

# **Attachment E**

Planning Commission Resolution No. 2019-035

## **RESOLUTION NO. PC2019-035**

### **A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF NEWPORT BEACH, CALIFORNIA, RECOMMENDING CITY COUNCIL ADOPTION OF CODE AMENDMENT NO. CA2019-005 TO AMEND TITLE 20 ENTITLED “PLANNING AND ZONING” OF THE CITY OF NEWPORT BEACH MUNICIPAL CODE RELATED TO HEDGE HEIGHTS IN FRONT SETBACKS ABUTTING STRADAS IN LIDO ISLE (PA2019-132)**

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

#### **SECTION 1. STATEMENT OF FACTS.**

1. An amendment to Title 20 (Planning and Zoning) of the City of Newport Beach Municipal Code (“NBMC”) in relation to hedge heights in front setbacks abutting stradas in Lido Isle is necessary due to the differing regulations between the City of Newport Beach (“City”) and Lido Isle Community Association (“LICA”) (“Amendment”).
2. A public hearing was held by the Planning Commission on December 5, 2019, in the Council Chambers located at 100 Civic Center Drive, Newport Beach, California. A notice of time, place and purpose of the public hearing was given in accordance with the California Government Code Section 54950 *et seq.* the (“Ralph M. Brown Act”) and Chapters 20.62 and 21.62 of the NBMC. 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.**

The Amendment is not a project subject to the California Environmental Quality Act (“CEQA”) in accordance with Section 21065 of the California Public Resources Code and Sections 15060 (c)(2), 15060 (c)(3), and 15378 of the California Code of Regulations Title 14, Division 6, Chapter 3 (“CEQA Guidelines”). The Amendment is also exempt pursuant to CEQA Guidelines Section 15061(b)(3), the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment. The Amendment itself does not authorize development that would directly result in physical change to the environment.

#### **SECTION 3. FINDINGS.**

1. Authorizing the amendment to Title 20 (Planning and Zoning) of the NBMC would correct an existing inconsistency in hedge height regulations between the City of Newport Beach and LICA. City regulations contained within NBMC Title 20 establish a maximum of 42 inches for hedges within front setback areas. In 2001, LICA homeowners voted to amend the Association Covenants, Conditions, and Restrictions (“CC&Rs”) to change the hedge height limit abutting stradas (public walkways) from 30 inches to 60 inches. The Amendment to Title 20 increases maximum hedge heights in front setback areas abutting stradas on Lido Isle from 42 inches to 60 inches, consistent with LICA CC&Rs.

2. An amendment to the Local Coastal Program ("LCP") is also underway, as all Lido Isle properties are part of the coastal zone. The subject Code Amendment shall not become effective until approval of the subject LCP amendment by the California Coastal Commission and adoption, including any modifications suggested by the California Coastal Commission, by resolution and/or ordinance of the City Council of the City of Newport Beach.

**SECTION 4. DECISION.**

**NOW, THEREFORE, BE IT RESOLVED:**

1. The Planning Commission finds the Amendment exempt from CEQA pursuant to Section 21065 of CEQA and CEQA Guidelines Sections 15060 (c)(2), 15060 (c)(3), and 15378, California Code of Regulations, Title 14, Division 6, Chapter 3. The Amendment is also exempt pursuant to CEQA Guidelines Section 15061(b)(3) because it has no potential to have a significant effect on the environment.
2. The Planning Commission of the City of Newport Beach hereby recommends approval of Code Amendment No. CA2019-005 as set forth in Exhibit "A," which is attached hereto and incorporated herein by reference.

**PASSED, APPROVED, AND ADOPTED THIS 5<sup>TH</sup> DAY OF DECEMBER, 2019.**

AYES: Ellmore, Kleiman, Koetting, Lowrey, Rosene, Weigand

NOES:

ABSTAIN:

ABSENT: Klaustermeier

BY:   
Peter Koetting, Chairman

BY:   
Lee Lowrey, Secretary

**EXHIBIT "A"****Proposed Code Amendment related to Hedge Heights in Front Setbacks Abutting Stradas In Lido Isle (CA2019-005)**

**Section 1:** Amending Section 20.30.040 (Fences, Hedges, Walls, and Retaining Walls) of Title 20 (Planning and Zoning) of the Newport Beach Municipal Code to read as follows:

**20.30.040 Fences, Hedges, Walls, and Retaining Walls.**

This section provides standards for the provision of fences, hedges, walls, and retaining walls.

**A. Maximum Height Allowed.**

1. Fences, Hedges, and Walls. Maximum heights of fences, hedges, and walls are shown in Table 3-1.

<b>TABLE 3-1</b>  <b>MAXIMUM HEIGHT OF FENCES, HEDGES, AND WALLS</b>	
<b>Location</b>	<b>Maximum Height</b>
Front setback areas.	42 inches. See subsection (B) of this section.
Rear and interior side setback areas.	6 feet in residential and commercial zoning districts. 8 feet in industrial zoning districts adjacent to residential uses.
Setback areas abutting or adjacent to the waterfront of Newport Bay, the shoreline of the Pacific Ocean, the Old Channel of the Santa Ana River (the Oxbow Loop), or the channels in West Newport.	42 inches from existing grade prior to construction. Setback areas on Balboa Island and Little Balboa Island that are abutting or adjacent to Newport Bay are regulated by subsection (B) of this section.
At intersections of streets, alleys and driveways within traffic sight areas.	See Section <u>20.30.130</u> (Traffic Safety Visibility Area).

2. Retaining Walls. The maximum height of a retaining wall shall be eight feet measured from finish grade at the base of the wall, not including any required guardrails. A minimum horizontal separation equal to the height of the tallest retaining wall shall be provided between retaining walls, except that the required separation shall not be more than six feet. The above requirements shall not apply to

retaining walls that are an integral part of principal structures. An increase in the height of a retaining wall may be requested in compliance with Section 20.52.050 (Modification Permits).

B. Special Area Regulations. In front setback areas in Balboa Peninsula, Balboa Island, Corona del Mar, West Newport, East Bay Front on Little Balboa Island, and North Bay Front and South Bay Front on Balboa Island fences and walls shall be allowed to extend to a height of five feet; provided, that any portion of the fence or wall above two feet shall be constructed of open grillwork, wrought iron, latticework, pickets, Plexiglas, or similar materials so that at least forty (40) percent of the portion of the fence or wall above two feet is open. See Figure 3-1.

C. Exceptions to Maximum Height.

1. Grade Differential. Where the existing or proposed grade of a lot adjacent to the front setback area is more than twenty-four (24) inches above the adjacent sidewalk (or curb elevation where no sidewalk exists), a maximum twenty-four (24) inch high retaining wall shall be allowed to be located at the front property line. Additional retaining walls shall be allowed to a maximum height of thirty-six (36) inches each, provided they are set back a minimum distance of twenty-four (24) inches from the inward face of the previous retaining wall. Additional retaining walls shall be subject to the same limitation. A maximum forty-two (42) inch guardrail shall be allowed atop the uppermost retaining wall for safety purposes, provided the guardrail is constructed of open grillwork, wrought iron, latticework, pickets, or similar materials so that at least forty (40) percent of the fence is open. See Figure 3-1.

2. Decorative Fence/Wall Details and Lights.

a. Finials, light fixtures, pilaster caps, pots, and similar decorative items may be placed on fence or wall vertical support elements (e.g., pilasters, pillars, posts, etc.), provided they are secure and do not extend more than twelve (12) inches above the maximum allowed height.

b. The number of decorative items (e.g., finials, pilaster caps, pots, and similar items) and light fixtures shall be limited to not more than one item or fixture for every six lineal feet of fence or wall.

3. Fencing for Pools and Spas.

a. Swimming pools, spas, and other similar features shall be fenced in compliance with Title 15.

b. Fencing and guardrails for ponds, spas, and swimming pools located in a front setback area or in the rear and side setback areas regulated as front setback areas on lots with forty-two (42)

inch height limitations may be allowed to exceed the height limit in compliance with the following standards:

- i. Fences shall be constructed of open grillwork, wrought iron, latticework, pickets, or similar materials so that at least forty (40) percent of the fence or wall is open. In lieu of the above, glass or Plexiglas may be allowed; and
- ii. Fence height shall be limited to the minimum required by Title 15.

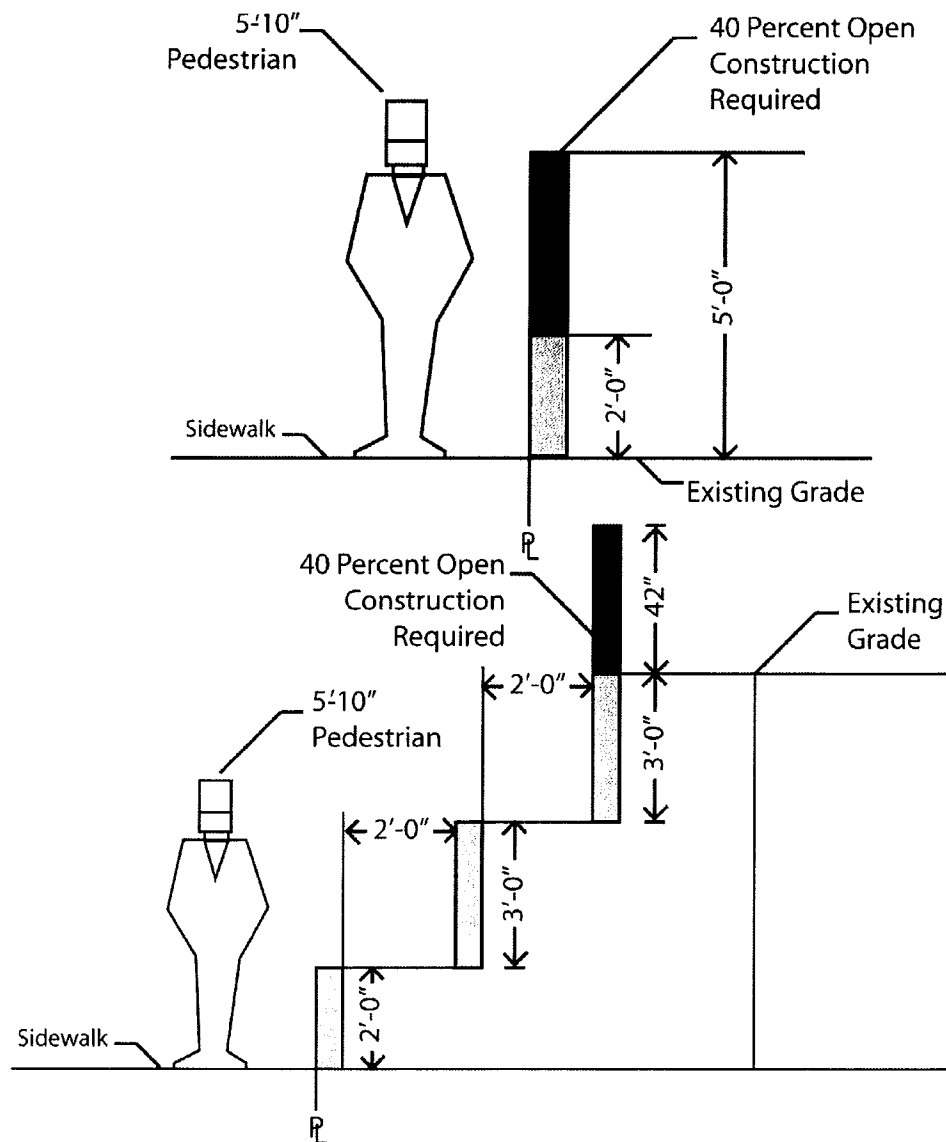


Figure 3-1

---

**Grade Differential at Front Property Line**

4. Residential Uses Adjacent to Commercial Uses or Alleys. For residential lots adjacent to nonresidential zoning districts or commercial alleys, fences, walls, or hedges may be up to eight feet in height in required residential side yards for buffering and/or sound attenuation.

5. Residential Lots Where the Top of Slab Is Required to Be Raised to 9.0 NAVD88 and Where the Grade of the Lot Is Proposed to Be Increased. The height of fences and walls within required side and rear yard setback areas may be increased provided the height does not exceed six feet as measured from the proposed finished grade and nine feet as measured from the existing grade prior to construction. Additionally, the height of fences or walls shall not exceed nine feet as measured from the existing grade of an abutting lot. The portion of the fence or wall above six feet in height from the existing grade prior to construction shall be constructed of open grillwork, wrought iron, latticework, pickets, or similar materials so that at least sixty (60) percent of the fence or wall is open or is constructed of a transparent material.

6.. Hedges in Lido Isle. In front setback areas abutting stradas in Lido Isle, the maximum hedge height shall be five feet.

D. Measurement of Fence or Wall Height. The height of a fence, hedge, or wall shall be measured from the existing grade prior to construction at the location where the fence, hedge, or wall is located.

E. Prohibited Fence Materials. Barbed wire, electrical fences, razor wire, and other similar materials shall not be allowed in residential zoning districts. (Ord. 2012-11 § 1 (Exh. A), 2012: Ord. 2010-21 § 1 (Exh. A)(part), 2010)

**Section 2:** Amending Section 20.80.010 (Area Maps) of Title 20 (Planning and Zoning) of the Newport Beach Municipal Code to include Area Map A-7 – Lido Isle as follows:

