

Attachment G

RMD Ordinance Public Comments

From: [Westmoreland, Liz](#)
To: [Lee, Amanda](#); [Garciamay, Ruby](#)
Subject: FW: May 9 planning commission
Date: Tuesday, May 07, 2019 5:27:32 PM
Attachments: [image001.png](#)

Public comment received regarding PA2019-065.

LIZ WESTMORELAND
Community Development Department
Assistant Planner
lwestmoreland@newportbeachca.gov
949-644-3234

CITY OF NEWPORT BEACH
100 Civic Center Drive, First Floor Bay B, Newport Beach, California 92660 | newportbeachca.gov

From: anastasios Nikolaou <taso@lockarate.com>
Sent: Tuesday, May 7, 2019 5:25 PM
To: Westmoreland, Liz <LWestmoreland@newportbeachca.gov>
Subject: May 9 planning commission

Hello -

I'm in favor of the amendment to allow attached homes because 90% of the district is attached home and uniform to the area.

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Item 3. Ordinance No. 2019-10: Adoption of an Ordinance Amending the Municipal Code to Rename the Multiple Residential Detached (RM-D) Zoning District to Medium Density Residential (RMD) and Include Reference to Attached Dwelling Units (PA2019-065)

There is little doubt the zoning in the Santa Ana Heights area where the “RMD” designation has been applied was always intended to include the possibility of attached as well as detached dwelling units.

Nonetheless, **there are a number of points the Council should consider before moving forward with adopting this ordinance:**

1. The addition of a “Multiple Residential Detached” Zoning District to the Zoning Code in 2010 does not appear to be entirely the clerical error City staff now claims it to be, and the Council may be making a mistake in completely obliterating it.
2. This proposal is coming to the Council to “legalize” a part of the Planning Commission’s recent approval of the three-story, eight-unit “Mesa Drive Townhomes” project at the northeast corner of Mesa Drive and Santa Ana Avenue ([PA2017-218](#)), which, as the PC recognized, was in glaring inconsistency with the description of the Zone, and which has been separately called up for review by the Council.
3. The detached/attached issue was glossed over in the previous approval by both the PC and the Council of the three-story, seven-unit “Santa Ana Avenue Cottages” on the lots immediate north of the “Mesa Drive Townhomes” proposal, which was approved by the Planning Commission as [Item 2](#) on its November 17, 2016, agenda (see [minutes](#)), and appealed but sustained (by all but Mayor Dixon) as [Item 12](#) on Council’s February 28, 2017, agenda (see [minutes](#)). The Final Tract Map and construction was approved as [Item 7](#) on the Council’s October 23, 2018, consent calendar. That project is currently under construction and is distinctly out of character with its surroundings.
4. **While the “Mesa Drive Townhomes” project has brought attention to the previously-ignored detached/attached “error,” no one seems to have noticed the 2010 Zoning Code contains what appears to be an even more serious error about the allowed density of development on these lots.** At the time of annexation, the promise was very clearly to retain the County’s “R-4” limit of one dwelling unit per **3,000** square feet of land area on these lots, NOT the one unit per **1,000** sf limit of the larger “R-2” lots to the immediate north of these along Santa Ana Avenue. As a result, the Santa Ana Avenue Cottages project, on an 11,489 square foot site, should have been limited to the (existing) three units, and the Mesa Drive Townhomes project, replacing two single-family homes on a 14,180 sf site, should have been limited to four units.
5. In addition to needing to address the apparent density error as well as the detached/attached error, the Council should be aware that much of the ordinance being presented to them involves “corrections” to tables in the Zoning Code that were not presented to or reviewed by the PC. Those tables contain additional errors and inconsistencies which staff is not pointing out to the Council or asking it to address.

To elaborate on these points:

The Existence of a “Multiple Residential Detached” Zoning District in the 2010 Code May Not be an Error

The purpose of the Zoning Code is to implement the General Plan.

Although the 1988 General Plan Land Use Element distinguished between “Single Family Detached” and “Single Family Attached” land uses, it did not seem to see any need to dictate if “Multi-Family Residential” properties would need to be developed with attached or detached dwelling units (see [page 19](#) as reproduced in [Resolution No. 88-100](#)). By contrast, the revised Land Use tables and maps submitted to voters for approval with Measure V in 2006 *did* (see [Resolution No. 2006-77, page 4](#)) while retaining the Single Unit Residential Detached (RS-D) versus Single Unit Residential Attached (RS-A) distinction, it added that distinction to multifamily housing to create two distinct land use categories: Multiple Residential (RM) and Multiple Residential Detached (RM-D).

As indicated in the staff report to the Planning Commission, voters were asked to apply the RM-D category to [Bay Island](#) and a number of sites in [Newport Coast](#) (note: although large parts of unincorporated County land, including West Santa Ana Heights, had been added to Statistical Area J6 of the City’s General Plan by “prezoning” in 2004 [see [Resolution No. 2004-5](#)], they do not seem to have been part of the 2006 General Plan [as presented to voters](#)).

It therefore seems natural, and perhaps even necessary, that the 2010 Zoning Code, intended to implement the 2006 General Plan, would have Multiple Residential (RM) *and* Multiple Residential Detached (RMD) Zoning Districts corresponding to the *two* distinct multi-family land use categories in the plan. In fact, the description of the purpose of RMD in the Zoning Code is an almost exact paraphrase of the description of RM-D in the General Plan.

Ironically, and perhaps ineptly, in 2010 the plain “RM” zoning was applied to Bay Island (despite it being “RM-D” in the General Plan in 2006), and the “RMD” zoning was applied to the strip of Santa Ana Avenue in West Santa Ana Heights despite it having being designated plain “RM” in the General Plan as amended during the annexation in 2008 (note: the zoning for the properties in Newport Coast designated RM-D in the 2006 General Plan is implemented through a Planned Community text without invoking RMD zoning districts).

Continuing the irony, despite declaring the existence of Multiple Residential Detached (RMD) Zoning Districts (for which Bay Island – a series of detached homes on a single large lot not subject to a PC text -- would be the only candidate at present), the present implementation of RMD does not (despite the title) limit construction to detached units, and if applied to Bay Island would impose additional restrictions (such as setbacks) that were likely not previously applicable there. And despite an appropriate General Plan designation, we have, at present, no zoning district that, if applied to it, would restrict Bay Island (or the areas in Newport Coast) to detached units.

It would seem that to correctly implement the 2006 General Plan, more than *two* kinds of “RM” zoning districts are needed, and simply redefining RMD to include attached units will not cut the ice for the City as a whole.

Through a Series of Errors, the Current General Plan and Zoning Misstate the Density of Development on Certain Lots in WSAH Allowed by the County Before Annexation

The confusion regarding the intent and implementation of the “RMD” designation, that has existed in the Zoning Code since 2004, can be better understood if one traces its history.

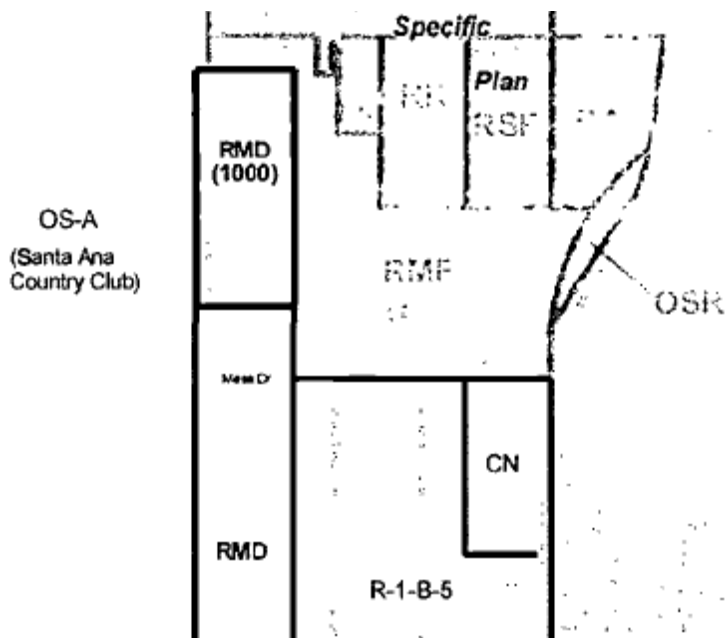
Prior to 2004, the City’s Zoning Code contained a “zoning district” name applicable to lots on which more than two dwelling units could be constructed: the Multifamily Residential (MFR) District. As indicated without full explanation on page 22-28 of the much longer staff report provided to the Council when this item was introduced as [Item 22](#) at the June 11 meeting, the RMD designation was added by [Ordinance No. 2004-1](#) to implement the General Plan designations in the accompanying [Resolution No. 2004-5](#), both of which were part of a “pre-zoning” effort in anticipation of a request to annex from the County what was known as “Area 7” (which included what we now call “West Santa Heights” as well as the still unincorporated Santa Ana Country Club and a large area south of Mesa Drive) and the “Emerson Tract.”

The effort at the time was to exactly match both the allowances and restrictions imposed by the County zoning.

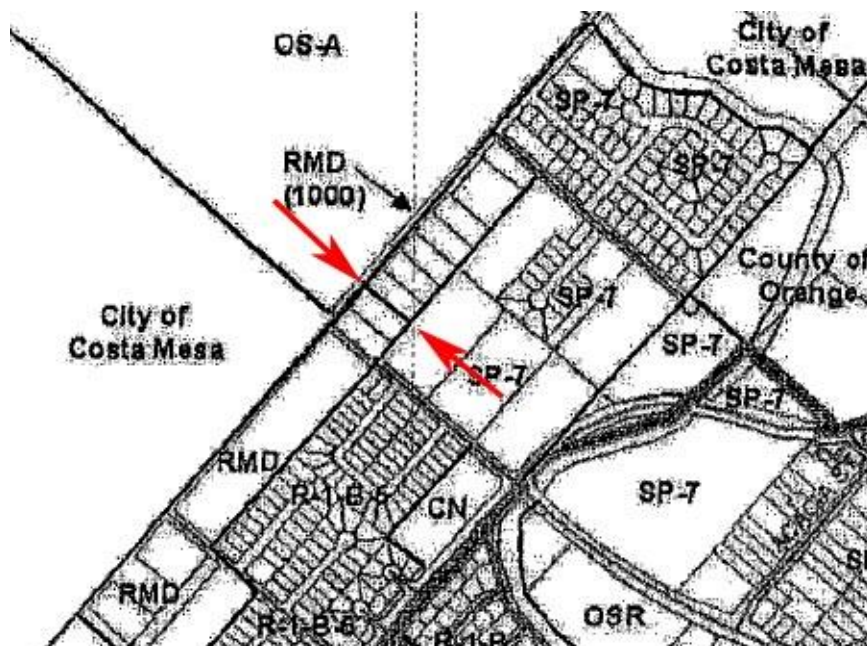
Apparently because the County zoning had slightly different setback rules, and also different default density rules, for its multifamily zoning than applied to the City’s MFR districts, it was felt expedient to introduce a new RMD district to match the former County rules. Among these differences was the County’s default requirement for **3,000 sf** of land area per dwelling unit (which translates into a density of 14.5 du/acre) unless shown otherwise on the maps, compared to the City’s default of **1,200 sf** per dwelling unit (density of 43.6 du/acre) in MFR districts. The 3,000 sf/du requirement was reflected in the table in former NBMC Sec. 20.10.030 as amended by [Ordinance No. 2004-1](#) on January 27, 2004, as shown at the bottom of [page 22-32](#) of the June 11 staff report.

As explained in detail in the January 13, 2004, staff report that accompanied that legislation, some of the multifamily lots had a County designation of “R-2,” with the 1,000 sf requirement, while others were “R-4,” with a 3,000 sf limitation. 3,000 sf per dwelling unit is also the default requirement in the “RMF” districts of the Santa Ana Heights Specific Plan, as can still be seen in the current [NBMC Sec. 20.90.090.F.3](#). See also the table on [page 7](#) of the January 13, 2004, Item 17 staff report comparing the County to the proposed City zoning regulations. As explained see top of [page 8](#), the “RMD(1000)” designation was to apply to the former County R-2 area north of Mesa Drive, but that was not all of Santa Ana Avenue north of Mesa Drive. The smaller lots immediately north of Mesa Drive, on and around Savanna Lane, were intended to continue the R-4/RMD default of 3,000 sf per unit, as were all those along Santa Ana Avenue south of Mesa Drive.

See the illustration in the January 13, 2004, staff report showing the RMD district (with the default of 3,000 sf/unit – as opposed to RMD(1000)) extending north of Mesa Drive:



See also the amended Districting Map 67 as adopted into the City's Zoning Code by Ordinance No. 2004-1 (with the boundary between normal "RMD" [3000] zoning and "RMD(1000)" highlighted by the added red arrows).



It might be noted that in the drafting of Ordinance 2004-1, the default RMD density limit had been inadvertently set to 2,000 sf per unit (21.8 du/acre), but that error was noticed and (partially) corrected during the review by the Planning Commission [see Item 17 [minutes](#) from November 20, 2003, referring to the erroneous [page 31](#) of the October 23, 2003, staff report, from which the item had been continued]— in part for fear that leaving it at 2,000 would trigger the need for a “Greenlight” (City Charter Section 423) vote because it would increase the number of dwelling units

allowed under the General Plan compared to what had been allowed under the County plan. However, as happens, the correction as not complete, so the description of RMD in the amended Section 20.10.010 described the “Medium Density Residential (RMD) District” *“Provides for medium density residential development up to approximately 22 dwelling units per gross acre, including single-family (attached and detached), two-family, and multi-family.”* The 22 du/ac figure came from the 2,000 sf/unit restriction. After the correction, it was presumably intended to say “14 du/ac” based on the 3,000 sf/unit standard.

So how did the 3,000 sf/du default limit for RMD properties get lost from the Zoning Code?

As happens in Newport Beach, no sooner did the Title 20 (the Zoning Code) get amended by the Planning Division with Ordinance No. 2004-1 in late January (effective at the end of February), but another department – in this case, the City Attorney’s office – brought to the Council an ordinance to amend Title 20 to address a different problem they’d been working on – in this case group homes. And the version of Title 20 they used as the basis for their redlining was the pre-Ordinance No. 2004-1 one, which did not include the RMD district. The City Attorney’s recommendations were adopted as [Ordinance No. 2014-16](#) on September 28, 2004 – some eight months after the ordinance that had added “RMD” to the Municipal Code. Ordinance No. 2014-16 enacted a completely new version of former NBMC Section 20.10.010.H, thereby deleting the definition of RMD as a designated type of zoning district, as well as the “Land Use Regulation” table of former Section 20.10.020 (see [page 5](#)). Some of these sections were subsequently amended by Ordinance No. 2006-27 and 2008-5, again without noticing the omissions of “RMD.” As a result, from 2004 through 2010 our Zoning Code had a table of “Property Development Regulations” (in former Section 20.10.030) showing a “RMD” development type with a minimum 3,000 sf/du, but no explanation of what “RMD” was or what uses were allowed in the district.

By the time the annexation of a much reduced portion of West Santa Heights became imminent in late 2007, and with the General Plan update measure submitted to the voters in 2006 having omitted the Council’s previously-approved 2004 rezoning of “Area 7,” staff presented the Council with a new General Plan amendment in the form of [Resolution No. 2007-78](#), offered as [Item 14](#) at the December 11, 2007, meeting.

By this time, the General Plan had taken to designating the allowed multifamily densities on the map, and this resolution designated the properties near the corner of Santa Ana Avenue and Mesa Drive as having a General Plan land use designation of “RM – 43 /ac” (see [page 5](#)) – a designation supposedly supported by what the December 2007 staff report claimed to be “West Santa Ana Heights Rezoning” map resulting from Ordinance No. 2004-1 (see [page 13](#), also shown to the Council without clear attribution on [page 22-43](#) of the recent June 11 staff report). This shows Ordinance No. 2004-1 as having applied a “RMD(1000)” zoning to all the lots along Santa Ana Avenue in West Santa Ana Heights that were not in the Specific Plan. But this is not correct, and this map does not reflect the County-consistent zoning adopted by Ordinance No. 2004-1 and Resolution No. 2004-5 as illustrated in the diagrams copied above.

Since the correct RMD development requirement of 3,000 sf/du (11 du/ac) had been missing from the Zoning Code since 2004, when the revised Zoning Code was adopted in 2010, someone

apparently copied the standards from Ordinance 2004-1, but changed “3,000 sf/du” to “1,000 sf/du” to match the erroneously-widely-applied “43 /ac” designation in Resolution 2007-78.

The evidence that this was a mix-up is at least as strong as the evidence that it was intentional. In particular:

1. There would be no need to label properties “RMD(1000)” if 1,000 sf/du was the default requirement (a number in parenthesis indicates the default number is being overridden).
2. The new description of “RMD” inserted into [Section 20.18.010](#) says it is for “*exclusively detached*” development – as in the 2006 General Plans new RM-D category – which was never appropriate for or assigned to these areas of Santa Ana Heights.
3. If it referred to the old (very short-lived) RMD district designation from 2004, 1,000 sf/du would be inconsistent with its description in Ordinance 2004-1 as being “*for medium density residential development up to approximately 22 dwelling units per gross acre.*” That is, if 1,000 sf/du were the proper default standard, the default density would be twice what is normally allowed in the district.

In short, to the extent it has been the City’s intent to preserve the zoning previously imposed by the County, the stated allowable density for the lots at the northeast corner of Santa Ana Avenue and Mesa Drive is as erroneous as the restriction to detached units. If that remains the Council’s intent, they both need to be fixed – not just the “detached” issue. Not correcting the density issue is leading to a proliferation of out-of-character, excessively-dense development at and around that corner.

Those seeing the Santa Ana Cottages project currently under construction (seven units where the County would have allowed only three) have ample reason to wonder how it got approved.

In addition, since “Multiple Residential Detached” (RM-D) is a land use designation in the current General Plan, the Council may wish to ensure that a corresponding zoning designation exists in the Zoning Code, with possibly a different designation for the areas of mixed attached/detached multi-family construction in Santa Ana Heights.

Additional Problems Highlighted by this Proposed Ordinance

A close reading of the June 11 staff report ([Item 22](#)) will reveal that a number of items being presented to the Council for approval as parts of Ordinance No. 2019-10 were neither presented to nor reviewed by the Planning Commission at their May 9, 2019, meeting (as their [Item 5](#)). It might also be noticed that the Resolution No. PC2019-12, adopted by the PC, refers to an “[Exhibit “A”](#)” recommended for Council approval, but the attachment does not seem to be part of the [posted resolution](#).

Among the things I notice in those previously unreviewed portions:

1. **Section 3**, on page 3-4 of the current staff report recommends an amendment to [Zoning Code Table 4-1](#) regarding “Animal Keeping” where the zoning district currently listed as “RM-D” is to be corrected to “RMD”.

- a. The staff report fails to call the Council's attention to the column headed "Maximum Number of Animals per Site".
 - b. The word "Site" is a term defined in Title 20 ([Section 20.70.020.S](#)) as "a lot or adjoining lots under single ownership or single control, considered as a unit for the purposes of development or other use." In other words, an entire apartment complex is a single site.
 - c. Per the line under the headings, a total of **three** cats and/or dogs is allowed in an **entire** multi-family complex.
 - d. I somehow doubt this is either the Council's intent or something City staff would cite offenders for.
 - e. **Shouldn't this be corrected?**
2. On page 3-5, the third row from the top lists "RA" as a zoning district. There is no "RA" district (see [Section 20.14.020](#) for a complete list of zoning districts and [Section 20.18.010](#) for a "complete" list of residential districts). As indicated in following rows, the intended designation is presumably "R-A". **Shouldn't this be corrected?**
 3. **Section 4**, on page 3-7, recommends an amendment to Table 1-1 of [Section 20.14.020](#), showing how the "General Plan Land Use Designations [are] Implemented by Zoning Districts."
 - a. The table, as amended continues to give the impression that we have a zoning district that implements the General Plan designation of "Multiple-Unit Residential Detached." We do not at present and the present ordinance does nothing to create one. **Shouldn't this be corrected?**
 - b. Other [General Plan Land Use Designations](#) that have no zoning district defined to implement them included RS-A, CR, OS(RV) and TS.
 - c. At the end of this table, on staff report page 3-9, where it lists "[Overlay Zoning Districts](#)," Table 1-1 fails to list the "H" ("Height") overlay district that was added to Title 20 by [Ordinance No. 2015-12](#). **Shouldn't this be corrected?**

Item 4. Resolution No. 2019-56: Adopting a Memorandum of Understanding with the Part Time Employees Association of Newport Beach (PTEANB)

See comment on Item 6. Those who know about the City's [system of MOU's](#) with its labor groups would know this has to do with wages and benefits. Those who read the full title of the resolution would know the item involves salaries, but not necessarily benefits.

Regarding the proposed MOU:

Staff report page 4-11: Paragraph 2 of the Preamble contains what certainly appear to be extraneous words the Council may wish to delete in the interest of clarity: "... *for the period from January 1, 2019 ~~through January 1, 2019~~ through December 31, 2021.*"