

CITY OF NEWPORT BEACH
PLANNING COMMISSION STAFF REPORT

May 4, 2017

Agenda Item No. 3

SUBJECT: Local Coastal Program Amendments (PA2017-047, PA2017-046 and PA2013-057)

- Implementation Plan Clean-up (LC2017-002)
- Balboa Village Parking Management Overlay District (LC2017-001)
- Oceanfront Encroachment Program (LC2013-002)

SITE LOCATION: Coastal Zone

APPLICANT: City of Newport Beach

PLANNER: Patrick Alford, Planning Program Manager
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PROJECT SUMMARY

A set of amendments to the City's certified Local Coastal Program (LCP) intended to: 1) cleanup certain procedures and incorporate changes adopted by the City Council after the LCP was submitted to the California Coastal Commission, and 2) incorporate regulations into the LCP previously adopted by the City Council creating the Balboa Village Parking Overlay District and East Ocean Front Encroachment Program.

RECOMMENDATION

- 1) Conduct a public hearing;
- 2) Determine the actions to adopt the amendments related to the LCP Cleanup and the East Oceanfront Encroachment Program are statutorily exempt from California Environmental Quality Act (CEQA) pursuant to Section 15265(a) (1) of the California Code of Regulations, Title 14, and Chapter 3 of the Coastal Act;
- 3) Determine the action to adopt the Balboa Village Parking Management Overlay District amendment categorically exempt from the California Environmental Quality Act ("CEQA") pursuant to Section 15301 (Existing Facilities), 15302 (Replacement or Reconstruction) and 15303 (New Construction) of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3; and
- 4) Adopt Resolution No. ____ recommending to the City Council approval of LC2017-002, LC2017-001 and LC2013-002.

INTRODUCTION

On January 13, 2017, the California Coastal Commission (Coastal Commission) effectively certified the City's LCP and the City assumed coastal development permit-issuing authority on January 30, 2017. The Coastal Commission is the final decision making authority on amendments to the certified LCP.

DISCUSSION

LCP Cleanup Amendments

When the City Council approved the Coastal Commission's suggested LCP modifications in November 2016, it was recognized that certain issues would be revisited through a future LCP update. In addition, there are new land use and property regulations that have been adopted by the City since the LCP was submitted to the Coastal Commission or after the LCP was certified that need to be incorporated into the LCP. Finally, early administration of the LCP revealed some ambiguities that need to be clarified. These revisions are summarized below.

1. New LCP Implementation Plan (IP) Section 21.26.055(V) adds land use and property development regulations for the Lido Villas Planned Community. This planned community did not become effective until after the submission of the LCP to the Coastal Commission for certification.
2. Revisions to IP Section 21.30.015(E)(5) will provide consistent language regarding protective devices in the LCP.
3. Revisions to IP Section 21.30.075(B)(4)(b) will add exceptions to landscape maintenance standards during water supply shortages. The City adopted these exceptions after the submission of the LCP to the Coastal Commission for certification.
4. Revisions to the Coastal Land Use Plan (CLUP) Policy 4.4.2-1 and IP Sections 21.30.060(C) and (D) and 21.60.060 will allow exceptions to height limits in the Shoreline Height Limitation Zone. CLUP Policy 4.4.2-1 calls for the City to maintain the 35-foot height limitation in the Shoreline Height Limitation Zone. The Coastal Commission has subsequently interpreted this policy as an absolute 35-foot height limit without exception. As a result, any development exceeding the 35-foot height in the Shoreline Height Limitation Zone requires an LCP amendment approved by the Coastal Commission, as was the case with the Marina Park lighthouse feature and Lido House Hotel. The City attempted to address this misconception in the original draft of the LCP by including the current Zoning Code height limit exceptions; however, the Coastal Commission modified the language to exclude these exceptions in the Shoreline Height Limitation Zone. The amendments to the CLUP and the IP will restore these exceptions.

In addition, new Section 21.30.060(D)(16) would allow government structures to exceed the height limit subject to the approval of a coastal development permit, if the increase in height is necessary for the facility to function. Examples include lifeguard towers, tsunami-warning sirens and architectural design features that accommodate emergency vehicles or essential equipment.

5. Revisions to IP Section 21.38.040(G)(1) will permit expansion of nonconforming residential structures up to 75 percent with a coastal development permit. The City adopted an increase from 50 percent to 75 percent after the submission of the LCP to the Coastal Commission for certification.
6. Revisions to IP Table 21.50-1 and IP Chapter 21.64 will clarify procedures relating to appeals and calls for review.
7. Revisions to IP Section 21.52.055 (re-numbered as subsection F) would correct an ambiguity as to the number of City Council members required to object to a coastal development permit waiver. The Coastal Commission's suggested modification set the number at "one-third of the City Council" followed by "two members" in parenthesis. Parliamentary procedure requires at least one-third or three members. It is also unclear if this means one-third of all seven Council members or only those members present. Staff believes the simplest approach would be to set the number at two.
8. New IP Section 21.52.090 will allow coastal development permits to include relief from zoning regulations authorized by modifications and variances.
9. New IP Section 21.62.050 will allow the Community Development Director to waive the public hearing requirement for coastal development permits involving minor development. Such waivers are permitted under Section 30624.9 of the Coastal Act if public notice is provided and if no objections to the waiver are received within 15 working days of the sending of the notice.

Balboa Village Parking Management Overlay District

The Balboa Village Parking Management Overlay District (Overlay District) was adopted in early 2015 and it is currently a regulation within of the Zoning Code. The Overlay District was included in the initial drafts of the Implementation Plan and was dropped from the draft at the request of Coastal Staff. The amendment attached to the draft resolution provides language to the Zoning Code.

The Overlay District affects properties within Balboa Village between Adams Street and A Street and does the following:

1. Eliminates Required, Off-street Parking for Most Commercial Uses. The proposed overlay would eliminate required, off-street parking spaces except for Assembly/Meeting Facilities, Commercial Recreation and Entertainment, Cultural Institutions, Marine Services Uses, Residential Uses, Schools, and Visitor

Accommodations. These uses would be required to provide off-street parking consistent with the Zoning Ordinance or they could seek relief through a Conditional Use Permit (CUP) and Coastal Development Permit (CDP) for a parking reduction or an off-site parking agreement. These uses were specifically excluded as they generate more parking demand than typical non-residential uses. Elimination of the parking requirement would potentially allow minor changes in use or small additions to buildings within established floor area limits of the General Plan and LCP. The removal of this regulatory constraint (parking) will not directly lead to intensification of uses as business and property owners will consider a wider array of factors including costs that play a more direct role in decisions to change use, expand a business or redevelop a building. The hope is with the removal of the parking requirement, reinvestment will follow, will help revitalize the area and better serve residents and visitors.

2. **Maintains Existing Off-Street Parking Facilities.** The Overlay District requires the retention of existing parking spaces, unless approved through a CDP. The review process would evaluate whether the subject parking represents a significant reduction in the overall parking supply of Balboa Village to ensure that parking conflicts are avoided and public access is provided.
3. **Allows Shared Use of Parking Facilities.** There are approximately 120 off-street spaces that are dedicated to tenant or customer parking within the proposed district. Making these spaces available for public use when they are not needed by the business is a more efficient utilization of these existing parking resources. The Overlay District would encourage the City to acquire or lease these private parking spaces from willing property owners to address issues of liability and maintenance. The LCP does not allow shared parking although off-site parking is allowed and is subject to a CDP. The proposal would allow shared use of non-residential parking or the leasing of off-site parking subject to the approval of the Community Development Director provided the hours of operation of the various uses do not significantly overlap. The proposal would also allow parking to be shared among different uses within a new, mixed-use building, subject to a CDP.
4. **Suspends Existing and Future In-Lieu Parking Fees.** Currently no business pays parking in-lieu fees. Prior to 2015, nine businesses in Balboa Village paid in-lieu parking fees (\$150 per space per year) prior to the program's suspension. The Overlay District eliminates the possibility for in-lieu parking fees and is appropriate given the recommendation to eliminate required parking for most commercial uses.

The Local Coastal Program, Land Use Plan provides the following relevant policy guidance related to parking management.

- 2.2.5-2. *In the older commercial districts of Balboa Village and Corona del Mar, allow existing commercial buildings that exceed current intensity limits to be renovated, upgraded, or reconstructed to no more than their existing intensity only where a finding can be made that the development will not*

perpetuate or establish a physical impediment to public access to coastal resources, nor adversely impact coastal views or biological resources. Where such development cannot meet current parking standards, such approval may only be granted if the proposed development includes at least as much parking as the existing development, and provides for or facilitates the use of alternative modes of transportation such as ride-sharing, carpools, vanpools, public transit, bicycling or walking to the extent feasible.

Providing off-street parking is one of the most significant constraints to new investment in Balboa Village. It is especially true when buildings are nonconforming to intensity limits. The proposed amendment preserves existing parking while encouraging reinvestment in the business or building while it avoids creating physical impediments to public access or impacts to public views or biological resources. Balboa Village is highly urbanized devoid of significant natural habitats and changes in use would remain limited by the certified land use plan. Public views to Newport Bay and the Pacific Ocean would not be impacted because changes in use or minor expansions would be limited to the existing developed commercial areas and not between the resource and public viewing areas such as the boardwalks, street ends, ferry or beach.

2.9.1-4. Encourage the use of commercial and institutional parking areas for use as public parking during weekends and holidays in conjunction with public transit or shuttles to serve coastal recreational areas.

2.9.3-13. Encourage commercial and institutional development located near beaches and other coastal resources to provide parking for public access during weekends and holidays.

The two policies above encourage shared parking; however, the LCP Implementation Plan [Section 21.40.030(B)] does not allow permanent or long-term shared parking as required parking is restricted to the use it is intended to serve. The proposed amendment contains provisions to allow shared parking within Balboa Village to facilitate the more efficient use of existing off-street parking when it is demonstrated that two or more uses do not have significant overlap in parking demands.

2.9.1-7. The City shall study alternative funding mechanisms to provide a low-cost public transportation system to serve beach areas impacted by traffic during summertime, peak-use periods. The City shall address feasible implementation measures for a summertime shuttle or other transit opportunities in the Implementation Plan of the LCP.

Although not directly part of the overlay, the City has initiated a pilot summertime shuttle program with the assistance of a grant from the Orange County Transportation Authority. The pilot program will serve the Balboa Peninsula from Hoag's lower campus and will include Lido Village, Cannery Village, McFadden Square to Balboa Village. The program will begin in the summer of 2017, and will provide alternative transportation with the goal to increase mobility of visitors and residents and reduce parking demand.

- 2.9.3-2. *Continue to require new development to provide off-street parking sufficient to serve the approved use in order to minimize impacts to public on-street and off-street parking available for coastal access.*
- 2.9.3-3. *Require that all proposed development maintain and enhance public access to the coast by providing adequate parking pursuant to the off-street parking regulations of the Zoning Code in effect as of October 13, 2005.*
- 2.9.3-8. *Continue to require properties with nonconforming parking to provide code-required off-street parking when new uses, alterations or additions result in increased parking demand.*
- 2.9.3-9. *Approve no application for a modification or waiver of off-street parking requirements that are found to impact public parking available for coastal access.*

The four policies above collectively mandate code-required parking when an impact to public access would result by not providing the increased parking required of a changed or expanded use. The proposed overlay district exempts retail, office and restaurant uses from providing parking and it would not extend the exemption to uses that tend to generate higher parking demand that could potentially reduce parking for visitors. Uses that would qualify, such as a retail or office use converting to a restaurant use would not impact public access because the new use would serve residents and visitors already in the area and would not generate new parking demand.

- 2.9.3-14. *Develop parking management programs for coastal zone areas that achieve the following:*

- *Provides adequate, convenient parking for residents, guests, business patrons, and visitors of the coastal zone;*
- *Optimizes use of existing parking spaces;*
- *Provides for existing and future land uses;*
- *Reduces traffic congestion;*
- *Limits adverse parking impacts on user groups;*
- *Provides improved parking information and signage;*
- *Generates reasonable revenues to cover City costs;*
- *Accommodates public transit and alternative modes of transportation.*

The proposed Overlay District is part of the City's effort to revitalize Balboa Village to better serve residents and visitors. The Balboa Village Master plan extensively studied parking in the area and concluded that sufficient parking exists in the area with the exception of the busiest summer weekends. The proposed parking management overlay is one component of the Master Plan parking strategy that includes maintenance of existing public and private parking, shared parking, permit parking where appropriate, alternative transportation, better wayfinding signage, and modified parking pricing

consistent with Policy 2.9.3-14. The current strategy relies upon better utilization of existing spaces before costlier alternatives such as increasing parking supply as a way to improve the range of services provided to residents and visitors of the village.

In conclusion, the proposed Parking Management Overlay District is consistent with the LCP and should assist area businesses and property owners to better serve residents and visitors.

East Ocean Front Encroachment Program

On July 26, 2016, the City Council approved an amendment to the Coastal Land Use Plan and Council Policy L-12 creating the East Ocean Front Encroachment and Removal and Replacement Program (Encroachment Program). Since this approval occurred after the LCP was submitted to the Coastal Commission, the Encroachment Program was not included in the Coastal Implementation Plan. Therefore, this proposed amendment would make the LCP internally consistent. Following the Council's authorization, the Encroachment Permit LCP Amendment will be forwarded to the Coastal Commission.

Public Notice

Pursuant to Section 13515 of the California Code of Regulations, review drafts of the LCP amendments were made available and a Notice of the Availability was distributed on February 28, 2017 and an update was distributed on April 14, 2017.

Notice of this hearing was published in the Daily Pilot. For LC2017-001 and LC2013-002, notice was 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:

Submitted by:



Patrick J. Alford, Planning Manager



Brenda Wisneski, AICP, Deputy Director

ATTACHMENTS

- PC 1 Draft Resolution with Findings
- PC 2 Redline/Strikeout Versions of LCP Amendments
- PC 3 Correspondence

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Attachment No. PC 1

Draft Resolution with Findings

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RESOLUTION NO. #####

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF NEWPORT BEACH RECOMMENDING TO THE CITY COUNCIL OF THE CITY OF NEWPORT BEACH APPROVAL OF LOCAL COASTAL PROGRAM AMENDMENTS NOS. LC2017-002, LC2017-001 and LC2013-002 (PA2017-047, PA2017-046 and PA2013-057)

THE PLANNING COMMISSION OF THE CITY OF NEWPORT BEACH HEREBY FINDS AS FOLLOWS:

SECTION 1. STATEMENT OF FACTS.

1. Section 30500 of the Public Resources Code requires each county and city to prepare a local coastal Program (LCP) for that portion of the coastal zone within its jurisdiction.
2. The California Coastal Commission effectively certified the City of Newport Beach (City) LCP on January 13, 2017, and the City assumed coastal development permit-issuing authority on January 30, 2017.
3. LCP amendments are necessary to address issues that have arisen since the LCP was certified, incorporate land use and property regulations adopted by the City after submission of the LCP to the California Coastal Commission and to clarify LCP administrative procedures.
4. Pursuant to Section 13515 of the California Code of Regulations, review drafts of the LCP amendments were made available and a Notice of the Availability was distributed on February 28, 2017 and an update was distributed on April 14, 2017.
5. A public hearing was held on May 4, 2017, in the 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 the Newport Beach Municipal Code. 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.

Pursuant to the authority and criteria contained in the California Environmental Quality Act (CEQA), LCP Amendment No. LC2017-002 and No. LC2013-002 are statutorily exempt from CEQA pursuant to Section 15265(a)(1) of the California Code of Regulations, Title 14, and Chapter 3 of the Coastal Act. Section 15265(a)(1) exempts local governments from the requirements of preparing an environmental impact report or otherwise complying with CEQA in connection with the adoption of a Local Coastal Program. LCP Amendment No. LC2017-001 is categorically exempt from the CEQA pursuant to Section 15301 (Existing Facilities), 15302 (Replacement or Reconstruction) and 15303 (New Construction) 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. The Amendment itself does not authorize development

that would directly result in physical change to the environment. The Amendment could indirectly lead to changes in use within existing buildings or minor additions to existing buildings. These changes would be subject to existing zoning and LCP regulations that limit the size and use consistent with the General Plan and Coastal Act.

NOW, THEREFORE, BE IT RESOLVED:

1. The Planning Commission of the City of Newport Beach hereby recommends to the City Council of the City of Newport Beach approval of:
 - a. **LCP Clean-up (LC2017-002)** – Amendments to: (i) add new IP Section 21.26.055(V) to add land use and property development regulations for the Lido Villas Planned Community; (ii) revise IP Section 21.30.015(E)(5) to provide consistent language regarding protective devices; (iii) revise IP Section 21.30.075(B)(4)(b) to add exceptions to landscape maintenance standards during water supply shortages; (iv) revise IP Section 21.38.040(G)(1) to permit expansion of nonconforming residential structures up to 75 percent with a coastal development permit; (v) revise CLUP Policy 4.4.2-1 and IP Sections 21.30.060(C) and (D) and 21.60.060 to clarify exceptions to height limits; (vi) revise IP Table 21.50-1 and IP Chapter 21.64 to clarify procedures relating to appeals and calls for review; (vii) revise IP Section 21.52.055 (re-numbered as subsection F) to correct ambiguities relating to the number of City Council members required to object to a coastal development permit waiver; (viii) add new IP Section 21.52.090 to clarify regulations relating to modifications and variances; and (ix) add new IP Section 21.62.050 to allow the Community Development Director to waive public hearing requirements for minor development, as attached in Exhibit A, and incorporated herein by reference.
 - b. **Balboa Village Parking Management Overlay District (LC2017-001)** – Amendment to IP Section 21.28.030 and the Coastal Zoning Map to establish the Balboa Village Parking Management Overlay, as attached in Exhibit B, and incorporated herein by reference.
 - c. **Oceanfront Encroachment Program (LC2013-002)** – Amendments to Coastal Land Use Plan (CLUP) Policy 3.13 and Coastal Implementation Plan (IP) Appendix C to establish an encroachment program for East Oceanfront, as attached in Exhibit C, and incorporated herein by reference.
2. The Planning Commission of the City of Newport Beach hereby certifies the local coastal program and the amendments thereto contained in this resolution are intended to be carried out in a manner fully in conformity with the California Coastal Act. Thus, the Planning Commission recommends the City Council of the City of Newport Beach direct staff to submit the proposed amendments to the California Coastal Commission for review and approval.
3. The certified Local Coastal Program, including the proposed amendments, shall be carried out fully in conformity with the California Coastal Act of 1976.

4. The LCP amendments shall not become effective until approval by the California Coastal Commission and adoption, including any modifications suggested the California Coastal Commission, by resolution and/or ordinance of the City Council of the City of Newport Beach.

PASSED, APPROVED, AND ADOPTED THIS 4TH DAY OF MAY, 2017.

AYES:

NOES:

ABSTAIN:

ABSENT:

BY: _____
Kory Kramer, Chairman

BY: _____
Peter Zak, Secretary

DRAFT

EXHIBIT "A"

LCP Clean-up (LC2017-002)

1. Amend Policy 4.4.2-1 of the City of Newport Beach Coastal Land Use Plan to read as follows:

4.4.2-1. Maintain the 35-foot height limitation in the Shoreline Height Limitation Zone, as graphically depicted on Map 4-3 with exceptions for assembly and meeting facilities, government facilities, architectural features, boat cranes, chimneys and vents, dormers, elevator shafts, flagpoles, landmark buildings, light standards, mechanical equipment, solar equipment, peaks of sloping roofs and other similar fixtures and exterior structures specified in, and regulated by, the certified Local Coastal Program Implementation Plan. In addition, height limits in excess of 35 feet may be established as part of an adopted planned community incorporated into the certified Local Coastal Program Implementation Plan, provided the planned community includes site and design standards that protect public views to and along the ocean and scenic coastal areas, minimize visual impacts and be visually compatible with the character of surrounding areas and, where feasible, restore and enhance visual quality in visually degraded areas.

2. Amend Section 21.26.055 of the Newport Beach Municipal Code to add Section 21.26.055(V) to read as follows, with all other provisions of Section 21.26.055 remaining unchanged:

V. Lido Villas (PC-59).

1. Lot Size: 52,099 square feet (1.2 acres)
2. Density/intensity Limit: twenty-three (23) dwelling units.
3. Setbacks.
 - a. Via Lido: 9 feet (first floor); 4 feet, 5 inches (second floor)
 - b. Via Malaga: 7 feet, 3 inches (first floor); 6 feet, 6 inches (second floor)
 - c. Via Oporto: 6 feet (first floor); 3 feet (second floor)
 - d. North Interior Property Line: 5 feet
4. Height: Thirty-five (35) feet.

3. Amend Section 21.30.010.015(E)(5) and Section 21.30.015(E)(5)(a) of the Newport Beach Municipal Code to include the following text, with all other provisions of Section 21.30.015 remaining unchanged:

5. Waiver of Future Protection. As a condition of approval of new development, the review authority shall require an agreement between an applicant, including its successors and assigns, and the City in favor of the City, in a form approved by the City Attorney, and recorded by the applicant, waiving any potential right to future protection that results in any encroachment seaward of the authorized footprint of the protective device to address situations in the future in which development is threatened with damage or destruction from waves, erosion, storm conditions, landslides, seismic activity, bluff retreat, sea level rise, or other natural hazards. The applicant shall agree to:

- a. Never construct structures or features over the economic life of the development to protect the development that results in any encroachment seaward of the authorized footprint of the protective device; and

4. Amend Section 21.30.060(C) and Section 21.30.060(D) of the Newport Beach Municipal Code to read as follows, with all other provisions of Section 21.30.060(C) and Section 21.30.060(D) remaining unchanged:

C. Increase in Height Limit.

1. Procedure. The height limits established in Part 2 of this Implementation Plan (Coastal Zoning Districts, Allowable Land Uses, and Coastal Zoning District Standards) may be increased within specified areas with approval of a coastal development permit when all applicable findings are met in compliance with subsection (C)(3) of this section (Required Findings). Height limits established as part of an adopted planned community shall not be subject to this subsection (See Section 21.26.055 (Planned Community Coastal Zoning District Development Standards)).

2. Height Limit Areas. The height limit areas shall be as follows:

a. R-A, R-1, R-BI, and R-2 Coastal Zoning Districts Height Limit Area. In this height limit area the base height limit for structures with flat roofs is twenty-four (24) feet (including guardrails and parapet walls) and the base height limit for structures with sloped roofs is twenty-nine (29) feet. The height of a structure may be increased up to a maximum of twenty-eight (28) feet with a flat roof or thirty-three (33) feet with a sloped roof through the approval of a coastal development permit as provided above. This height limit applies in all R-A, R-1, R-BI, and R-2 Coastal Zoning Districts as shown on the Coastal Zoning Map.

b. RM Coastal Zoning District Height Limit Area. In this height limit area the base height limit for structures with flat roofs is twenty-eight (28) feet (including guardrails and parapet walls) and the base height limit for structures with sloped roofs is thirty-three (33) feet. The height of a structure may be increased up to a maximum of thirty-two (32) feet with a flat roof or thirty-seven (37) feet with a sloped roof through the approval of a coastal development permit as provided above. This height limit applies in the RM Coastal Zoning District as shown on the Coastal Zoning Map.

c. Nonresidential, Shoreline Height Limit Area. In this height limit area the base height limit for nonresidential and mixed-use structures with flat roofs is twenty-six (26) feet and the base height limit for structures with sloped roofs is thirty-one (31) feet. The height of a structure may be increased up to a maximum of thirty-five (35) feet with a flat roof or forty (40) feet with a sloped roof through the approval of a coastal development permit application as provided above. The shoreline height limit shall apply to all nonresidential coastal zoning districts and mixed-use coastal zoning districts within the boundaries of the Shoreline Height Limit Area shown on the High Rise and Shoreline Height Limit Areas Map (See Map H-1 in Part 8 (Maps) of this Implementation Plan).

d. Nonresidential, Nonshoreline Height Limit Area. In this height limit area the base height limit for nonresidential and mixed-use structures with flat roofs is thirty-two (32) feet and the base height limit for structures with sloped roofs is thirty-seven (37) feet. The height of a structure may be increased up to a maximum of fifty (50) feet with a flat roof or fifty-five (55) feet with a sloped roof through the approval of a coastal development permit as provided above. This height limit shall apply to all nonresidential, nonshoreline coastal zoning districts and mixed-use coastal zoning districts within its boundaries. The nonresidential, nonshoreline height limit area is identified as all of the area outside the Shoreline Height Limit Area shown on the High Rise and Shoreline Height Limit Areas Map (See Map H-1 in Part 8 (Maps) of this Implementation Plan).

e. High Rise Height Area. In this height limit area, the maximum height limit shall be three hundred (300) feet and no further increase to the maximum allowed height is available. This height limit is applicable to all nonresidential coastal zoning districts within its boundaries as indicated on the High Rise and Shoreline Height Limit Areas Map (See Map H-1 in Part 8 (Maps) of this Implementation Plan).

3. Required Findings. The review authority may approve a coastal development permit to allow an increase in the height of a structure above the base height limit only after first making all of the following findings in addition to the findings required in Section 21.52.015(F):

- a. The project is sited and designed to protect public views to and along the ocean and scenic coastal areas; and
- b. The project is sited and designed to minimize visual impacts and be visually compatible with the character of surrounding areas; and
- c. Where feasible, the project will restore and enhance visual quality in visually degraded areas.

D. Exceptions to Height Limits.

1. Assembly and Meeting Facilities. Structures used as places of worship may be allowed to exceed the height limit subject to the approval of a coastal development permit in compliance with Chapter 21.52 (Coastal Development Review Procedures).

Where more than one structure exists or is proposed for the site, only the principal structure shall be eligible for approval to exceed the maximum height limit.

2. Architectural Features. Architectural features (e.g., cupolas, weathervanes, and other decorative rooftop features) of an open nature, but excluding guardrails, parapet walls, and similar features, may be allowed up to the height limit for a sloped roof. Architectural features with a height greater than that allowed for a sloped roof shall be subject to the approval of a coastal development permit.

3. Boat Cranes. Boat cranes used in conjunction with an approved marine-oriented nonresidential use may be allowed to exceed the maximum height limit up to a maximum operating height of seventy (70) feet, subject to the approval of a coastal development permit.

4. Chimneys and Vents. Chimneys and spark arrestors for fireplaces and roof-mounted vents shall be allowed to exceed the allowed height limits as follows:

- a. Chimneys may extend above the allowed height limit a maximum of two feet or a greater height if required by the City's Building Code;
- b. Spark arrestors may extend above the top of a chimney a maximum of two feet, provided they do not exceed a width of two feet and a length of four feet; and
- c. Roof-mounted vents may extend above the allowed height limit a maximum of twelve (12) inches or a greater height if required by the City's Building Code.

5. Dormers. Dormers may be allowed to exceed the maximum height; provided, that:

- a. The total width of the dormer that exceeds the height limit shall not be greater than thirty-five (35) percent of the length of the side of the structure where the dormer is located;
- b. The roof pitch of the dormer shall not be less than 2:12; and
- c. The peak of the dormer shall not be higher than the peak of the roof on which it is located.

6. Elevator Shafts, Enclosed Stairwells. Elevator shafts and enclosed stairwell housings may exceed the allowed height limit by the minimum height required by the California Building Code, provided they do not exceed thirty (30) square feet in area, unless a larger elevator is required by the California Building Code and/or the Fire Department. In these instances, the area of the elevator or stair housing shall not exceed the minimum size required by the California Building Code and/or the Fire Department. Elevator shafts and enclosed stairwell housings that exceed thirty (30) square feet in area shall have sloped roofs with a minimum 3/12 pitch.

7. Fences, Hedges, and Walls. Section 21.30.040 (Fences, Hedges, Walls, and Retaining Walls) sets forth exceptions to height limits for these structures.

8. Flagpoles.

a. Ground-mounted flagpoles shall be allowed in residential coastal zoning districts to a maximum height of twenty-eight (28) feet and in nonresidential coastal zoning districts to a maximum height of thirty-five (35) feet.

b. Flagpoles mounted on tops of buildings located in nonresidential coastal zoning districts shall be allowed to exceed the maximum height limit by up to twenty (20) feet.

9. **Landmark Buildings.** An alteration or addition to a landmark building shall be exempt from height limits; provided, that structural alterations or additions that exceed the height of the existing structure shall require approval of a coastal development permit in compliance with Chapter 21.52 (Coastal Development Review Procedures) and shall not exceed a maximum of fifty-five (55) feet in height. The coastal development permit may be approved only if all of the following findings are first made in addition to those findings identified in Section 21.52.015(F):

a. The portion of the structural alteration or addition that exceeds the height of the existing structure does not significantly impact public views from public rights-of-way.

b. The portion of the structural alteration or addition that exceeds the height of the existing structure will not be used in a manner that increases the intensity of the use of the landmark building.

c. The allowed height of the landmark building will not be detrimental to the health, safety, peace, comfort, or general welfare of persons residing or working in the neighborhood of the landmark building.

10. **Light Standards.** Light standards may be allowed to exceed maximum height limits, subject to the approval of a coastal development permit in compliance with Chapter 21.52 (Coastal Development Review Procedures). All light fixtures and standards shall comply with the requirements of Section 21.30.070 (Outdoor Lighting).

11. **Mechanical Equipment.**

a. **Nonresidential Coastal Zoning Districts.** In nonresidential coastal zoning districts, roof-mounted mechanical equipment, totaling not more than thirty (30) percent of the total roof area, including required screening devices, shall be allowed to exceed the maximum height limit by up to five feet.

b. **Residential Coastal Zoning Districts.** In residential coastal zoning districts, roof-mounted equipment is not allowed to exceed the maximum height limit for the coastal zoning district.

12. **Solar Equipment.** The height limit regulations in this Implementation Plan do not apply to equipment and panels used for the production of solar energy.

13. **Skylights and Roof Windows.** Skylights or roof windows shall be allowed to exceed the maximum height limit by up to six inches on conforming roofs.

14. Marina Park Lighthouse Feature. A single, up to maximum seventy-three (73) foot tall, faux lighthouse architectural tower, that creates an iconic landmark for the public to identify the site (1600 West Balboa Boulevard) from land and water as a boating safety feature, may be allowed. No further exceptions to the height limit shall be allowed, including, but not limited to, exceptions for architectural features, solar equipment or flagpoles. Any architectural tower that exceeds the thirty-five (35) foot height limit shall not include floor area above the thirty-five (35) foot height limit, but shall house screened communications or emergency equipment, and shall be sited and designed to reduce adverse visual impacts and be compatible with the character of the area by, among other things, incorporating a tapered design with a maximum diameter of thirty-four (34) feet at the base of the tower. Public viewing opportunities shall be provided above the thirty-five (35) feet, as feasible.

15. Lido House Hotel. At the former City Hall, 3300 Newport Boulevard and 475 32nd Street:

- a. At least seventy-five (75) percent of the total area of the site shall be thirty-five (35) feet in height or lower.
- b. Buildings and structures up to fifty-five (55) feet in height with the peaks of sloping roofs and elevator towers up to sixty (60) feet in height provided it is demonstrated that development does not adversely materially impact public views.
- c. Architectural features such as domes, towers, cupolas, spires, and similar structures may be up to sixty-five (65) feet in height.
- d. Buildings and structures over thirty-five (35) feet in height, including architectural features, shall not occupy more than twenty-five (25) percent of the total area of the site.
- e. Buildings and structures over forty-five (45) feet in height, including architectural features, shall not occupy more than fifteen (15) percent of the total area of the site.
- f. With the exception of a fire station, all buildings and structures over thirty-five (35) feet in height, including architectural features, shall be set back a minimum of sixty (60) feet from the Newport Boulevard right-of-way and seventy (70) feet from the 32nd Street right-of-way.
- g. A fire station may be located in its current location and may be up to forty (40) feet in height.
- h. A fire station may include architectural features up to forty-five (45) feet in height to house and screen essential equipment. (Ord. 2016-19 § 1 (Exh. A)(part), 2016)

16. Government Facilities. Structures owned, operated, or occupied by the City or other governmental agency to provide a governmental service to the public may be allowed to exceed the height limit subject to the approval of a coastal development permit in compliance with Chapter 21.52 (Coastal Development Review Procedures) where the increase in height is necessary for the facility to function (e.g., lifeguard

towers, tsunami warning sirens, architectural design features that accommodate emergency vehicles or essential equipment, etc.).

5. Amend Section 21.30.075(B)(4)(b) of the Newport Beach Municipal Code to include the following text, with all other provisions of 21.30.075(B)(4)(b) remaining unchanged:

b. Landscaped areas shall be maintained in a healthy and growing condition and shall receive regular pruning, fertilizing, mowing and trimming. Lawn areas shall be exempt from the healthy and growing condition provision when the City Council has declared a Level Three water supply shortage and all lawn, landscape, and other vegetated areas shall be exempt from the healthy and growing condition requirement when the City Council has declared a Level Four water supply shortage.

6. Amend Section 21.38.040(G)(1) of the Newport Beach Municipal Code to include the following text, with all other provisions of 21.38.040(G)(1) remaining unchanged:

1. Expansion shall be limited to a maximum of fifty (50) percent of the gross floor area of the existing structure; expansion of residential structures may be permitted up to a maximum of seventy-five (75) percent with the approval of a coastal development permit.

7. Amend Table 21.50-1 of Section 21.51.020 of the Newport Beach Municipal Code to read as follows, with all other provisions of Table 21.50-1 of Section 21.51.020 remaining unchanged:

TABLE 21.50-1

REVIEW AUTHORITY

Type of Action	Applicable Code Chapter/Section	Role of Review Authority (1)					
		Director	Zoning Administrator	Harbor Resources Manager	Commission	Council (2)	Coastal Commission
Administrative and Legislative							
Interpretations	Section 21.12.020	Determination (3)			Appeal	Appeal	Appeal (8)
LCP Amendments					Recommend	Decision (4)	Decision (4)
Approvals in Concept	Section 21.52.015(B)(1)(a)		Determination (3)	Determination (5)	Appeal	Appeal	
Waiver for De Minimis Development	Section 21.52.055	Decision (9)				(9)	

Type of Action	Applicable Code Chapter/Section	Role of Review Authority (1)					
		Director	Zoning Administrator	Harbor Resources Manager	Commission	Council (2)	Coastal Commission
Permits and Approvals							
Coastal Development Permits	Section 21.52.015		Decision (6)		Appeal	Appeal	Decision (7) Appeal (2)
Emergency Coastal Development Permits	Section 21.52.025	Decision (3)			Appeal	Appeal	

Notes:

(1) “Recommend” means that the Commission makes a recommendation to the Council; “Determination” and “Decision” mean that the review authority makes the final determination or decision on the matter; “Appeal” means that the review authority may consider and decide upon appeals to the decision of a previous decision making body, in compliance with Chapter 21.64 (Appeals and Calls for Review).

(2) The Council is the final review authority for all applications in the City. A decision by the City on a coastal development permit application within the appeal areas depicted on the Post-LCP Certification Permit and Appeal Jurisdiction Map or a project that constitutes a major public works project or energy facility may be appealed to the Coastal Commission in compliance with Chapter 21.64 (Appeals and Calls for Review).

(3) The Director or Zoning Administrator may defer action and refer the request to the Commission for consideration and final action.

(4) The California Coastal Commission is the final decision making authority on amendments to the Local Coastal Program.

(5) For development located on tidelands or submerged lands that did not involve a discretionary action authorized by this Implementation Plan where the authority is specifically assigned to the Council, Commission, Director, or Zoning Administrator.

(6) If the project also requires another discretionary approval (e.g., conditional use permit, variance, etc.), then the applicable review authority shall be the authority for the other discretionary approval.

(7) All development on tidelands, submerged lands, and public trust lands as described in California Public Resources Code Section 30519(b) and in deferred certification areas designated by the Local Coastal Program shall require a permit issued by the Coastal Commission in accordance with procedures specified by the Coastal Commission, in addition to other permits or approvals required by the City. This provision does not include those tidelands, submerged lands, and public trust lands where permit authority may be delegated to the City at a future date if determined by the Coastal Commission to be filled and developed and located within an area committed to urban uses pursuant to Coastal Act Section 30613.

(8) Appeal procedure for interpretations shall only apply to interpretations made by the Director on the determination of whether a development is categorically excluded, exempt, nonappealable or appealable to the Coastal Commission according to the dispute resolution process in compliance with Section 21.50.050(B).

(9) A waiver shall not take effect until after the Director makes his/her report to the City Council. If one-third of the City Council (two members) so request, such issuance shall not be effective and, instead, the application for a coastal development permit shall be processed in accordance with the coastal development permit provisions of Chapter 21.52 (Coastal Development Permit Review Procedures).

8. Amend Chapter 21.52 of the Newport Beach Municipal Code add Section 21.52.055 to read as follows, with all other provisions of Chapter 21.52 remaining unchanged:

F. Report to the City Council. The Director shall report to the City Council at its next available public meeting those projects for which waivers are proposed, with sufficient description to give notice of the proposed development to the City Council. A list of waivers issued by the Director shall be available for public inspection at the public counter of the Department and at the City Council meeting during which any waivers are reported. A waiver shall not take effect until after the Director makes his/her report to the City Council. If two members of the City Council so request, such issuance shall not be effective and, instead, the application for a coastal development permit shall be processed in accordance with the coastal development permit provisions of this chapter.

9. Amend Chapter 21.52 of the Newport Beach Municipal Code add Section 21.52.090 to read as follows, with all other provisions of Chapter 21.52 remaining unchanged:

21.52.090 Relief from Implementation Plan Development Standards.

A. Purpose. The purpose of this section is to provide relief from the development standards of this Implementation Plan when so doing is consistent with the purposes of the certified Local Coastal Program and will not have an adverse effect, either individually or cumulatively, on coastal resources.

B. Applicability. Any development standard of this Implementation Plan may be modified or waived through the approval of a coastal development permit, except: allowed and prohibited uses; residential density; nonresidential floor area ratios; specific prohibitions (for example, prohibitions intended to protect coastal resources, prohibited barriers to public access, limits on the use of protective structures, prohibited materials, prohibited plant species, prohibited signs, etc.); or procedural requirements.

1. Modifications. Minor deviations for the following development standards may be permitted when practical difficulties associated with the property and that the strict application of the Implementation Plan results in physical hardships:

- a. Height modifications from exceptions identified in Part 3 of this Title (Site Planning and Development Standards). The following modifications are limited to not more than a ten (10) percent deviation from the standard being modified.
 - i. Chimneys, rooftop architectural features, and vents in excess of the exception to the allowed height limits identified in Part 3 of this Title (Site Planning and Development Standards);
 - ii. Flag poles in excess of the exception to the allowed height limits; and
 - iii. Heights of fences, hedges, or walls (except retaining walls).
- b. Setback Modifications. The following modifications are limited to not more than a ten (10) percent deviation from the standard being modified.
 - i. Encroachments in front, side, or rear setback areas while still maintaining the minimum clearances required by Section 21.30.110 (Setback Regulations and Exceptions). Exceptions include the following:
 - (A) Modifications shall not be allowed for encroachments into alley setbacks; and
 - (B) Modifications shall not be allowed for encroachments into bluff setback areas.
 - ii. Structural appurtenances or projections that encroach into front, side, or rear setback areas.
- c. Other Modifications. Except as otherwise provided, the following modifications are not limited in the amount of deviation from the standard being modified:

- i. Distances between structures located on the same lot;
 - ii. Landscaping standards in compliance with Chapter 21.30.075 (Landscaping), except for subsection (B)(3);
 - iii. Size or location of parking spaces, access to parking spaces, and landscaping within parking areas;
 - v. Increase in allowed floor area of additions for uses that have nonconforming parking;
 - vi. Increase in allowed height, number, and area of signs;
 - vii. Increase in the allowed height of retaining walls; and
 - viii. Increase in allowed floor area of additions for nonconforming residential structures as identified in Section 21.38.040 (Nonconforming Structures).
 2. Variances. Waiver or modification of certain standards of this Implementation Plan may be permitted 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 coastal zoning district.
 3. Modifications and Waivers Authorized Elsewhere. This section is not applicable when a modification or waiver to a development standard is specifically authorized elsewhere in this Implementation Plan.
- C. Findings and Decision. The review authority may approve or conditionally approve a modification or waiver to a development standard of this Implementation Plan only after first making all of the following findings as applicable:

1. The granting of the modification is necessary due practical difficulties associated with the property and that the strict application of the Implementation Plan results in physical hardships; or
2. The granting of the variance is necessary due to special circumstances applicable to the property, including location, shape, size, surroundings, topography, and/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 coastal zoning district; and
3. The modification or variance complies with the findings required to approve a coastal development permit in Section 21.52.015(F);
4. The modification or variance will not have an adverse effect, either individually or cumulatively, on coastal resources; and

The granting of the modification or variance will not be contrary to, or in conflict with, the purpose of this Implementation Plan, nor to the applicable policies of the certified Local Coastal Program.

10. Amend Section 21.64.050(A) of the Newport Beach Municipal Code to read as follows, with all other provisions of Section 21.64.050(A) remaining unchanged:

A. Director. Interpretations and decisions of the Director may be appealed or called for review to the Planning Commission, with the exception of waivers for de minimis development, which are reported to the City Council pursuant to Section 21.52.055(E).

11. Amend Section 21.64.035(C)(2) of the Newport Beach Municipal Code to read as follows, with all other provisions of Section 21.64.035(C)(2) remaining unchanged:

2. An appeal of a City decision was filed by two members of the Coastal Commission in compliance with Public Resources Code Section 30625. Notice of a Coastal Commissioner's appeal shall be transmitted to the City in compliance with Title 14 California Code of Regulations Section 13111(d). The Director may transmit the Coastal Commissioners' appeal to the local appellate body (which considers appeals from the review authority that rendered the final decisions subject to the Coastal Commissioners' appeal), and the Coastal Commissioners' appeal may be suspended pending a decision on the merits by that City appellate body. If the final action by an appellate body modifies or reverses the previous decision, the Coastal Commissioners appeal shall be required to file a new appeal from that decision.

12. Amend Chapter 21.62 of the Newport Beach Municipal Code add Section 21.62.050 to read as follows, with all other provisions of Chapter 21.62 remaining unchanged:

A. Purpose. The purpose of this section is to provide a process, in accordance with Section 30624.9 of the Coastal Act, through which the public hearing requirement may be waived for certain minor developments that require coastal development permits.

B. Minor Development Defined. For purposes of this section, "minor development" means a development that the Director determines satisfies all of the following requirements:

1. Is consistent with the certified Local Coastal Program;
2. Requires no discretionary approvals other than a coastal development permit; and
3. Has no adverse effect either individually or cumulatively on coastal resources or public access to the shoreline or along the coast.

C. Procedure. The Director may waive the requirement for a public hearing on a Coastal Development Permit application for a minor development, if all of the following occur:

1. Notice is mailed or delivered to all persons and agencies required to be notified under Section 21.62.020(B)(2). The notice shall contain and shall contain all of the information required in Section 21.62.020(A). In addition, the notice of waiver of public hearing for the pending application shall contain the following:

- a. A statement that a public hearing will be held upon the written request of any person provided that such written request is received by the Department within fifteen (15) working days from the date of sending the notice; and

- b. For proposed development within the appealable area, a statement that failure by a person to submit a written request for a public hearing may result in the loss of that person's ability to appeal to the Coastal Commission any action taken by the City on a coastal development permit application in this matter.

2. No request for public hearing is received by the Department within fifteen (15) working days from the date of sending the notice pursuant to subsection (1) of this section.

3. Requests for hearing must be made in writing to the Department. Upon receipt of a request for a hearing, the Department shall schedule the matter for a public hearing and issue notice of such hearing consistent with the provisions of this Chapter.

EXHIBIT “B”

Balboa Village Parking Management Overlay District (LC2017-001)

1. Amend Section 21.28.030 of the Newport Beach Municipal Code to add Section 21.28.030(E) to read as follows, with all other provisions of Section 21.28.030(E) remaining unchanged:

E. Parking Management Overlay Districts Established. The parking management districts identified in this section and depicted in the referenced maps exhibits adopted in Part 8 of this Implementation Plan.

1. Balboa Village Parking Management Overlay District applies to all property located within Balboa Village between the Pacific Ocean, A Street, Newport Bay, and Adams Street and depicted in Parking Management Overlay Map PM-1.
 - a. Purpose. The purpose of the Balboa Village Parking Management Overlay District is to identify existing and planned parking facilities and establish parking programs to adequately serve the parking needs for Balboa Village. Additionally, the District establishes modified parking requirements for properties that differ from the basic requirements of Chapter 21.40 (Off-Street Parking).
 - b. Existing Parking Facilities. The City maintains six public parking lots within or near the District: 1) A Street lot, 2) B Street lot, 3) Washington Street lot, 4) Palm Street lot, 5) Balboa Metered lot, and 6) Balboa Pier lot. In addition, the City provides and maintains a small number of on-street parking spaces along Balboa Boulevard, Palm Street, and Bay Avenue. The City intends to maintain public parking facilities; however, should the need arise, the City may modify, add, or remove parking spaces to ensure safe and efficient operations and meet parking demand.
 - c. Planned Parking Facilities. Due to the high cost of land acquisition and construction and the underutilization of existing parking, additional off-street parking facilities are not necessary to meet the demand of existing uses. Parking demand shall be monitored and evaluated by the City to determine whether additional District parking is necessary, economical, appropriate, and desirable. The City may acquire or lease parking facilities to make them available to the public.
 - d. Required Off-Street Parking
 - i. Non-residential Uses. No off-street parking shall be required for any new non-residential use or intensification of uses except the following uses as defined by the Implementation Plan: Assembly/Meeting Facilities, Commercial Recreation and Entertainment, Cultural Institutions, all Marine Services Uses, Schools, and Visitor Accommodations. Uses that require off-street parking shall provide said spaces in accordance with Chapters 21.40 (Off-Street Parking) and 21.38 (Nonconforming Uses and Structures).

- ii. Residential Uses. Residential uses shall provide parking in accordance with Chapters 21.40 (Off-Street Parking) and 21.38 (Nonconforming Uses and Structures).
- iii. Existing off-street parking spaces shall be preserved unless the elimination of spaces is authorized by the approval of a coastal development permit application by the Zoning Administrator.
- iv. Shared Parking for Non-residential Uses. Notwithstanding the Implementation Plan requirement that off-street parking be reserved for the use it serves, the shared use of parking is allowed and encouraged. Shared parking shall be subject to the following requirements:
 - (A) Required Off-street Parking. When required, parking for non-residential uses may be satisfied by leasing nearby parking spaces at off-site locations within 1,250 feet of the parcel it serves. Development on multiple parcels with reciprocal access agreements is considered one site for parking purposes. If the spaces are required or otherwise leased to other uses, the hours of operation shall not significantly overlap. The distance between the parking facility and the use it serves shall be measured along public walkways from the closest portion of the parking facility to the main entrance of the use. The leasing of off-site parking to satisfy required parking shall be maintained in perpetuity when the use requires it and may only be discontinued if the use is discontinued.
 - (B) Excess Parking. Parking that is not necessary to satisfy off-street parking requirements may be leased to other uses or made available to the general public.
 - (C) Parking within Mixed-use Buildings. Parking for different uses within a new, mixed-use building may be shared subject to the review and approval of a coastal development permit application.
 - (D) The reduction of required parking associated with a shared parking arrangement shall be subject to the review and approval of the Director when in compliance with the following conditions:
 - (1) Shared parking spaces are within 1,250 feet as described in Section 21.28.030.D.5.d.1;
 - (2) There is no significant overlap in the hours of operation or peak parking demand of the uses sharing the parking;
 - (3) The use of the shared parking facility will not create traffic hazards or impacts to surrounding uses;

(4) The property owners involved in the shared parking facilities provide a binding agreement or other legal instrument assuring the joint use of the parking facilities subject to the satisfaction of the Director;

(5) The Director may require the preparation and implementation of a parking management program to address potential parking conflicts.

(E) Section 20.41.110.A.2 (Joint Use of Parking Facilities) does not apply within the Balboa Village Parking Management Overlay District.

v. Private Parking Facilities Available to the General Public. Non-residential, off-street parking facilities are encouraged to be made available to the general public, even if the parking facility is required for existing developments. Subject to City Council review and approval, the City may enter into an agreement with the property owner for the use and/or management of the parking facility. Allowing general public access to private off-street parking facilities shall not affect the property's conformance with its required off-street parking. The agreement should at a minimum address hours of availability for use by the general public, signage, maintenance, duration of agreement, and liability.

e. Suspension of In-lieu Parking. Uses within the Balboa Village Parking Management Overlay District shall not be eligible for in-lieu parking pursuant to Section 21.40.130 (In-Lieu Parking Fee).

f. Voluntary Employee Parking. The City will develop and implement a voluntary Balboa Village Employee Permit Program that will include reduced fees and designated parking locations for employee parking during specified hours.

2. Amend the Coastal Zoning Map of Title 21 of the Newport Beach Municipal Code to include the "PM-1" overlay district symbol to Balboa Village area as shown as Exhibit B-1 with all other provisions of the Coastal Zoning Map remaining unchanged.

3. Amend Chapter 21.80 of the Newport Beach Municipal Code to and Map PM-1 as shown as Exhibit B-2 and add Section 21.80.035 to read as follows, with all other provisions of Chapter 21.80 remaining unchanged:

21.80.035 – Parking Management Overlay District Maps.

PM-1 – Balboa Village Parking Management Overlay District

EXHIBIT “C”**Oceanfront Encroachment Program (LC2013-002)**

1. Amend Title 21, Appendix C, Section (B) of the Newport Beach Municipal Code add Section (B)(4) to read as follows, with all other provisions of Section (B) remaining unchanged:
 4. The owner of any oceanfront residential parcel between and including 1400 East Ocean Front and Channel Road may install improvements on the oceanside of the parcel up to a maximum of 15 feet oceanward of the private property line and within an oceanward prolongation of the property lines on the side of the parcel.
2. Amend Title 21, Appendix C, Section (C)(2) of the Newport Beach Municipal Code to read as follows, with all other provisions of Section (C) remaining unchanged:
 2. Encroachments and improvements are prohibited oceanward of any ocean front parcel from a point 250 feet southeast of E Street to and including 107 G Street, with the exception of landscaping trees existing prior to October 22, 1991, and groundcover.
3. Amend Title 21, Appendix C, Section (M)(3) of the Newport Beach Municipal Code to read as follows, with all other provisions of Section (M) remaining unchanged:
 3. Subsequent to the reconstruction of all West Newport street ends, at least eighty-five percent (85%) of the fees generated by encroachments will be used for the construction of improvements which directly benefit the beach going public such as parking spaces, transportation alternatives, rest rooms, vertical or lateral walkways along the beach and similar projects.

Attachment No. PC 2

Redline/Strikeout Versions of LCP Amendments

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4.4.2-1.

Maintain the 35-foot height limitation in the Shoreline Height Limitation Zone, as graphically depicted on Map 4-3 with exceptions for assembly and meeting facilities, government facilities, architectural features, boat cranes, chimneys and vents, dormers, elevator shafts, flagpoles, landmark buildings, light standards, mechanical equipment, solar equipment, peaks of sloping roofs and other similar fixtures and exterior structures specified in, and regulated by, the certified Local Coastal Program Implementation Plan. In addition, height limits in excess of 35 feet may be established as part of an adopted planned community incorporated into the certified Local Coastal Program Implementation Plan, provided the planned community includes site and design standards that protect public views to and along the ocean and scenic coastal areas, minimize visual impacts and be visually compatible with the character of surrounding areas and, where feasible, restore and enhance visual quality in visually degraded areas.except for the following sites:

- ~~A. Marina Park located at 1600 West Balboa Boulevard: A single, up to maximum 73-foot tall faux lighthouse architectural tower, that creates an iconic landmark for the public to identify the site from land and water as a boating safety feature, may be allowed. No further exceptions to the height limit shall be allowed, including but not limited to, exceptions for architectural features, solar equipment or flag poles. Any architectural tower that exceeds the 35-foot height limit shall not include floor area above the 35-foot height limit, but shall house screened communications or emergency equipment, and shall be sited and designed to reduce adverse visual impacts and be compatible with the character of the area by among other things, incorporating a tapered design with a maximum diameter of 34-feet at the base of the tower. Public viewing opportunities shall be provided above the 35-feet, as feasible. (Resolution 2013-44)~~
- ~~B. Former City Hall Complex at 3300 Newport Blvd and 475 32nd Street (the site):~~
- ~~• At least 75% of the total area of the site shall be 35 feet in height or lower.~~
 - ~~• Buildings and structures up to 55 feet in height with the peaks of sloping roofs and elevator towers up to 60 feet in height, provided it is demonstrated that development does not adversely impact public views.~~
 - ~~• Architectural features such as domes, towers, cupolas, spires, and similar structures may be up to 65 feet in height.~~
 - ~~• Buildings and structures over 35 feet in height, including architectural features, shall not occupy more than 25 percent of the total area of the site.~~
 - ~~• Buildings and structures over 45 feet in height, architectural features, shall not occupy more than 15 percent of the total area of the site.~~

- ~~With the exception of a fire station, all buildings and structures over 35 feet in height, including architectural features, shall be setback a minimum of 60 feet from the Newport Boulevard right-of-way and 70 feet from the 32nd Street right-of-way.~~
- ~~A fire station may be located in its current location and may be up to 40 feet in height. A fire station may include architectural features up to 45 feet in height to house and screen essential equipment.~~
- ~~The purpose of allowing limited exceptions to the 35-foot height limit on this site is to promote vertical clustering resulting in increased publically accessible on-site open space and architectural diversity while protecting existing coastal views and providing new coastal view opportunities. (Resolution 2016-29)~~

Exceptions.

- a. Hedges along the perimeter wall along Bayside Drive shall be limited to twelve (12) feet in height.
 - b. Open-work walls and fences that are ninety (90) percent of the wall plane open (wrought iron in combination with pilaster) up to a maximum of six feet in height are permitted at the side property line of each waterfront lot (Lots 3-15) and extending into the rear yard from the setback line to the waterfront property line.
 - c. Walls that extend in the same plane as the front (driveway street-side) wall of a dwelling into a required side yard for purposes of enhancing the entrance of an entry courtyard may be up to twelve (12) feet in height.
7. **Parking.** A minimum of two garage parking spaces shall be provided per dwelling. In addition, a minimum of two parking spaces (side by side, not tandem) shall be provided on the driveway to each garage of each single-family dwelling. A total of nineteen (19) curbside parking spaces shall be provided on the street that provides access to each buildable lot. (Ord. 2016-19 § 9 (Exh. A)(part), 2016)

V. Lido Villas (PC-59).

1. Lot Size: 52,099 square feet (1.2 acres)
2. Density/intensity Limit: twenty-three (23) dwelling units.
3. Setbacks.
 - a. Via Lido: 9 feet (first floor); 4 feet, 5 inches (second floor)
 - b. Via Malaga: 7 feet, 3 inches (first floor); 6 feet, 6 inches (second floor)
 - c. Via Oporto: 6 feet (first floor); 3 feet (second floor)
 - d. North Interior Property Line: 5 feet
4. Height: Thirty-five (35) feet.

21.26.065 Planned Communities without Development Plans.

A. Lido Peninsula (PC-6). Land uses and development limits are established by use permits and the policies of the Coastal Land Use Plan.

1. 630-670 Lido Park Drive (CM Area).
 - a. Land Use. Land uses allowed within the CM Coastal Zoning District (Table 21.20-1).
 - b. Intensity. Floor area to land area ratio of 0.5.
2. Cannery Village—700 Lido Park Drive (RM Area).
 - a. Land Use. Land uses allowed within the RM Coastal Zoning District (Table 21.18-1).
 - b. Density. Thirty-four (34) dwelling units.
3. Lido Peninsula Resort (RM Area).
 - a. Land Use. Land uses allowed within the RM Coastal Zoning District (Table 21.18-1).
 - b. Density. Two hundred seventeen (217) dwelling units.
4. Lido Peninsula Commercial (CM Area).

- e. An analysis of the following factors:
 - i. Slope geometry and site topography, extending the surveying work beyond the site as needed to depict unusual geomorphic conditions that might affect the site;
 - ii. Identification of the coastal bluff or canyon edge, where applicable;
 - iii. Historic, current, and foreseeable erosion, including changes in shore configuration and sand transport;
 - iv. Geologic conditions (e.g., soil, sediment, rock types and characteristics, etc.) in addition to structural features (e.g., bedding, joints, faults, etc.). The analysis shall include slope stability/failure analyses (i.e., analyses of the possibility that bluff retreat may occur suddenly and catastrophically through slope failure) and erosion rate estimates (i.e., estimates of the possible rate at which bluff retreat may occur over time);
 - v. Evidence of past or potential landslide conditions, the implications of the condition for the proposed development, and the potential effects of the development on landslide activity;
 - vi. Impact of construction activity on the stability of the site and adjacent area;
 - vii. Ground and surface water conditions and variations, including hydrologic changes caused by the development;
 - viii. The erosion potential of the site and mitigation measures to be used to ensure minimized erosion problems before and after proposed construction (i.e., landscape and drainage design);
 - ix. Effects of marine erosion factoring in long-term (seventy-five (75) year) coastal bluff retreat projections for sea level rise;
 - x. Potential effects of seismic forces resulting from a maximum credible earthquake;
 - xi. Any other factors that might affect bluff, canyon, or shoreline stability; and
 - xii. Identification of the geologic setback line (GSL) necessary to assure a 1.5 factor of safety (static) and 1.1 factor (pseudostatic) for seventy-five (75) years without reliance upon any deepened foundation system (e.g., caissons).

5. Waiver of Future Protection. As a condition of approval of new development, the review authority shall require an agreement between an applicant, including its successors and assigns, and the City in favor of the City, in a form approved by the City Attorney, and recorded by the applicant, waiving any potential right to future protection that results in any encroachment seaward of the authorized footprint of the protective device to address situations in the future in which development is threatened with damage or destruction from waves, erosion, storm conditions, landslides, seismic activity, bluff retreat, sea level rise, or other natural hazards. The applicant shall agree to:

- a. Never construct structures or features over the economic life of the development to protect the development that results in any encroachment seaward of the authorized footprint of the protective device; and
- b. Remove and relocate all portions of a development, including associated fallen debris at the base of a bluff or canyon and/or State tidelands, if a government agency determines that the development is hazardous or a threat to the public.

6. Fuel Modification.

- a. Applicability. This subsection provides standards for development within and adjacent to wildland fire hazard areas.

a. Top of Slab Elevation for Interior Living Areas. The minimum required top of slab elevation for interior living areas of all new development within flood hazard areas shall be as established by the Flood Insurance Rate Maps recognized by the Building Division as part of flood safety requirements and maps adopted by the Council. Notwithstanding the building elevations established by the Flood Insurance Rate Maps, the minimum required top of slab elevation for interior living areas of all new structures/new development shall be at least 9.00 (NAVD 88).

i. Sea Level Rise. The minimum required top of slab elevation for interior living areas may be increased as necessary to minimize hazards associated with long-term sea level rise over the economic life of the structure identified in the coastal hazards report pursuant to Section 21.30.015(E)(2). To address the uncertainty inherent in sea level rise projections (see Appendix A), adjustments to the top of slab elevation may be based on a moderate sea level rise scenario within the projected range of possible sea level rise amounts identified by the current best available science, so long as the structure's design can, if necessary, accommodate future adaptation measures for the high sea level rise scenario that comply with the certified LCP and do not result in coastal resource impacts.

b. Height Measurement. The height of a principal structure shall be measured from the top of slab elevation.

c. Accessory Structures.

i. The height of accessory structures, except fences, hedges, walls, and retaining walls (see Section 21.30.040) shall be measured from existing grade of the lot prior to construction.

ii. Exception: When a new principal building is required to have the top of slab constructed at elevation 9.00 NAVD 88 and when the grade surrounding the new principal building is proposed to be increased, the height of accessory structures shall be measured from the proposed finished grade.

4. Structures on Ocean Boulevard. New structures and additions/changes to existing structures on the bluff side of Ocean Boulevard in Corona del Mar shall not be constructed to a height greater than the elevation of the adjacent curb. The top of curb height limit shall be established by a plane created by the extension of the top of curb line across each lot.

C. Increase in Height Limit.

1. Procedure. The height limits established in Part 2 of this Implementation Plan (Coastal Zoning Districts, Allowable Land Uses, and Coastal Zoning District Standards) may be increased within specified areas with approval of a coastal development permit when all applicable findings are met in compliance with subsection (C)(3) of this section (Required Findings). ~~No increase above thirty five (35) feet may be authorized for commercial, mixed use and residential structures within the Shoreline Height Limitation Zone, except as specified for the Lido House Hotel and Marina Park Lighthouse Feature identified in subsection (D) of this section, Exceptions to Height Limits.~~ Height limits established as part of an adopted planned community shall not be subject to this subsection (See Section 21.26.055 (Planned Community Coastal Zoning District Development Standards)).

2. Height Limit Areas. The height limit areas shall be as follows:

a. R-A, R-1, R-BI, and R-2 Coastal Zoning Districts Height Limit Area. In this height limit area the base height limit for structures with flat roofs is twenty-four (24) feet (including guardrails and parapet walls) and the base height limit for structures with sloped roofs is twenty-nine (29) feet. The height of a structure may be increased up to a maximum of twenty-eight (28) feet with a flat roof or thirty-three (33) feet with a sloped roof through the approval of a coastal development permit as provided above. This height limit applies in all R-A, R-1, R-BI, and R-2 Coastal Zoning Districts as shown on the Coastal Zoning Map.

b. RM Coastal Zoning District Height Limit Area. In this height limit area the base height limit for structures with flat roofs is twenty-eight (28) feet (including guardrails and parapet walls) and the base

height limit for structures with sloped roofs is thirty-three (33) feet. The height of a structure may be increased up to a maximum of thirty-two (32) feet with a flat roof or ~~thirty-five (35) feet in the Shoreline Height Limitation Zone and~~ thirty-seven (37) feet ~~outside the Shoreline Height Limitation Zone~~ with a sloped roof through the approval of a coastal development permit as provided above. This height limit applies in the RM Coastal Zoning District as shown on the Coastal Zoning Map.

c. Nonresidential, Shoreline Height Limit Area. In this height limit area the base height limit for nonresidential and mixed-use structures with flat roofs is twenty-six (26) feet and the base height limit for structures with sloped roofs is thirty-one (31) feet. The height of a structure may be increased up to a maximum of thirty-five (35) feet with a flat roof or ~~outside the Shoreline Height Limitation Zone,~~ forty (40) feet with a sloped roof through the approval of a coastal development permit application as provided above. The shoreline height limit shall apply to all nonresidential coastal zoning districts and mixed-use coastal zoning districts within the boundaries of the Shoreline Height Limit Area shown on the High Rise and Shoreline Height Limit Areas Map (See Map H-1 in Part 8 (Maps) of this Implementation Plan).

d. Nonresidential, Nonshoreline Height Limit Area. In this height limit area the base height limit for nonresidential and mixed-use structures with flat roofs is thirty-two (32) feet and the base height limit for structures with sloped roofs is thirty-seven (37) feet. The height of a structure may be increased up to a maximum of fifty (50) feet with a flat roof or fifty-five (55) feet with a sloped roof through the approval of a coastal development permit as provided above. This height limit shall apply to all nonresidential, nonshoreline coastal zoning districts and mixed-use coastal zoning districts within its boundaries. The nonresidential, nonshoreline height limit area is identified as all of the area outside the Shoreline Height Limit Area shown on the High Rise and Shoreline Height Limit Areas Map (See Map H-1 in Part 8 (Maps) of this Implementation Plan).

e. High Rise Height Area. In this height limit area, the maximum height limit shall be three hundred (300) feet and no further increase to the maximum allowed height is available. This height limit is applicable to all nonresidential coastal zoning districts within its boundaries as indicated on the High Rise and Shoreline Height Limit Areas Map (See Map H-1 in Part 8 (Maps) of this Implementation Plan).

3. Required Findings. The review authority may approve a coastal development permit to allow an increase in the height of a structure above the base height limit only after first making all of the following findings in addition to the findings required in Section 21.52.015(F):

a. The project is sited and designed to protect public views to and along the ocean and scenic coastal areas; and

b. The project is sited and designed to minimize visual impacts and be visually compatible with the character of surrounding areas; and

c. Where feasible, the project will restore and enhance visual quality in visually degraded areas ~~; and~~

~~d. Where the project is located in the Shoreline Height Limitation Zone, the project will not exceed thirty-five (35) feet.~~

D. Exceptions to Height Limits. ~~Except as specified in subsections (D)(3), (14) and (15) of this section, the following apply everywhere other than within the Shoreline Height Limitation Zone:~~

1. Assembly and Meeting Facilities. Structures used as places of worship may be allowed to exceed the height limit subject to the approval of a coastal development permit in compliance with Chapter 21.52 (Coastal Development Review Procedures). Where more than one structure exists or is proposed for the site, only the principal structure shall be eligible for approval to exceed the maximum height limit.

2. Architectural Features. Architectural features (e.g., cupolas, weathervanes, and other decorative rooftop features) of an open nature, but excluding guardrails, parapet walls, and similar features, may be allowed up to the height limit for a sloped roof. Architectural features with a height greater than that allowed for a sloped roof shall be subject to the approval of a coastal development permit.

h. A fire station may include architectural features up to forty-five (45) feet in height to house and screen essential equipment. (Ord. 2016-19 § 1 (Exh. A)(part), 2016)

i. Government Facilities. Structures owned, operated, or occupied by the City or other governmental agency to provide a governmental service to the public may be allowed to exceed the height limit subject to the approval of a coastal development permit in compliance with Chapter 21.52 (Coastal Development Review Procedures) where the increase in height is necessary for the facility to function (e.g., lifeguard towers, tsunami warning sirens, architectural design features that accommodate emergency vehicles or essential equipment, etc.).

21.30.065 Signs.

A. Applicability. This section provides regulations for rooftop and freestanding signs.

B. Prohibited Sign Types. The following signs and sign types shall be prohibited throughout all coastal zoning districts of the City:

1. Pole signs.
2. Roof signs.

C. Billboard Policy. The City completely prohibits the construction, erection or use of billboards, other than those that legally exist in the City, or for which a valid permit has been issued and has not expired, as of the date on which this provision was first adopted. Permits shall not be issued for billboards that violate this policy, and the City will take immediate abatement action against billboards constructed or maintained in violation of this policy. The Council affirmatively declares that it would have adopted this billboard policy even if it were the only provision in this chapter. The Council intends for this billboard policy to be severable and separately enforceable even if other provisions of this chapter may be declared, by a court of competent jurisdiction, to be unconstitutional, invalid, or unenforceable.

D. Standards for Freestanding Signs. Table 21.30-2 provides regulations for permanent freestanding signs.

**Table 21.30-2
Freestanding Signs**

Sign Class	Allowed Sign Types	Maximum Number	Maximum Sign Area	Maximum Sign Height	Location Requirements	Lighting Allowed	Additional Requirements
RESIDENTIAL COASTAL ZONING DISTRICTS							
Identification sign Multi-unit uses	Ground sign	1 per multi-unit use	12 sq. ft.	Below eave of roof or parapet for wall sign	Near main entrance	Yes	Cabinet signs not allowed
Residential community identification signs	Ground	2 per primary entrance	40 sq. ft. total	6 ft.	At primary entrances to residential community	Indirect only	Cabinet signs not allowed
Signs for allowed nonresidential uses	Ground sign	1 per use	12 sq. ft.	Below eave of roof or parapet for wall sign	Near main entrance	Yes	Cabinet signs not allowed
COMMERCIAL AND INDUSTRIAL COASTAL ZONING DISTRICTS							
On-site sign	Freestanding signs. Permitted on sites with minimum 50 ft. of frontage.	1 freestanding sign allowed per site. May be used in combination with other allowed building signs.	1 sq. ft. of sign area per lineal foot of primary street frontage, 75 sq. ft. max. per sign.	Not to exceed 20 ft. in height for pylon signs, or 8 ft. maximum height and 6 ft. maximum	Located on street frontage only. At least 15 feet from any building sign and 50 feet from any freestanding	Yes	

- i. Environmentally Sensitive Habitat Areas (ESHA) and ESHA buffer areas.
 - ii. Fuel modification zones abutting an ESHA and sites where a biological survey has identified significant natural habitat.
 - iii. Natural habitat and nonurbanized areas.
 - iv. Within fifty (50) feet of a designated environmentally sensitive habitat area.
 - c. Dune Habitats. Plant materials in southern coastal foredune and southern dune scrub habitat areas shall be restricted to native plant species.
 - d. ESHA Buffers. See Chapter 21.30B (Habitat Protection).
 - e. Deciduous Trees. Landscape designs shall maximize the use of deciduous trees.
 - f. Grouping of Plants. Plants having similar water use requirements shall be grouped together in distinct hydrozones.
4. Maintenance.
- a. Landscape materials and landscaped areas shall be maintained in compliance with an approved landscape plan.
 - b. Landscaped areas shall be maintained in a healthy and growing condition and shall receive regular pruning, fertilizing, mowing and trimming. Lawn areas shall be exempt from the healthy and growing condition provision when the City Council has declared a Level Three water supply shortage and all lawn, landscape, and other vegetated areas shall be exempt from the healthy and growing condition requirement when the City Council has declared a Level Four water supply shortage.
 - c. Landscaped areas shall be kept free of weeds, debris, and other undesirable materials.
 - d. Irrigation systems shall be kept in good operating condition, including adjustments, replacements, repairs, and cleaning as part of regular maintenance. Adjustments to eliminate overspray or runoff shall be made on a regular basis.
 - e. The nonnative and invasive ornamental plant species shall be removed in areas where such materials are restricted or prohibited by subsection (B)(3)(b) of this section.
 - f. Landscape materials and landscaped areas shall be maintained to minimize impacts to public viewsheds to the greatest extent feasible.
- C. Water Waste Prohibited. Water waste resulting from an inefficient irrigation system leading to excessive runoff, low head drainage, overspray, and other similar conditions where water flows onto adjacent property, nonirrigated areas, walks, roadways, or structures is prohibited. Use of recycled/reclaimed water for irrigation instead of potable water is encouraged.
- D. Fuel Modification. See Section 21.30.015(E)(6). (Ord. 2016-19 § 9 (Exh. A)(part), 2016)

21.30.085 Water Efficient Landscaping.

- A. Applicability. All planting, irrigation, and landscape-related improvements required by this section shall apply to the following:
1. New landscape installations with a landscaped area equal to or greater than five hundred (500) square feet or which otherwise require a ministerial permit for a landscape or water feature;
 2. Landscape rehabilitation projects with a landscaped area equal to or greater than two thousand five hundred (2,500) square feet or which otherwise require a ministerial permit for a landscape or water feature.

21.38.040 Nonconforming Structures.

Nonconforming structures may be maintained, altered, or added on to only in compliance with the provisions of this section.

- A. **Maintenance and Repairs.** Routine maintenance and repairs may be made to nonconforming principal and accessory structures. The replacement of fifty (50) percent or more of a structure is not repair and maintenance but instead constitutes a replacement structure.
- B. **Nonstructural Alterations.** Changes to interior partitions or other nonstructural improvements may be made to nonconforming principal structures, but shall not be made to accessory structures.
- C. **Structural Alterations.** Structural elements, with the exception of foundations of nonconforming principal structures (see subsection (D) of this section), may be modified, repaired, or replaced when the proposed improvements do not increase the degree of nonconformity. Structural alteration of nonconforming accessory structures is not allowed.
- D. **Foundation Alterations.** Routine maintenance and repairs may only be made to foundations of nonconforming principal structures if the foundation is not within a geologic setback or bulkhead setback area. A foundation of a nonconforming principal structure may be repaired or maintained when necessary and in conjunction with additions allowed in compliance with subsection (G) of this section and Section 21.38.060(A). For any alterations beyond routine repair or maintenance, the nonconforming structure shall be required to be brought into compliance with all applicable standards and regulations of this Implementation Plan, except as provided in subsection (F) of this section. Alterations to nonconforming accessory structures shall not be allowed.
- E. **Seismic Retrofits.** Alterations to nonconforming structures due to seismic retrofitting requirements are allowed in compliance with the California Existing Building Code.
- F. **Reasonable Accommodation.** Improvements to a nonconforming structure that are necessary to comply with an approved reasonable accommodation in compliance with Federal and State fair housing laws shall be allowed.
- G. **Additions.** Nonconforming structures may be expanded and the existing nonconforming elements of the structure shall not be required to be brought into compliance with the development standards of this Implementation Plan subject to the following limitations and the limitations provided in Section 21.38.060 (Nonconforming Parking):
 - 1. Expansion shall be limited to a maximum of fifty (50) percent of the gross floor area of the existing structure; [expansion of residential structures may be permitted up to a maximum of seventy-five \(75\) percent with the approval of a coastal development permit.](#)
 - 2. The floor area of any addition, together with the floor area of the existing structure, shall not exceed the allowed maximum floor area for the coastal zoning district;
 - 3. The addition shall comply with all applicable development standards and use regulations of this Implementation Plan; and
 - 4. Additional parking shall be provided in compliance with Section 21.38.060 (Nonconforming Parking).
- H. **Nonconformity with Coastal Resource Protection Regulations.** If a structure is nonconforming due to a coastal resource protection development regulation of Section 21.28.040 (Bluff (B) Overlay District), Section 21.28.050 (Canyon (C) Overlay District), Section 21.30.030 (Natural Landform and Shoreline Protection), Chapter 21.30A (Public Access and Recreation), or Chapter 21.30B (Habitat Protection) and when proposed development such as alterations or additions would involve demolition or replacement of more than fifty (50) percent of the exterior walls, or foundation of an existing structure, the entire structure shall be brought into conformity with all current development regulations and all applicable policies of the certified Local Coastal Program.
- I. **Exceptions.**

Chapter 21.50

PERMIT APPLICATION FILING AND PROCESSING

Sections:

- 21.50.010 Purpose.
- 21.50.020 Authority for Decisions.
- 21.50.025 Projects Bisected by Jurisdictional Boundaries.
- 21.50.030 Application Preparation and Filing.
- 21.50.040 Application Fees.
- 21.50.050 Initial Application Review.
- 21.50.060 Project Evaluation and Staff Reports.
- 21.50.070 Environmental Review.
- 21.50.080 Posting Notice.

21.50.010 Purpose.

This chapter provides procedures and requirements for the preparation, filing, and processing of permit applications required by this Implementation Plan. (Ord. 2016-19 § 9 (Exh. A)(part), 2016)

21.50.020 Authority for Decisions.

A. Review Authority. Table 21.50-1 (Review Authority) identifies the review authority responsible for reviewing and making decisions on each type of application required by this Implementation Plan.

TABLE 21.50-1

REVIEW AUTHORITY

Type of Action	Applicable Code Chapter/Section	Role of Review Authority (1)					
		Director	Zoning Administrator	Harbor Resources Manager	Commission	Council (2)	Coastal Commission
Administrative and Legislative							
Interpretations	Section 21.12.020	Determination (3)			Appeal	Appeal	Appeal (8)
LCP Amendments					Recommend	Decision (4)	Decision (4)
Approvals in Concept	Section 21.52.015(B)(1)(a)		Determination (3)	Determination (5)	Appeal	Appeal	
Waiver for De Minimis Development	Section 21.52.055	<u>Decision (9)</u>	Determination (3)		<u>Appeal</u>	<u>Appeal(9)</u>	
Permits and Approvals							
Coastal Development Permits	Section 21.52.015		Decision (6)		Appeal	Appeal	Decision (7) Appeal (2)
Emergency Coastal Development Permits	Section 21.52.025	Decision (3)			Appeal	Appeal	

Notes:

- (1) "Recommend" means that the Commission makes a recommendation to the Council; "Determination" and "Decision" mean that the review authority makes the final determination or decision on the matter; "Appeal" means that the review authority may consider and decide upon appeals to the decision of a previous decision making body, in compliance with Chapter 21.64 (Appeals and Calls for Review).
- (2) The Council is the final review authority for all applications in the City. A decision by the City on a coastal development permit application within the appeal areas depicted on the Post-LCP Certification Permit and Appeal Jurisdiction Map or a project that constitutes a major public works project or energy facility may be appealed to the Coastal Commission in compliance with Chapter 21.64 (Appeals and Calls for Review).
- (3) The Director or Zoning Administrator may defer action and refer the request to the Commission for consideration and final action.
- (4) The California Coastal Commission is the final decision making authority on amendments to the Local Coastal Program.
- (5) For development located on tidelands or submerged lands that did not involve a discretionary action authorized by this Implementation Plan where the authority is specifically assigned to the Council, Commission, Director, or Zoning Administrator.
- (6) If the project also requires another discretionary approval (e.g., conditional use permit, variance, etc.), then the applicable review authority shall be the authority for the other discretionary approval.
- (7) All development on tidelands, submerged lands, and public trust lands as described in California Public Resources Code Section 30519(b) and in deferred certification areas designated by the Local Coastal Program shall require a permit issued by the Coastal Commission in accordance with procedures specified by the Coastal Commission, in addition to other permits or approvals required by the City. This provision does not include those tidelands, submerged lands, and public trust lands where permit authority may be delegated to the City at a future date if determined by the Coastal Commission to be filled and developed and located within an area committed to urban uses pursuant to Coastal Act Section 30613.
- (8) Appeal procedure for interpretations shall only apply to interpretations made by the Director on the determination of whether a development is categorically excluded, exempt, nonappealable or appealable to the Coastal Commission according to the dispute resolution process in compliance with Section 21.50.050(B).

(9) A waiver shall not take effect until after the Director makes his/her report to the City Council. If one-third of the City Council (two members) so request, such issuance shall not be effective and, instead, the application for a coastal development permit shall be processed in accordance with the coastal development permit provisions of Chapter 21.52 (Coastal Development Permit Review Procedures).

(Ord. 2016-19 § 9 (Exh. A)(part), 2016)

21.50.025 Projects Bisected by Jurisdictional Boundaries.

A. Projects Bisected by Coastal Zone. Where a proposed project site is physically located both within and outside the coastal zone, the following procedures apply:

1. A coastal development permit shall be required for a lot or parcel proposed for subdivision that is bisected by the coastal zone boundary.
2. For any development involving a structure or similar integrated physical construction partially in the coastal zone, a coastal development permit shall be required for the development in the coastal zone.

B. Projects Bisected by City and Coastal Commission Jurisdiction. Where a proposed development is located within both the Coastal Commission's and City's coastal development permit jurisdictions, coastal development permits are required by both the City and the Coastal Commission. Alternatively, if the applicant, the City and the Coastal Commission agree, the Coastal Commission can process a consolidated coastal development permit application pursuant to the procedures in Public Resources Code, Section 30601.3.

C. Projects Bisected by Different Local Government Jurisdictions. If a project straddles the boundaries of the City and another local government, the applicant must obtain separate coastal permits from each jurisdiction. An exception is possible for public agencies that, pursuant to California Public Resources Code Section 30605, may obtain one "Public Works Plan" approval from the Coastal Commission, in lieu of locally issued coastal permits. (Ord. 2016-19 § 9 (Exh. A)(part), 2016)

21.50.030 Application Preparation and Filing.

A. Application Contents. Each permit application required by this Implementation Plan shall be filed with the Department on the appropriate City application form, together with all required fees and/or deposits and all other information and materials specified by the Director for the specific type of application.

7. A statement that a public comment period of sufficient time to allow for the submission of comments by mail will be held prior to the decision.

F. Report to the City Council. The Director shall report to the City Council at its next available public meeting those projects for which waivers are proposed, with sufficient description to give notice of the proposed development to the City Council. A list of waivers issued by the Director shall be available for public inspection at the public counter of the ~~Community Development~~ Department and at the City Council meeting during which any waivers are reported. A waiver shall not take effect until after the Director makes his/her report to the City Council. If ~~one-third~~ **two members** of the City Council ~~(two members)~~ so request, such issuance shall not be effective and, instead, the application for a coastal development permit shall be processed in accordance with the coastal development permit provisions of this chapter. (Ord. 2016-19 § 9 (Exh. A)(part), 2016)

21.52.075 Coastal Commission Review of Recorded Access Documents.

A. Standards and Procedures. Upon final approval of a coastal development permit or other authorization for development, and where issuance of the permit or authorization is conditioned upon the applicant recording a legal document which restricts the use of real property or which offers to dedicate or grant an interest or easement in land for public use, a copy of the permit conditions, findings of approval, and drafts of any legal documents proposed to implement the conditions shall be forwarded to the Coastal Commission for review and approval prior to the issuance of the permit consistent with the following procedures and California Code of Regulations Section 13574:

1. The Executive Director of the Coastal Commission shall review and approve all legal documents specified in the conditions of approval of a coastal development permit for public access and conservation/open space easements.
 - a. Upon completion of permit review, and prior to the issuance of the permit, the City shall forward a copy of the permit conditions, findings of approval, and copies of the legal documents to the Executive Director of the Coastal Commission for review and approval of the legal adequacy and consistency with the requirements of potential accepting agencies;
 - b. The Executive Director of the Coastal Commission shall have fifteen (15) working days from receipt of the documents in which to complete the review and notify the City of recommended revisions if any;
 - c. The City may issue the permit upon expiration of the fifteen (15) working day period if notification of inadequacy has not been received by the City within that time period;
 - d. If the Executive Director has recommended revisions to the City, the permit shall not be issued until the deficiencies have been resolved to the satisfaction of the Executive Director; or
2. At the time of coastal development permit approval, if the City requests, the Coastal Commission shall delegate to the City the authority to process the recordation of the necessary legal documents pertaining to the public access and open space conditions. Upon completion of the recordation of the documents the City shall forward a copy of the permit conditions and findings of approval and copies of the legal documents pertaining to the public access and open space conditions to the Executive Director of the Coastal Commission. (Ord. 2016-19 § 9 (Exh. A)(part), 2016)

21.52.090 Relief from Implementation Plan Development Standards.

- A. Purpose. The purpose of this section is to provide relief from the development standards of this Implementation Plan when so doing is consistent with the purposes of the certified Local Coastal Program and will not have an adverse effect, either individually or cumulatively, on coastal resources.
- B. Applicability. Any development standard of this Implementation Plan may be modified or waived through the approval of a coastal development permit, except: allowed and prohibited uses; residential density; nonresidential floor area ratios; specific prohibitions (for example, prohibitions intended to protect coastal resources, prohibited barriers to public access, limits on the use of protective structures, prohibited materials, prohibited plant species, prohibited signs, etc.); or procedural requirements.
1. Modifications. Minor deviations for the following development standards may be permitted when practical difficulties associated with the property and that the strict application of the Implementation Plan results in physical hardships:
- a. Height modifications from exceptions identified in Part 3 of this title (Site Planning and Development Standards). The following modifications are limited to not more than a ten (10) percent deviation from the standard being modified.
- i. Chimneys, rooftop architectural features, and vents in excess of the exception to the allowed height limits identified in Part 3 of this title (Site Planning and Development Standards);
- ii. Flag poles in excess of the exception to the allowed height limits; and
- iii. Heights of fences, hedges, or walls (except retaining walls).
- b. Setback Modifications. The following modifications are limited to not more than a ten (10) percent deviation from the standard being modified.
- i. Encroachments in front, side, or rear setback areas while still maintaining the minimum clearances required by Section 21.30.110 (Setback Regulations and Exceptions). Exceptions include the following:
- (A) Modifications shall not be allowed for encroachments into alley setbacks; and
- (B) Modifications shall not be allowed for encroachments into bluff setback areas.
- ii. Structural appurtenances or projections that encroach into front, side, or rear setback areas.
- c. Other Modifications. Except as otherwise provided, the following modifications are not limited in the amount of deviation from the standard being modified:
- i. Distances between structures located on the same lot;
- ii. Landscaping standards in compliance with Chapter 21.30.075 (Landscaping), except for subsection (B)(3);
- iii. Size or location of parking spaces, access to parking spaces, and landscaping within parking areas;
- v. Increase in allowed floor area of additions for uses that have nonconforming parking;
- vi. Increase in allowed height, number, and area of signs;

vii. Increase in the allowed height of retaining walls; and

viii. Increase in allowed floor area of additions for nonconforming residential structures as identified in Section 21.38.040 (Nonconforming Structures).

2. Variances. Waiver or modification of certain standards of this Implementation Plan may be permitted 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 coastal zoning district.

3. Modifications and Waivers Authorized Elsewhere. This section is not applicable when a modification or waiver to a development standard is specifically authorized elsewhere in this Implementation Plan.

C. Findings and Decision. The review authority may approve or conditionally approve a modification or waiver to a development standard of this Implementation Plan only after first making all of the following findings:

1. The granting of the modification is necessary due practical difficulties associated with the property and that the strict application of the Implementation Plan results in physical hardships; or

2. The granting of the variance is necessary due to special circumstances applicable to the property, including location, shape, size, surroundings, topography, and/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 coastal zoning district; and

3. The modification or variance complies with the findings required to approve a coastal development permit in Section 21.52.015(F);

4. The modification or variance will not have an adverse effect, either individually or cumulatively, on coastal resources; and

4.5. The granting of the modification or variance will not be contrary to, or in conflict with, the purpose of this Implementation Plan, nor to the applicable policies of the certified Local Coastal Program.

5. Failure to Receive Notice. The failure of any person or entity to receive notice given in compliance with this section shall not be grounds to invalidate the actions of the applicable review authority. (Ord. 2016-19 § 9 (Exh. A)(part), 2016)

21.62.030 Hearing Procedure.

A. Time and Place of Hearing. A hearing shall be held at the date, time, and place for which notice was given.

B. Continued Hearing. A hearing may be continued without further notice, provided the official or chair of the review authority announces the date, time, and place to which the hearing will be continued before the adjournment or recess of the hearing.

C. Deferral of Final Decision. The review authority may announce a tentative decision and defer their action on a final decision until appropriate findings and/or conditions of approval have been prepared. (Ord. 2016-19 § 9 (Exh. A)(part), 2016)

21.62.040 Decision.

A. Decision.

1. The review authority may announce and record their decision on the matter being considered at the conclusion of a scheduled hearing, or defer action and continue the matter to a later meeting in compliance with Section 21.62.030 (Hearing Procedure).

2. The Director or Zoning Administrator, as applicable, may instead refer the matter to the Commission for a decision.

B. Effective Date of Decision.

1. The decision of the applicable review authority is final and effective at the end of the applicable appeal period.

2. The decision of the Council shall be final on any coastal development permit matter except for an appealable coastal development permit as specified in the notice in compliance with Section 21.62.020 (Notice of Public Hearing), above, and as specified in Section 21.64.035 (Appeal to the Coastal Commission). (Ord. 2016-19 § 9 (Exh. A)(part), 2016)

21.62.050 Public Hearing Waiver for Minor Development.

A. Purpose.. The purpose of this section is to provide a process, in accordance with Section 30624.9 of the Coastal Act, through which the public hearing requirement may be waived for certain minor developments that require coastal development permits.

B. Minor Development Defined. For purposes of this section, "minor development" means a development that the Director determines satisfies all of the following requirements:

1. Is consistent with the certified Local Coastal Program;
2. Requires no discretionary approvals other than a coastal development permit; and
3. Has no adverse effect either individually or cumulatively on coastal resources or public access to the shoreline or along the coast.

C. Procedure. The Director may waive the requirement for a public hearing on a Coastal Development Permit application for a minor development, if all of the following occur:

1. Notice is mailed or delivered to all persons and agencies required to be notified under Section 21.62.020(B)(2). The notice shall contain and shall contain all of the information required in Section 21.62.020(A). In addition, the notice of waiver of public hearing for the pending application shall contain the following:
 - a. A statement that a public hearing will be held upon the written request of any person provided that such written request is received by the Department within fifteen (15) working days from the date of sending the notice; and
 - b. For proposed development within the appealable area, a statement that failure by a person to submit a written request for a public hearing may result in the loss of that person's ability to appeal to the Coastal Commission any action taken by the City on a coastal development permit application in this matter.
2. No request for public hearing is received by the Department within fifteen (15) working days from the date of sending the notice pursuant to subsection (1) of this section.
3. Requests for hearing must be made in writing to the Department. Upon receipt of a request for a hearing, the Department shall schedule the matter for a public hearing and issue notice of such hearing consistent with the provisions of this Chapter.

Chapter 21.64

APPEALS AND CALLS FOR REVIEW

Sections:

- 21.64.010 Purpose.
- 21.64.020 Appeals or Calls for Review.
- 21.64.030 Filing and Processing of Appeals and Calls for Review.
- 21.64.035 Appeal to the Coastal Commission.
- 21.64.050 Judicial Review of City Decision.

21.64.010 Purpose.

The purpose of this chapter is to provide procedures for the appeal or call for review of determinations and decisions of the Director, Zoning Administrator, and Planning Commission, and to establish provisions for appeals to the Commission and Coastal Commission. Any provision of this Implementation Plan relating to appeals shall be considered a call for review and processed according to this chapter when initiated by a member of the Commission or City Council under Section 21.64.030(A) if the purpose for the call for review is to bring the matter in front of the entire body for review. (Ord. 2016-19 § 9 (Exh. A)(part), 2016)

21.64.020 Appeals or Calls for Review.

A. Director. Interpretations and decisions of the Director may be appealed or called for review to the Planning Commission, with the exception of waivers for de minimis development, which are reported to the City Council pursuant to Section 21.52.055(E).

B. Zoning Administrator. Decisions of the Zoning Administrator may be appealed or called for review to the Planning Commission.

C. Planning Commission. Decisions of the Commission may be appealed or called for review to the Council. (Ord. 2016-19 § 9 (Exh. A)(part), 2016)

21.64.030 Filing and Processing of Appeals and Calls for Review.

A. Eligibility. Appeals may be initiated by any interested party. Calls for review may be initiated by a member of the Planning Commission or City Council, in the member's official capacity, if the purpose for the call for review is to bring the matter in front of the entire body for review.

B. Timing and Form of Appeal and Calls for Review. An appeal shall be submitted in writing and shall state the facts and basis for the appeal. A call for review initiated by a member of the Commission or City Council, in their official capacity, shall be submitted in writing and shall be for the purpose of bringing the matter in front of the entire body for review.

1. General Appeals.

a. Filing an Appeal or Call for Review. An appeal or call for review shall be filed with the Director or City Clerk, as applicable, within fourteen (14) days following the date the action or decision was rendered.

i. Appeals addressed to the Commission shall be filed with the Director on forms provided by the Department; and

ii. Appeals addressed to the Council shall be filed with the City Clerk on forms provided by the Clerk.

iii. Calls for review addressed to the Planning Commission shall be filed with the Director on forms provided by the Department; and

iv. Calls for review addressed to the City Council shall be filed with the City Clerk on forms provided by the Clerk.

3. In the event of a tie vote by the review authority on an appeal or call for review, the decision being appealed shall stand. (Ord. 2016-19 § 9 (Exh. A)(part), 2016)

21.64.035 Appeal to the Coastal Commission.

A final action taken by the City on a coastal development permit application for appealable development as defined in subsection (A) of this section may be appealed to the Coastal Commission in compliance with this section and Title 14 California Code of Regulations Sections 13111 through 13120 and Section 30603 of the Coastal Act. If there is any conflict between the provisions of this section or Title 14 California Code of Regulations Sections 13111 through 13120 and Section 30603 of the Coastal Act, Title 14 California Code of Regulations Sections 13111 through 13120 and Section 30603 of the Coastal Act shall control.

A. **Appealable Development**—Public Resources Code Section 30603(a). A decision by the City on a coastal development permit application within the appeal areas identified in Public Resources Code Section 30603(a) as generally depicted on the Post-LCP Certification Permit and Appeal Jurisdiction Map or on any development approved or denied by the City on a coastal development permit application for a project that constitutes a major public works project or energy facility may be appealed to the Coastal Commission.

B. **Status of Appellant.**

1. **Who May Appeal.** An appeal may be filed by an applicant, an aggrieved person, or two members of the Coastal Commission in compliance with Public Resources Code Section 30625.
2. **Aggrieved Person Defined.** As provided by Public Resources Code Section 30801, an aggrieved person is any who, in person or through a representative, appeared at a public hearing held before the Zoning Administrator, Planning Commission, or Council in connection with the decision or action appealed, or who, by other appropriate means prior to a hearing, informed the City of the nature of their concerns or who for good cause was unable to do either.

C. **Exhaustion of City Appeals Required.** An applicant or other aggrieved person may appeal a City decision on a coastal development permit application to the Coastal Commission only after exhausting all appeals to the Planning Commission and Council in compliance with this chapter. Except that exhaustion of all local appeals shall not be required if any of the circumstances identified in Code of Regulations Section 13573 apply, including, but not limited to, the following circumstances:

1. An appellant was denied the right of the initial local appeal under this chapter because City notice and hearing procedures did not comply with Title 14, Division 5.5, Chapter 8, Subchapter 2, Article 17 of the California Code of Regulations; or
2. An appeal of a City decision was filed by two members of the Coastal Commission in compliance with Public Resources Code Section 30625. Notice of a Coastal Commissioner's appeal shall be transmitted to the City in compliance with Title 14 California Code of Regulations Section 13111(d). The ~~City Director~~ may transmit the Coastal Commissioners' appeal to the local appellate body (which considers appeals from the ~~local body review authority~~ that rendered the final decisions subject to the Coastal Commissioners' appeal), and the Coastal Commissioners' appeal may be suspended pending a decision on the merits by that ~~local City~~ appellate body. If the final action by an appellate body modifies or reverses the previous decision, the Coastal Commissioners appeal shall be required to file a new appeal from that decision.

D. **Grounds for Appeal to Coastal Commission**—Public Resources Code Section 30603. The grounds for an appeal to the Coastal Commission of a City final action on a coastal development permit application are as follows:

1. For approval of a coastal development permit as described in subsection (A) of this section, an allegation that the project does not conform to the standards of the Local Coastal Program or the public access policies of the Coastal Act;
2. For denial of a development described in subsection (A) of this section, an allegation that the project conforms to the standards of the Local Coastal Program and the public access policies of the Coastal Act.

Draft LCP Amendment for Balboa Parking Management Overlay District

LC2017-001 (PA2017-046)

I. Section 21.28.030 Parking Management (PM) Overlay District is amended as follows with added text underlined:

A. Parking Management District Plan Required. Before approving a Coastal Zoning Map amendment reclassifying land to a PM Overlay District, the Commission and Council shall approve a parking management district plan.

B. Establishment of Parking Management Program(s). The parking management district plan shall identify existing and planned parking facilities and establish parking management programs necessary to adequately serve the parking needs of the area and address the following issues:

1. The provision of adequate, convenient parking for residents, guests, business patrons, and visitors of the coastal zone;
2. Optimizing the use of existing parking spaces;
3. Providing for existing and future land uses;
4. Reducing traffic congestion;
5. Limiting adverse parking impacts on user groups;
6. Providing improved parking information and signage;
7. Generating reasonable revenues to cover City costs;
8. Accommodating public transit and alternative modes of transportation.

C. Exemptions. The parking management district plan shall also include a formula or procedure establishing the extent to which commercial, residential, and mixed-use properties shall be exempted from the requirements of Chapter 21.40 (Off-Street Parking).

D. Local Coastal Program Amendment Required. The implementation of any future parking management district plans as a PM Overlay District shall require an amendment to the Local Coastal Program approved by the Coastal Commission.

E. Parking Management Overlay Districts Established. The parking management districts identified in this section and depicted in the referenced maps exhibits adopted in Part 8 of this Implementation Plan.

1. Balboa Village Parking Management Overlay District applies to all property located within Balboa Village between the Pacific Ocean, A Street, Newport Bay, and Adams Street and depicted in Parking Management Overlay Map PM-1.

a. Purpose. The purpose of the Balboa Village Parking Management Overlay District is to identify existing and planned parking facilities and establish parking programs

Draft LCP Amendment for Balboa Parking Management Overlay District

LC2017-001 (PA2017-046)

to adequately serve the parking needs for Balboa Village. Additionally, the District establishes modified parking requirements for properties that differ from the basic requirements of Chapter 21.40 (Off-Street Parking).

b. Existing Parking Facilities. The City maintains six public parking lots within or near the District: 1) A Street lot, 2) B Street lot, 3) Washington Street lot, 4) Palm Street lot, 5) Balboa Metered lot, and 6) Balboa Pier lot. In addition, the City provides and maintains a small number of on-street parking spaces along Balboa Boulevard, Palm Street, and Bay Avenue. The City intends to maintain public parking facilities; however, should the need arise, the City may modify, add, or remove parking spaces to ensure safe and efficient operations and meet parking demand.

c. Planned Parking Facilities. Due to the high cost of land acquisition and construction and the underutilization of existing parking, additional off-street parking facilities are not necessary to meet the demand of existing uses. Parking demand shall be monitored and evaluated by the City to determine whether additional District parking is necessary, economical, appropriate, and desirable. The City may acquire or lease parking facilities to make them available to the public.

d. Required Off-Street Parking

i. Non-residential Uses. No off-street parking shall be required for any new non-residential use or intensification of uses except the following uses as defined by the Implementation Plan: Assembly/Meeting Facilities, Commercial Recreation and Entertainment, Cultural Institutions, all Marine Services Uses, Schools, and Visitor Accommodations. Uses that require off-street parking shall provide said spaces in accordance with Chapters 21.40 (Off-Street Parking) and 21.38 (Nonconforming Uses and Structures).

ii. Residential Uses. Residential uses shall provide parking in accordance with Chapters 21.40 (Off-Street Parking) and 21.38 (Nonconforming Uses and Structures).

iii. Existing off-street parking spaces shall be preserved unless the elimination of spaces is authorized by the approval of a coastal development permit application by the Zoning Administrator.

iv. Shared Parking for Non-residential Uses. Notwithstanding the Implementation Plan requirement that off-street parking be reserved for the use it serves, the shared use of parking is allowed and encouraged. Shared parking shall be subject to the following requirements:

(A) Required Off-street Parking. When required, parking for non-residential uses may be satisfied by leasing nearby parking spaces at off-site locations within 1,250 feet of the parcel it serves. Development on multiple parcels with reciprocal access agreements is considered one site for parking purposes. If the spaces are required or otherwise leased to other uses, the hours of operation shall not significantly overlap. The distance between the parking facility and the use it serves shall be measured along public walkways from the closest portion of the parking facility to the main

Draft LCP Amendment for Balboa Parking Management Overlay District

LC2017-001 (PA2017-046)

entrance of the use. The leasing of off-site parking to satisfy required parking shall be maintained in perpetuity when the use requires it and may only be discontinued if the use is discontinued.

(B) Excess Parking. Parking that is not necessary to satisfy off-street parking requirements may be leased to other uses or made available to the general public.

(C) Parking within Mixed-use Buildings. Parking for different uses within a new, mixed-use building may be shared subject to the review and approval of a coastal development permit application.

(D) The reduction of required parking associated with a shared parking arrangement shall be subject to the review and approval of the Director when in compliance with the following conditions:

(1) Shared parking spaces are within 1,250 feet as described in Section 21.28.030.D.5.d.1;

(2) There is no significant overlap in the hours of operation or peak parking demand of the uses sharing the parking;

(3) The use of the shared parking facility will not create traffic hazards or impacts to surrounding uses;

(4) The property owners involved in the shared parking facilities provide a binding agreement or other legal instrument assuring the joint use of the parking facilities subject to the satisfaction of the Director;

(5) The Director may require the preparation and implementation of a parking management program to address potential parking conflicts.

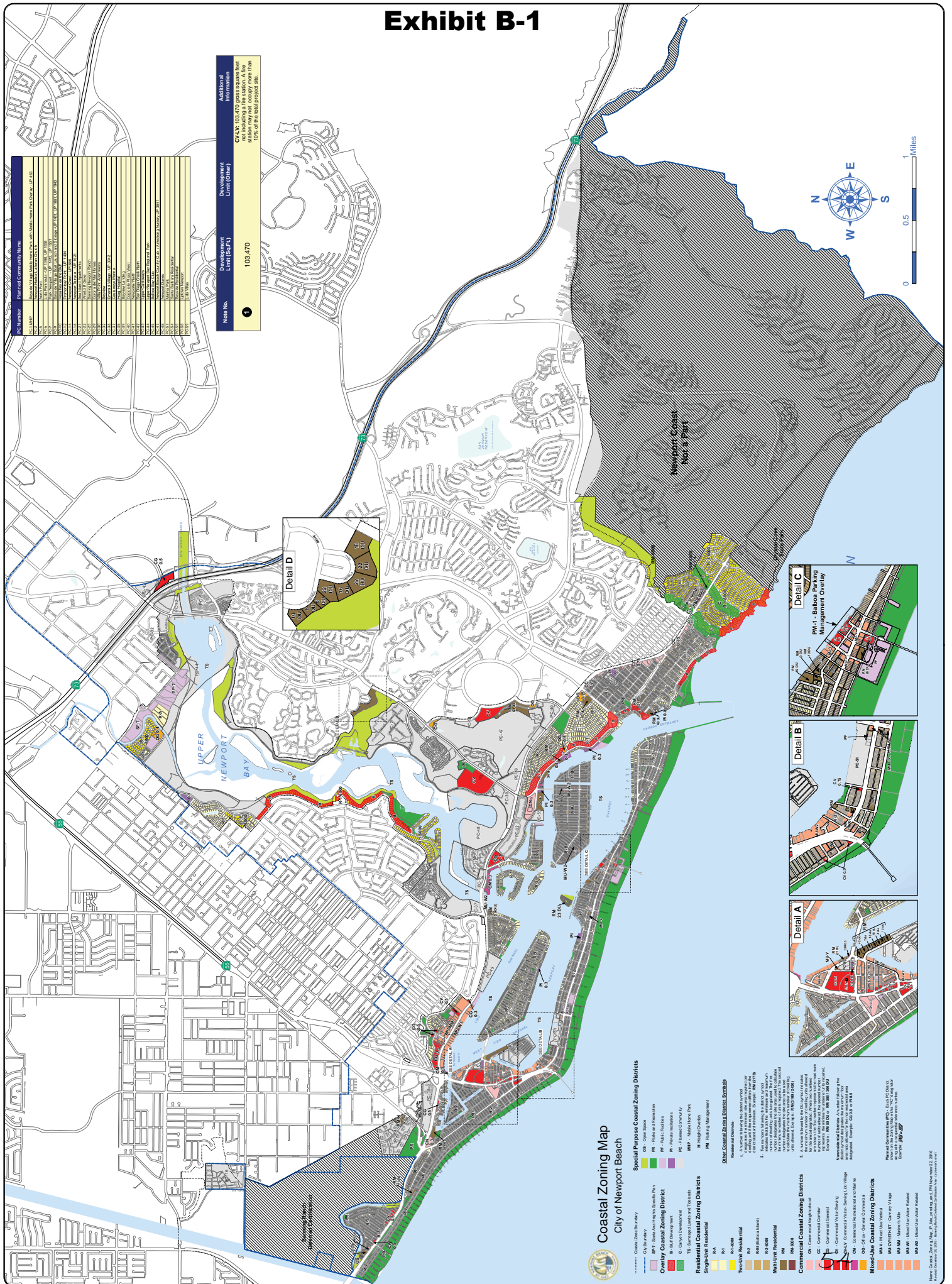
(E) Section 20.41.110.A.2 (Joint Use of Parking Facilities) does not apply within the Balboa Village Parking Management Overlay District.

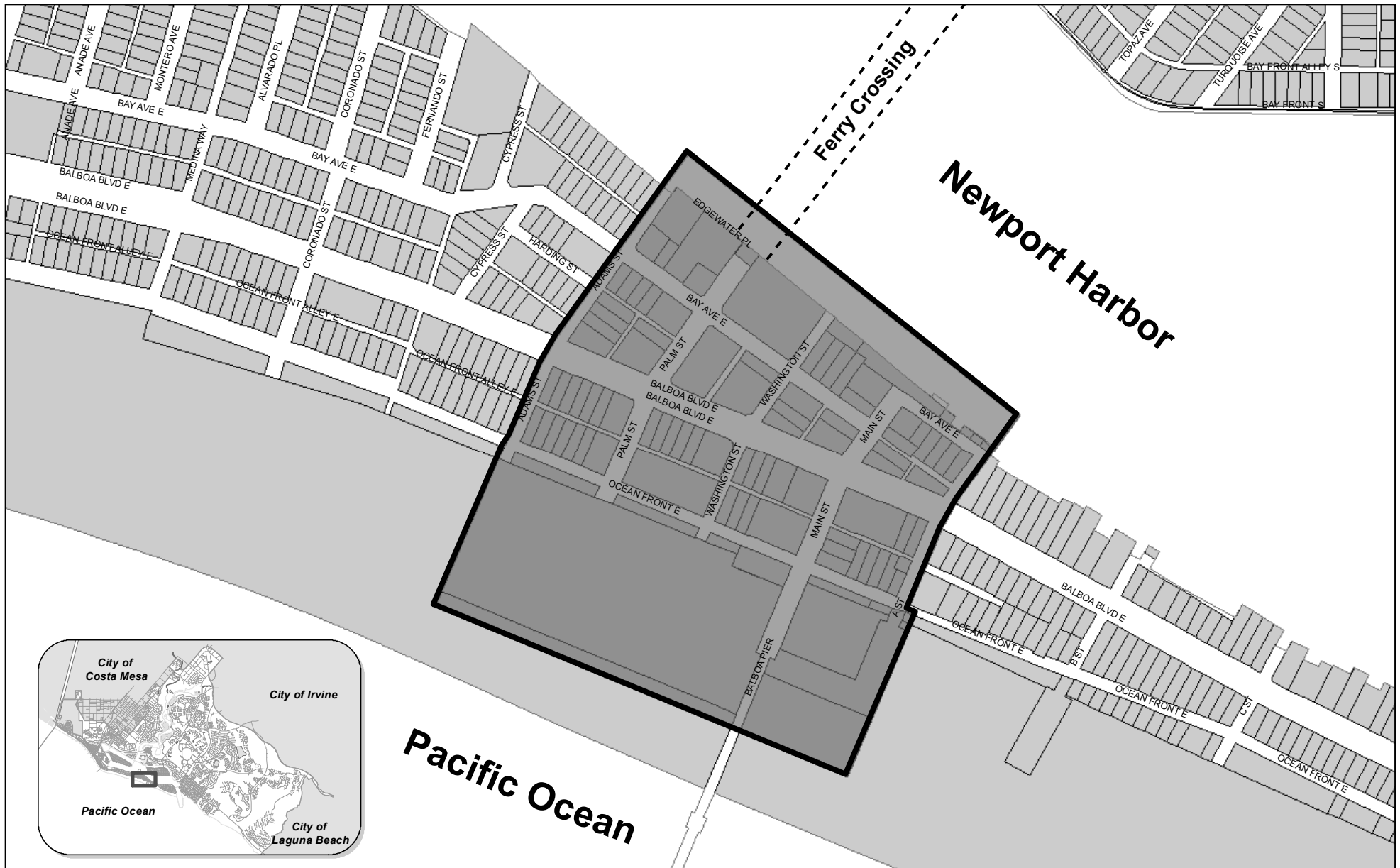
v. Private Parking Facilities Available to the General Public. Non-residential, off-street parking facilities are encouraged to be made available to the general public, even if the parking facility is required for existing developments. Subject to City Council review and approval, the City may enter into an agreement with the property owner for the use and/or management of the parking facility. Allowing general public access to private off-street parking facilities shall not affect the property's conformance with its required off-street parking. The agreement should at a minimum address hours of availability for use by the general public, signage, maintenance, duration of agreement, and liability.

e. Suspension of In-lieu Parking. Uses within the Balboa Village Parking Management Overlay District shall not be eligible for in-lieu parking pursuant to Section 21.40.130 (In-Lieu Parking Fee).

f. Voluntary Employee Parking. The City will develop and implement a voluntary Balboa Village Employee Permit Program that will include reduced fees and designated parking locations for employee parking during specified hours.

Exhibit B-1





PM-1 Balboa Village Parking Management Plan Overlay District **DRAFT**



Appendix C – Oceanfront Encroachment Policy Guidelines

The Oceanfront Encroachment Policy established specific restrictions and conditions on the installation of private improvements in the public right of way along the oceanfront from the Santa Ana River Channel to Channel Road.

The policy included a mitigation program involving the reconstruction of 33 unimproved street ends between 36th Street and Summit Street to provide additional parking and improved public access. In 2002, the final five street ends were reconstructed. Pursuant to the mitigation program, a minimum of 85 percent of the encroachment fees will be used for the construction and maintenance of improvements which directly benefit the beach-going public such as parking spaces, restrooms, vertical or lateral walkways along the beach and similar projects.

The Oceanfront Encroachment Policy was originally approved by the Coastal Commission on June 11, 1991 and finalized by the City Council through the adoption of Resolution No. 91-80 on July 11, 1991. These restrictions and conditions were incorporated into the Coastal Land Use Plan, which was approved by the Coastal Commission on October 13, 2005, adopted by the City Council on December 13, 2005, and became effective on February 8, 2006.

These guidelines are intended to implement the Oceanfront Encroachment Policy by establishing a procedure for approval of permitted encroachments, removal of prohibited encroachments, limiting the extent of encroachments, and clarification of improvements permitted within each encroachment zone.

A. Definitions.

1. For the purpose of this Section, the following words and phrases shall be defined as specified below:
 - a. Existing encroachment shall mean any encroachment or improvement installed or constructed before May 31, 1992.
 - b. New encroachment shall mean any encroachment or improvement installed or constructed after May 31, 1992.
 - c. Improvements or Encroachments shall mean any object, thing or landscaping:
 - i. within or oceanward of any encroachment zone described in this policy;
 - ii. within or oceanward of the north edge of the Oceanfront Boardwalk, between 36th Street and A Street; or

- iii. oceanward of any residential parcel from a point 250 feet southeast of E Street to Channel Road.
- d. Encroachment permit shall mean the permit issued by the Public Works Director authorizing the maintenance or installation of encroachments or improvements within the encroachment zones described in this policy.
- e. Application shall mean any application for an encroachment permit pursuant to the provisions of this policy and the land use plan of the local coastal program.
- f. Oceanfront Boardwalk, Oceanfront Walk, or sidewalk, shall mean the concrete walkway along the oceanside of ocean front residential properties between 36th Street and a point approximately 250 feet southeast of E Street.

B. Encroachment Zones.

Subject to compliance with the provisions of this policy:

- 1. The owner of any ocean front residential parcel between the Santa Ana River and 52nd Street may install improvements on the oceanside of the parcel up to a maximum of 15 feet oceanward of the private property line and within an oceanward prolongation of the property lines on the side of the parcel.
- 2. The owner of any oceanfront residential parcel between 52nd Street and 36th Street may install improvements on the ocean side of the parcel up to a maximum of 10 feet oceanward of the private property line and within an oceanward prolongation of the property lines on the side of the parcel.
- 3. The owner of any oceanfront residential parcel between A Street and a point 250 feet southeast of E Street may install improvements up to the inland edge of the Oceanfront Boardwalk and within an oceanward prolongation of the property lines on the side of the parcel.
- 4. The owner of any oceanfront residential parcel between and including 1400 East Ocean Front and Channel Road may install improvements on the oceanside of the parcel up to a maximum of 15 feet oceanward of the private property line and within an oceanward prolongation of the property lines on the side of the parcel.

C. Prohibited Encroachments.

- 1. Encroachments and improvements are prohibited oceanward of private property between 36th Street and A Street.

2. Encroachments and improvements are prohibited oceanward of any ocean front parcel from a point 250 feet southeast of E Street to ~~Channel Road~~ and including 107 G Street, with the exception of landscaping trees existing prior to October 22, 1991, and groundcover.
3. Any existing encroachment or improvement for which no application has been filed on or before May 31, 1992, and any new encroachment or improvement for which no application is filed prior to installation is prohibited.
4. Any new or existing encroachment or improvement which, on or after July 1, 1992, is not in conformance with this policy is prohibited.
5. Any new or existing encroachment or improvement for which there is no valid permit.

D. Permitted Encroachment/Improvements.

Subject to compliance with the provisions of this policy, the following improvements are permitted within the encroachment zones described in Section B:

1. Patio slabs or decks no higher than six inches above existing natural grade. The determination of grade will be made as provided in Section J.
2. Walls and/or fences less than 36 inches in height above existing natural grade. The determination of grade will be made as provided in Section J.
3. Existing improvements which were constructed in conjunction with development for which a building permit was issued may be approved by the Public Works Director upon a finding that the improvement is consistent with or is modified to be consistent with the standards of this chapter.
4. . Where a shoreline protective device per Section 21.30.030(Natural Landform and Shoreline Protection) cannot be sited within private property, it may be sited as close as feasible to private property. In no event shall a shoreline protective device be constructed to protect a private encroachment authorized on a public right-of-way.

E. Prohibited Improvements.

1. Except for perimeter walls and/or fences less than 36 inches in height, any structural, electrical, plumbing or other improvements which require issuance of a building permit.
2. Pressurized irrigation lines and valves.
3. Any object which exceeds 36 inches in height, exclusive of the following:
 - a. trees planted by the City of Newport Beach or private parties pursuant to written policy of the City Council of the City of Newport Beach; or

- b. any landscaping or vegetation within the encroachment zone subject to the following:
 - i. The vegetation or landscaping was installed prior to the first effective date of this policy;
 - ii. The vegetation or landscaping does not block views from adjoining property;
 - iii. The vegetation or landscaping does not function as a hedge as defined in Title 20 of the Newport Beach Municipal Code; and
 - iv. The vegetation or landscaping does not impair or affect the health, safety or welfare of persons using the oceanfront Walk, nearby property owners, or residents of the area.
 - v. New plant materials that have not been approved by a coastal development permit issued by the Coastal Commission.

Notwithstanding the provisions of this Subparagraph, the City reserves the right to reduce the height of any existing landscaping at any time, upon a determination by the Public Works Director, and after notice to the owner of property on which the vegetation or landscaping exists, that a reduction in height is necessary or appropriate given the purposes of this policy.

F. Permit Process.

1. An encroachment permit shall be required for all permitted improvements. The application shall be filed with the Public Works Department on a form provided by the City. The application shall be signed by the owner of the property, or an agent of the owner if the application is accompanied by a document, signed by the owner, granting the agent the power to act for the owner with respect to the property. The application shall be accompanied by a site plan, drawn to scale and fully dimensioned, which accurately depicts the location, height, nature and extent of all proposed improvements and objects within the encroachment zone. Applications with incomplete information and/or inadequate drawings will not be accepted.
2. Applications for existing encroachments must be filed on or before May 31, 1992. Applications for new encroachments shall be filed before any encroachment or improvement is installed. No new encroachments or improvements shall be installed without an encroachment permit.
3. Upon receipt of the application, the Public Works Director shall, within fifteen (15) days after the date of filing, determine if the application is complete or if additional information is necessary or appropriate to an evaluation of the application. In the event the application is incomplete or additional information is necessary, written

notice to that effect shall be sent to the property owner within twenty (20) days after the application is filed.

4. With respect to applications for existing encroachments, an inspection shall be conducted of all improvements within the encroachment zone before a permit is issued by the Public Works Director. With respect to applications for new encroachments, an on site inspection will be conducted after installation of the improvements to insure conformity with provisions of the permit and this Section.
5. The Public Works Director shall approve the permit upon a determination that the encroachments proposed to be constructed, or to remain, are permitted by this Section, the applicant has agreed to abide by all of the terms and conditions imposed on the permit, and the applicant has paid all fees.
6. The Public Works Director shall have the authority to condition his/her approval of the encroachment permit as necessary or appropriate to insure compliance with the provisions of this Section. The Public Works Director shall have the specific authority to condition approval of an encroachment permit on the removal of nonconforming improvements within a specified period of time.
7. The Public Works Director shall notify the applicant of his/her decision within sixty (60) days after the application is filed and the decision of the Public Works Director shall be final.

G. Term.

1. Except as provided in this Section, annual encroachment permits shall expire on June 30 of each calendar year.
2. Encroachment permits issued prior to June 30, 1992 shall expire June 30, 1993.

H. Renewal.

1. Annual renewal fees shall be due and payable on or before May 31 preceeding the annual term of the permit. For example: Annual renewal fees due on May 31, 2001, are for the period July 1, 2001 through June 30, 2002.
2. The Public Works Director shall approve annual renewal if:
 - a. The applicant has complied with all standard and special conditions of approval;
 - b. The applicant has constructed only those improvements and encroachments authorized by the permit;
 - c. The applicant is in compliance with all of the provisions of this policy.

I. Standard Conditions.

1. The Public Works Director shall impose standard conditions of approval on all encroachment permits. These standard conditions shall include, without limitation, the following:
 - a. The obligation of permittee to comply with all of the provisions of this policy and all conditions imposed upon the permit.
 - b. The right of the Public Works Director to revoke any permit after notice and hearing if the permittee is in violation of this policy or conditions to the permit.
 - c. The right of the City to summarily abate encroachments or improvements which are prohibited by this policy or conditions on the permit upon ten (10) day's written notice.
 - d. The obligation of permittee to pay all costs incurred by the City in summarily abating any prohibited improvement.
 - e. The obligation of permittee to defend, indemnify and hold the City and its employees harmless from and against any loss or damage arising from the use or existence of the improvements or encroachment.
 - f. Permittee's waiver of any right to contest the City's street and public access easement over property within or oceanward of the encroachment zones.
 - g. The right of the Public Works Director or his designee to inspect improvements within the encroachment zone without notice to the permittee.
 - h. The right of the City to cancel or modify any, or all, encroachment permit(s) upon a determination by the City Council to construct a public facility or improvement within or adjacent to the encroachment zone.
2. The construction of any seawall, revetment or other device necessary to control erosion, shall occur as close to private property as feasible.

Erosion control devices shall not be placed or installed closer to the ocean to protect improvements or encroachments.
3. The Public Works Director may impose additional standard conditions necessary or appropriate to insure compliance with, or facilitate City administration of this policy.

J. Determination of Grade.

1. The nature of the beach makes a precise determination of grade difficult. The level of the sand changes with wind, storm, and tidal conditions. The Public Works

Director shall determine the level from which the height of encroachments and improvements is to be measured. In making this determination, the Public Works Director shall consider the following criteria:

- a. The existing natural grade in the area;
- d. Any data on the historic elevation of the beach in that area.

K. Annual Fee.

1. The fees based on the depths of encroachment shown below shall be established by resolution of the City Council and paid annually as a condition of the issuance of encroachment permits:

Depth of Encroachment

0 - 5 feet

5 - 7 1/2 feet

7 1/2 - 10 feet

10 - 15 feet

2. For purposes of determining fees, the average depth of the encroachment shall be used. However, the maximum depth shall not exceed the limitations specified in Section B. A dimensional tolerance not to exceed 12 inches may be allowed in determining the appropriate fee to be paid by persons with existing encroachments.
3. The annual fee shall be due and payable upon submittal of the application for the initial encroachment permit. Renewal fees shall be due May 31 of each year. The fee shall be considered delinquent thirty (30) days thereafter. Delinquent fees shall be established by resolution of the City Council.
4. The annual fee shall be used to defray City costs of administration, incidental costs of improvements on street ends along the oceanfront, and incidental costs to enhance public access and use of the ocean beaches. At least eighty-five (85%) percent of the fees shall be used by the City to implement the mitigation plan as required by Amendment No. 23 to the Land Use Plan of the City's Local Coastal Program. (See Section M.)

L. Violations/Remedy.

1. The City shall, in addition to any right or remedy provided by law, have the right to do any or all of the following in the event a permittee is in violation of the provisions of this policy or any condition to the permit, or any encroachment or improvement violates the provisions of this policy:

- a. Revoke the permit after giving the permittee notice and an opportunity to be heard upon a determination that there is substantial evidence to support a violation of this policy. The Public Works Director shall establish the specific procedures designed to insure that permittee receives due process of law.
- b. Summarily abate any encroachment or improvement violative of this policy after giving the permittee or property owner ten (10) day's written notice of its intention to do so in the event the permittee or property owner fails to remove the encroachment or improvement. The permittee or property owner shall pay all costs incurred by the City in summarily abating the encroachment or improvement. The determination of the Public Works Director with respect to abatement shall be final.

M. Mitigation Plan.

To mitigate any impact on beach access resulting from the encroachments, the City shall:

1. Reconstruct thirty-three unimproved street ends between 36th Street and Summit to provide additional parking and approved access in accordance with the following:
 - a. The reconstruction shall provide a minimum, where feasible, of two parking spaces per street end and shall proceed in substantial conformance with the standard drawing, attached as exhibit "A."
 - b. The City shall use at least eighty-five percent (85%) of the fees to fund reconstruction of street ends until all have been improved. The City will use its best efforts to improve three or more street ends per year (except during the year when vertical handicapped access is constructed), and anticipates that funding will be adequate to do so.
 - c. West Newport street-end parking spaces shall be metered in the same manner as the West Newport Park in order to encourage public use of the spaces.
2. Within three years after Council approval of this Resolution, City shall construct a hard surface walkway perpendicular to Seashore Drive at Orange Avenue. The walkway shall extend oceanward a sufficient distance to allow a view of the surfline by an individual seated in a wheelchair. At least one handicapped parking space shall be designated at the Orange Avenue street end. City shall designate at least one other handicapped space at one of the first three street ends improved.
3. Subsequent to the reconstruction of all West Newport street ends, at least eighty-five percent (85%) of the fees generated by encroachments will be used for the construction of improvements which directly benefit the beach going public such

as parking spaces, transportation alternatives, rest rooms, vertical or lateral walkways along the beach and similar projects.

B-7 - Shorecliffs (PDF)

B-8 - Cameo Shores (PDF)

B-9 – Upper Newport Bay Bluffs

- B-9A Upper Newport Bay Bluffs (PDF)
- B-9B Upper Newport Bay Bluffs (PDF)
- B-9C Upper Newport Bay Bluffs (PDF)
- B-9D Upper Newport Bay Bluffs (PDF)

(Ord. 2016-19 § 9 (Exh. A)(part), 2016)

21.80.025 Canyon Overlay.

C-1 – Canyon Overlay (PDF)

(Ord. 2016-19 § 9 (Exh. A)(part), 2016)

21.80.030 Height Limit Areas.

H-1 High Rise and Shoreline Height Limit Areas (PDF)

(Ord. 2016-19 § 9 (Exh. A)(part), 2016)

21.80.035 – Parking Management Overlay District Maps.

PM-1 – Balboa Village Parking Management Overlay District

21.80.040 Setback Maps.

S-1 – Index Map (PDF)

S-1A - West Newport (PDF)

S-1B - West Newport (PDF)

S-2A - Balboa Peninsula (PDF)

S-2B - Balboa Peninsula (PDF)

S-2C - Balboa Peninsula (PDF)

S-2D - Balboa Peninsula (PDF)

S-2E - Balboa Peninsula (PDF)

S-2F - Balboa Peninsula (PDF)

S-2G - Balboa Peninsula (PDF)

S-3A - Lido Isle (PDF)

S-3B - Lido Isle (PDF)

S-4 - Balboa Island (PDF)

S-5 - Newport Heights (PDF)

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Attachment No. PC 3

Correspondence

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AFFILIATED AGENCIES

Orange County
Transit District

Local Transportation
Authority

Service Authority for
Freeway Emergencies

Consolidated Transportation
Service Agency

Congestion Management
Agency

Service Authority for
Abandoned Vehicles

April 10, 2017

Mr. Patrick Alford
Planning Manager
City of Newport Beach
100 Civic Center Drive
Newport Beach, CA 92660

Subject: Notice of Availability of Draft Local Coastal Program Amendments

Dear Mr. Alford:

Thank you for providing the Orange County Transportation Authority (OCTA) with the Notice of Availability of the Draft Local Coastal Program Amendments (Amendments). The following comment is provided for your consideration:

- From the Local Coastal Program, Page 2-74, Section 2.9.1, Subsection 'Bus Transportation', please revise the first paragraph to read as follows:
 - "Public transportation services in Newport Beach are provided by the Orange County Transportation Authority (OCTA) and consist of regular fixed-route service and ADA Paratransit service through ACCESS service. OCTA operates at the Newport Beach Transportation Center located at Avocado Avenue and San Joaquin Hills Road. Demand for bus service from the inland areas to Newport Beach is intensified during the summer peak months. OCTA adds buses to beach routes most in demand to offset increased traffic congestion during the summer peak months."

Throughout the development of this project, we encourage communication with OCTA on any matters discussed herein. If you have any questions or comments, please contact me at (714) 560-5907 or at dphu@octa.net.

Sincerely,

Dan Phu
Manager, Environmental Programs

April 11, 2017, Council Agenda Item 18 Comments

The following comments on an item on the Newport Beach City Council [agenda](#) are submitted by:

Jim Mosher (jimmosher@yahoo.com), 2210 Private Road, Newport Beach 92660 (949-548-6229)

Item 18. Local Coastal Program Amendments

A. Procedural Comments: Improperly before Council

I strongly object to this matter, which I believe is being improperly placed before the Council without proper public review and without a recommendation from the Planning Commission.

Council members who were in office in 2016 may or may not recall that as originally submitted to the Coastal Commission, the Implementation Plan included a [Chapter 21.66](#) detailing the procedures for amending it, including the need for a Planning Commission recommendation.

At the Council's November 7, 2016, meeting, staff reported (see that agenda packet, [page 11-7](#)) that this chapter was deleted: *"IP Chapter 21.66 (Amendments) provided procedures for the amendment of the Local Coastal Program. Coastal Commission staff believes that it is inappropriate for an implementation plan to include these procedures as the regulations for LCP amendments are solely governed by the Coastal Act and its implementing regulations."*

I suspect the complete deletion of Chapter 21.66 was a miscommunication between City and CCC staff, since one need go no further than [Huntington Beach](#) or [Laguna Beach](#) to find IP's with local regulations supplementing, without replacing, the statewide standards for amendment, including a requirement for a Planning Commission recommendation preceding any Council resolution.

In any event, **I do not believe the City is free to ignore the procedural requirement imposed by Table 21.50-1 of the recently certified LCP-IP**, which is reproduced on page 18-17 of the present staff report and which City staff does not recommend changing. That table (see second line under "Administrative and Legislative") clearly indicates that (as in Huntington Beach and Laguna Beach) the Council and CCC decisions on an LCP amendment are to be preceded by a Planning Commission recommendation.

I therefore believe the present hearing is improper. But notwithstanding the neglect of that clear requirement of the certified LCP-IP it is not at all clear that City staff has complied with even the minimal requirements of the "[Section 13515](#) of the California Code of Regulations" ([Title 14, Division 5.5](#)), which it says it is following.

Section 13515 places on local agencies a requirement for "**establishing procedures providing maximum opportunities for the participation of the public and all affected governmental agencies**" and then sets minimal standards.

Not only has Newport Beach failed to establish any procedures (beyond the cryptic note calling for Planning Commission review in IP Table 21.50-1), it is not clear it has met even the minimal standards of Section 13515. For example, Resolution No. 2017-26 claims "*review drafts of the*

LCP amendments were made available and a Notice of the availability was distributed a minimum of six weeks prior the public hearing. There is indeed such a requirement in Section 13515, yet the Notice and what purport to be review drafts at the Mariners Branch Library (libraries being a minimal distribution location required by Section 13515) is stamped "March 10, 2017." And to the best of my knowledge no one in the public was informed that copies had been distributed for public review: the City webpages devoted to the [LCP](#) and [IP](#) are completely silent on the idea that *any* revisions were being contemplated after the CCC approval trumpeted on the latter. Indeed, prior announcement of the present hearing on the City website appears to have been confined to an obscure posting placed at a completely different location and opaquely informing the public about a hearing involving "[Balboa Village Parking Management](#)."

In short, the public first became aware of the proposed amendments around 4 p.m. on the afternoon of April 6, five days before the hearing, when they were released as part of the Council's 643 page agenda packet.

And, on further examination, the five double-sided plus one single-sided page of often unlabeled text provided without further explanation in the distribution placed at the Mariners Library sometime after March 10 (which no one, in practice, knew about, and which is not six weeks before the hearing) are at best an incomplete and inaccurate version of the revisions being presented at the present in this agenda item.

Among the discrepancies noted:

- The highlighted words "government facilities" on page 18-29 of the present staff report (and possibly others?) are not present in the Mariners draft
- The proposed changes to Section "21.30.010.015(E)(5)" shown on page 18-32 are not announced in the Notice or shown in the draft changes. Indeed, it is not apparent from the present report what Section 21.30.010.015(E)(5) is even part of, nor (it might be observed) is there actually a Section 21.30.010.015 in the IP at all.
- The changes on page 18-37 are to a section mentioned in the Notice, but the proposed changes are not shown in the Mariners draft.
- The changes on the present pages 18-38 through 18-41, and 18-58, are in neither the Notice nor the Mariners draft
- The changes on pages on pages 18-44 through 18-57 are mentioned in the Notice, but not shown in the Mariners draft
- The proposed resolution (see page 18-10) and all the notices say amendments are being proposed "to Coastal Land Use Plan (CLUP) Policy 3.13" but I have been unable to find any description of what those amendments might be. Does staff propose to reveal the changes after Council approves them?

Of similar discrepancies *within* the present report, it might be noted that an extensive new Section 21.52.090 is added on pages 18-18 through 18-20 of Attachment A, but as best I can tell it not part of the redline of Attachment B.

In short, rather than "*establishing procedures providing maximum opportunities for the participation of the public*," as required by Section 13515, City staff seems to have gone out of

its way to ensure that the opportunities for public participation in the LCP amendment process would be sub-minimal.

In summary, it is my firm belief that to bring this matter to the Council in compliance with Section 13515 of the California Code of Regulations, a proper draft of the proposed amendments needs to be redistributed with adequate public notice, and then City staff needs to seek a recommendation from the Planning Commission as required by Table 21.50-1 of the certified Implementation Plan.

B. Substantive Comments

If the Council chooses to proceed with sending these improperly and inadequately reviewed changes to the Coastal Commission, based a quick reading of the material which I first became aware of on April 6 (along with the 585 *other* pages of the Council agenda packet) I have a number of specific comments. With the exception of the proposed new **Section 21.52.090**, which as noted above is not disclosed in the redline and whose significance I have not had time to assess, these comments refer to the page numbers in the redline of Attachment B, where the proposed changes are more apparent.

1. **Pages 18-29 through 30:** I strongly object to the proposed emasculation of the Shoreline Height Limitation policy.

For 47 years, residents of Newport Beach have relied on strong height limits to preserve the low-key coastal environment of the bulk of the city, and dampen the wave of pre-Coastal Act high rise development pressure. More recently we have relied on the City's commitment to Shoreline Height limitations in CLUP Policy 4.4.2-1, as well as to maintaining bulk and height standards, as they existed at the time of CLUP certification, in Policies 2.2.2-4 and 4.4.2-3.

While it is true that the local height restrictions always allowed a number of minor exceptions to the basic 35 foot height limit (including, to encourage a variety of architectural styles, a 5 foot allowance for sloping roofs), the proposed changes simply do not express the height restrictions as they existed at the time of certification, thereby creating an internally inconsistent CLUP.

In particular, they insert a great number of vague and apparently *unlimited* exceptions using words defined nowhere in the CLUP, as well as creating an entirely new exception for "government facilities" (which, as noted above, would not have been found in the "review" drafts, even if the public knew there were review drafts).

As one example among many, it appears that consistent with this proposed policy, the IP could be expanded to completely exempt from height limits the "meeting facilities" of a hotel complex. That has never been the public's understanding of the shoreline height limits in Newport Beach.

Far more disturbingly, the proposed policy introduces a blanket exemption from the 35 foot limit for "planned communities." This is most certainly inconsistent with the public's

understanding of the shoreline height limits, and in particular the local restrictions in effect at the time of certification of the CLUP (see [Ordinance 97-9](#)). Former Zoning Code Section 20.65.050.A (for applicability of height limits to Planned Communities approved after October 11, 1972) said "***in no event shall the development exceed the height limits permitted in the height limitation zones***" and former Section 20.65.060.C (for use of limits specified in Planned Community texts approved prior to October 11, 1972) said "*a use permit shall be required for any structure which exceeds the height limits established by this chapter.*"

2. **Page 18-32:** Since these proposed edits, like many of the others, are presented out of context, I have not had time to assess their significance.
3. **Pages 18-33 through 35:** As noted in comment 1, above, neither the CLUP nor the IP properly express the nuances of the local 35 foot shoreline height limitation, including the allowance of 5 feet for sloped roofs and other minor exceptions, but these proposed changes make the discrepancies even worse, particularly to the extent they imply an exemption from height limits is available for anything the staff and City Council declare to be a "planned community."
4. **Page 18-32:** I have not had time to assess the significance of this proposed change.
5. **Page 18-32:** With regard to the proposed footnote (9), as noted in my comment to Item 14 on the Council's present consent calendar, a request from "two members" would not, in the usual understanding of things, constitute a request from "one-third" of the Council, any more than three are "one-half". Whatever is intended, it is probably wiser to simply cite the ambiguous code section by number rather than attempting to restate or summarize it. Repeating the same regulation in two or more places does nothing but lead to the possibility the various statements of policy may contradict each other.
6. **Pages 18-40 through 41:** As noted above, this proposed amendment was not noticed or provided in the public review drafts that no one knew about. I have not had time to assess it.
7. **Pages 18-44 through 48:** The proposal for a Balboa Village Parking Management Plan Overlay District seems remarkably similar to the plan that was previously submitted to the Coastal Commission, but deleted before certification of the IP. Although I did not have time to assess the former, if this proposal is changed from that, it would have been helpful to indicate how, where and why. My impression is the Coastal Commission wanted to see a comprehensive parking approach for the entire peninsula, not a piecemeal one.

The summary on page 18-3 of the staff report suggests that this implementation will eliminate parking requirements for "Most Commercial Uses," but not for such things as "Cultural Institutions" and "Marine Services." I find it very hard to see how that objective, particularly with regard to marine services, could be found consistent with the Coastal

Act. Indeed, it would seem to place special burdens on the most coastal-dependent uses, allowing them to be forced out by generic, non-coastal-related uses.

8. **Pages 18-49 through 57:** As noted above, I have not been able to find anywhere the text of the noticed change to CLUP Policy 3.13, which is presumably related to this. I also have trouble finding the rationale for allowing any of these private encroachments on public oceanfront property. The permission granted (on page 18-51) for private walls and fencing on public property seems particularly problematic and inconsistent with coastal access policies.

Of the specific changes proposed:

- a. Pages 18-50 through 51: The rationale for having areas where encroachments are allowed, but for some reason an area where they are not allowed, somewhere between E Street and G Street, is both hard to fathom and hard to visualize without a diagram (of which none seems to be provided). Only by finding a map can the reader discover that 107 G Street is adjacent to, but inland from, 1400 East Ocean Front, and that they share a west-facing beach-abutting property line, with only 1400 East Ocean Front also having a south-facing beach-abutting property line. Even knowing that, the code seems to say the owner of 107 G Street is prohibited from encroaching onto the sand to its west, but it is impossible to tell if 1400 East Ocean Front is similarly restricted.
- b. Page 18-57: The existing idea seems to be to use the encroachment fees to pay for physical improvements to mitigate the effect of allowing physical encroachments. I can see City staff's wish to use the fees to pay for its shuttle service, but I would see spending on "transportation alternatives" to be a much lower priority than providing physical improvements. In particular, it seems a continuing blot on the character of Newport Beach that there are areas of the city in which we allow private use of public beach property but do not provide restrooms for use by the public trying to enjoy the portion of the beach left to them. If "transportation alternatives" is allowed at all as an acceptable use of the encroachment fees, I think it should be toward the bottom of the list, to be used only after the other possibilities have been exhausted.



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April 10, 2017

OFFICERS

PRESIDENT
Marko Popovich

Newport Beach City Council
100 Civic Center Drive
Newport Beach, CA 92660

VICE PRESIDENT
Dorothy Kraus

RE: City Council Agenda Item 18: Local Coastal Program Amendments (April 11, 2017)

TREASURER
Dennis Baker

Dear Mayor Muldoon and Members of the City Council:

SECRETARY
Allan Beek

We would like to enter these comments into the public testimony regarding the proposed request to the Coastal Commission amending the Local Coastal Plan. Our concern is that buried within the red lined "clean-up" are very significant policy changes of great concern to the residents of Newport Beach who have relied on the Shoreline Height Limits to preserve the character of our community since the 1970s.

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Of special concern are the changes shown in the redlining of Attachment B, Section 4.4.2-1, where it says "In addition, height limits in excess of 35 feet may be established as part of an adopted planned community incorporated into the certified Local Coastal Program Implementation Plan ..."

Recently the residents of the City of Newport Beach have registered their concern about increasing heights without a vote of the people and especially about those projects which are proposed using the Planned Community Development District as the vehicle for changing the zoning and eliminating the general policies of the city including heights. The City has more and more commonly waived the Planned Community District's requirement of 10 acres to allow for a development on as little as 1.3 acres.

This trend is of serious concern to SPON and residents of Newport Beach and especially in the Coastal Zone. The waiver to allow Planned Community Developments of any size, have led to what we believe to be "spot zoning" and piecemeal planning. All too often, the city just reacts to a developer's request and juggles the zoning to allow piecemeal zoning to happen.



A 501(c)(3) non-profit public education organization working to protect and preserve the residential and environmental qualities of Newport Beach.

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Beyond that, even if a Planned Community were 10 acres or more, we are unaware of any precedent or resident desire for exempting Planned Communities in the Shoreline Height Limitation Zone from the 35 foot limit.

SPON urges the Council to reject these poorly vetted proposals and send the entire matter to the Planning Commission for a more thorough public discussion.

Sincerely,

Marko Popovich

President

cc:

Newport Beach City Council

City Council

Leilani Brown, City of Newport Beach, City Clerk

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