

## May 04, 2017, Planning Commission Agenda Item Comments

Comments on Newport Beach Planning Commission regular meeting agenda item submitted by:

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### **Item No. 3. LOCAL COASTAL PROGRAM AMENDMENTS (PA2017-047, PA2017-046 & PA2013-057)**

An item very similar to this was before the City Council as [Item 18](#) on its April 11, 2017, agenda, but continued to allow referral to the Planning Commission.

When the item was before the City Council, I submitted the five pages of written comments reproduced on handwritten pages 70 through 74 of the present staff report. These comments are a supplement to those.

### **Further comments on the “height limit” portion of the Implementation Plan “Clean-up” (LC2017-002)**

Regarding height limits, to reiterate and reinforce my April 11 comments as referenced in the May 3 [SPON letter](#) from attorney Michelle Black, the proposed exceptions to Policy 4.4.2-1 are too ill-defined to be placed at the level of the CLUP and the blanket exception for planned communities is wholly inconsistent with the CLUP as presently certified.

As certified, the public, after reading in the CLUP about the height limitations in effect in the Newport Beach Municipal Code in 2005, including, but not limited to the “35 foot” shoreline limit, expects the City to follow:

*“Policy 4.4.2-1. **Maintain the 35-foot height limitation in the Shoreline Height Limitation Zone**, as graphically depicted on Map 4-3, ...”*

which is bolstered by at least two other promises:

*“Policy 4.4.2-3. Implement the regulation of the building envelope to preserve public views through the **height**, setback, floor area, lot coverage, and building bulk **regulation of the Zoning Code in effect as of October 13, 2005** that limit the building profile and maximize public view opportunities.”*

and:

*“Policy 2.2.2-4. Implement building design and siting regulations to protect coastal resources and public access through **height**, setback, floor area, lot coverage, building bulk, and other property development **standards of the Zoning Code** intended to control building placement, height, and bulk. “*

**These conditions were regarded as, and remain, important for maintaining the visual character of this coastal city, and nothing in the Zoning Code in effect in 2005 supported the notion that there was any kind of exception for “planned communities” -- in the Shoreline Height Limitation Zone, or anywhere else in the City.**

The Zoning Code in effect at the time of the most recent CLUP certification was essentially that of the "Comprehensive Zoning Code Update" of Ordinance No. 97-9, within which the height regulations are found in [Chapter 20.65](#). That chapter fairly faithfully repeated the original (pre-Coastal Act) height limit structure adopted by the City with [Ordinance No. 1454](#) in 1972.

Regarding **existing** (pre-1972) Planned Community standards, it said:

*"20.65.060.C. "Proposed structures within a planned community district adopted prior to the effective date of this chapter (October 11, 1972) may be constructed in accordance with the height limits contained within the planned community text; provided, however, that **a use permit shall be required for any structure which exceeds the height limits established by this chapter.**"*

Regarding **"new"** (post-1972) Planned Communities, it said:

*"20.65.050 Planned Community Districts. In each planned community district established subsequent to the adoption of this chapter, the **height limits shall be established as part of the Planned Community Development Plan; provided, however, that in no event shall the development exceed the height limits permitted in the height limitation zones** as set forth under Section 20.65.040 ..."*

It should be noted that by the time the CLUP was last certified, in 2005, the height policy for existing PC's of Subsection 20.65.060.C had been erroneously deleted as part of a "clean-up" of what someone thought was "obsolete" code per [page 7](#) of Ordinance 98-21. As far as I can tell, the code was in fact not obsolete, since although no construction applications pending in 1972 were still pending in 1998, new applications for construction in PC's with pre-1972 standards could be filed at any time, including many years from now.

Since 2005, the Zoning Code was comprehensively updated in 2010. In that process (which promised "height limits are not changing"), the height regulations were condensed and garbled in such a way that **recent staff reads the present [Subsection 20.30.060.C.1](#) as entirely exempting planned communities from the height limits** (see, for example, the arbitrary heights proposed for the "Car Wash Project" in Newport Center). **That reading is clearly erroneous as applied to the existing code, and even more clearly erroneous as applied to the LCP.**

The 1997 Code **did** allow sloping roofs to exceed the "normal" limits by 5 feet, and there **was** a list of "Exceptions to Height Limits" in Section 20.65.070, but none for such things as "assembly facilities" or "government facilities." As to the latter, the 1997 Code said it applied to "any building" in the City (per Section 20.00.025). Indeed, Section 20.25.030 defining development limits on governmental zoned parcels refers to Chapter 20.65 for their height limits.

In short, much of this does not appear to me to be a "clean up," but rather a significant change to long-established policies.

## Further comments on Oceanfront Encroachment Program (LC2013-002)

Regarding the proposed Oceanfront Encroachment Program, the Planning Commission should at least be aware of the very significant tension that exists between permitting private encroachments on public, oceanfront property and the Coastal Act's core tenet of preserving public access to the coast.

[Section 30210](#) of the Coastal Act provides: "*In carrying out the requirement of Section 4 of Article X of the California Constitution, **maximum access**, which shall be conspicuously posted, and recreational opportunities **shall be provided**...*" Section 30211 elaborates: "*Development shall not interfere with the public's right of access to the sea where acquired through use or legislative authorization, including, but not limited to, the use of dry sand and rocky coastal beaches to the first line of terrestrial vegetation.*"

The East Oceanfront Encroachment Program expressly authorizes oceanfront landowners to construct decks or fences up to 15 feet oceanward of their property lines, thereby privatizing public, sandy beach for their own private use, and hence appears to prioritize private property interests over coastal access, without the justifications required by Coastal Act Section 30210.

The mitigations offered seem largely a recitation of possibly outdated provisions related to West Newport, not East Oceanfront. This is particularly concerning in view of a strong suspicion that two of the key mitigations cited in the CLUP as justifying private encroachments onto public beach property seem unlikely to ever be realized in this area: there seems to be a general unwritten understanding with homeowners that the City is never going to provide public beach restrooms east of the Balboa Pier area, and Council member Dixon has recently said the oceanfront "boardwalk" will never be extended beyond its current east terminus.