbacks. Prior to the 2010 comprehensive update to Title 20, the R-1-6000 zoning district was called the R-1-B zoning district and included a provision that authorized additions to the existing principal dwelling to be constructed to the side setback line in effect at the time the principal dwelling was constructed. This provision allowed for those dwellings constructed with 5-foot setbacks to add additional floor area and maintain their existing 5-foot side setback instead of being forced to stagger their additions to accommodate the greater 6-foot setback. Unfortunately, that provision was inadvertently omitted in the 2010 comprehensive update to Title 20. In 2017, the California Coastal Commission certified Title 21, which incorporated the same development standards for R-1-6000 properties located within the coastal zone. The proposed amendment would reinstate the omitted provision to the R-1-6000 development standards in both Title 20 and Title 21.

¹ Senate Bills 330 (Chapter 654, Statutes of 2019) and SB 8 (Chapter 161, Statutes of 2021) which established and extended the Housing Crisis Act of 2019, respectively – temporarily prohibits the City from approving a housing development that results in a net loss of residential density until January 1, 2030.

FISCAL IMPACT:

There is no fiscal impact related to this item.

ENVIRONMENTAL REVIEW:

The initiation of zoning and LCP amendments are statutorily exempt from the California Environmental Quality Act (CEQA), pursuant to California Public Resources Code section 21080.17. Section 21080.17 of the Public Resource Code states the CEQA does not apply to the preparation and adoption of a nonconforming use and setback ordinance.

NOTICING:

The Newport Beach 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.

ATTACHMENT:

Attachment A – Resolution No. 2022-29