

# **Attachment H**

Planning Commission Resolution No. PC2020-24

## **RESOLUTION NO. PC2020-024**

### **A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF NEWPORT BEACH, CALIFORNIA, RECOMMENDING CITY COUNCIL ADOPT CODE AMENDMENT NO. CA2019-001 TO AMEND TITLE 20 (PLANNING AND ZONING) OF THE CITY OF NEWPORT BEACH MUNICIPAL CODE CORRECTING AND CLARIFYING PROVISIONS RELATED TO OVERLAYS AND PUBLIC HEARING NOTICE REQUIREMENTS (PA2019-055)**

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 Newport Beach Municipal Code (NBMC) ("Code Amendment") is necessary to provide clarification and corrections to Title 20 related to overlays and public hearing notice requirements.
2. On April 23, 2019, the City Council adopted Resolution No. 2019-41 initiating the Code Amendment.
3. A telephonic public hearing was held on June 18, 2020, in the Council Chambers located at 100 Civic Center Drive, Newport Beach, California, due to the Declaration of a State Emergency and Proclamation of Local Emergency related to COVID-19. 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 Chapter 20.62 (Public Hearings) 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 action proposed herein 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 proposed action 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 Code Amendment itself does not authorize development that would directly result in physical change to the environment.

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

1. Section 20.28.10 (Purposes of Overlay Zoning Districts) of Title 20 (Planning and Zoning) inadvertently states that the more restrictive standard of the underlying zoning district or applicable overlay apply; however, overlays are often a land use tool used to specify a different standard that might be less restrictive than the underlying zone. For example, the Height Overlay District allows a greater building height (less restrictive) if certain conditions

(findings) are met. The Parking Management Overlay authorizes the establishment of a Parking Management District that allows reduced parking requirements than that of the base zoning standards. The Code Amendment to Title 20 (Planning and Zoning) will clarify that in cases where standards conflict in an overlay district and the underlying coastal zoning district, those of the overlay district will control.

2. Section 20.62.020 (Notice of Public Hearing) of Title 20 (Planning and Zoning) provides noticing requirements for project applications requiring a public hearing. Prescribed methods of notice distribution include: publication in a newspaper of general circulation; mailing to affected property owners, local agencies, nearby property owners and residents, and persons requesting notice; and posting of notice on or near the subject property. In lieu of mailed notice, NBMC Subsection 20.62.020(B)(4) (Alternative to Mailing) authorizes the Director to choose alternative notice specified by State law. To eliminate ambiguity and provide clarification of the alternative afforded by State law, the LCP Amendment will clearly specify that the alternative to mailings of over 1,000 notices is to publish a larger one-eighth page display advertisement in a newspaper of general circulation within the City. In addition, a new NBMC Subsection 20.62.020(B)(6) (Additional Notice) will make it clear that the Community Development Director may choose to provide additional notice of a hearing in any other manner deemed necessary.
3. Chapter 20.66 (Amendments) establishes the procedures for amendments to Title 20 (Planning and Zoning). For amendments initiated by property owners, NBMC Section 20.66.030 (Processing, Notice, and Hearing) refers to NBMC Chapter 20.62 (Public Hearings) for noticing procedures; however, for amendments initiated by the Planning Commission or City Council, the existing regulations are unclear with regard to proper noticing procedures. Staff utilizes NBMC Chapter 20.62 (Public Hearings) as a guide; however, most amendments affect multiple properties where mailing each affected property owner and posting on each site is infeasible. Therefore, the amendment to NBMC Section 20.66.030 (Processing, Notice, and Hearing) is needed to provide clear standards for public hearing noticing related to City-initiated amendments not affiliated with a specific project site.

#### SECTION 4. DECISION.

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

1. The Planning Commission finds the Code Amendment is not a project subject to CEQA pursuant to Section 21065 of Public Resources Code and the CEQA Guidelines Sections 15060(c)(2), 15060(c)(3), and 15378. The proposed action is also statutorily 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. CA2019-001 as set forth in Exhibit "A," which is attached hereto and incorporated herein by reference.

**PASSED, APPROVED, AND ADOPTED THIS 18<sup>TH</sup> DAY OF JUNE, 2020.**

AYES: Ellmore, Klaustermeier, Kleiman, Koetting, Lowrey, and Weigand

NOES:

ABSTAIN:

ABSENT: Rosene

DocuSigned by:  
BY: Peter Koetting  
Peter Koetting, Chairman

BY: Lee Lowrey  
Lee Lowrey, Secretary

**EXHIBIT "A"****Proposed Code Amendment No. CA2019-001 to Clarify Provisions related to  
Overlays and Public Hearing Notice Requirements**

**Section 1:** Amend Section 20.28.010 (Purposes of Overlay Zoning Districts) of Title 20 (Planning and Zoning) of the Newport Beach Municipal Code as follows

**20.28.010 Purposes of Overlay Zoning Districts.**

The purposes of the individual overlay zoning districts and the manner in which they are applied are outlined below. An overlay district may be initiated as a Zoning Map amendment in compliance with Chapter 20.66 (Amendments). All development shall comply with the applicable development standards (e.g., setbacks, height) of the underlying zoning district in addition to the standards provided in this chapter, if any. In situations where an inconsistency occurs between the development standards of the underlying zoning district and the standards in this chapter, the standards of the overlay district shall prevail.

**Section 2:** Amend Subsection 20.62.020(B)(4) (Alternative to Mailing) of Title 20 (Planning and Zoning) of the Newport Beach Municipal Code to as follows:

4. Alternative to Mailing. If the number of property owners to whom notice would be mailed in compliance with subsection (B)(2)(c) of this section is more than one thousand (1,000), in lieu of mailed notice, the Director may choose to publish a one-eighth page display advertisement in a newspaper of general circulation within the City at least ten (10) days before the scheduled hearing as specified by State law.

**Section 3:** Renumber Subsection 20.62.020(B)(5) to Subsection 20.62.020(B)(6) and add new Subsection 20.62.020(B)(5) (Additional Notice) to Title 20 (Planning and Zoning) of the Newport Beach Municipal Code as follows:

5. Additional Notice. The Director may provide additional notice of the hearing in any other manner deemed necessary.
6. Failure to Receive Notice. The failure of any person or entity to receive notice given in compliance with this section shall not invalidate the actions of the applicable review authority.

**Section 4:** Amend Section 20.66.030 (Processing, Notice, and Hearing) of Chapter 20.66 (Amendments) of Title 20 (Planning and Zoning) of the Newport Beach Municipal Code, as follows:

**20.66.030 Processing, Notice, and Hearing.**

- A. If initiated by property owner(s) with the filing of an amendment application:
  1. Process. The application shall be processed in compliance with Chapter 20.50 (Permit Application Filing and Processing).
  2. Notice. Notice of the public hearings shall be provided in compliance with Chapter 20.62 (Public Hearings).

B. If initiated by Council or Commission, notice of the public hearings shall be given as specified below:

1. Publication. Notice for all matters shall be published at least once in a newspaper of general circulation in the City at least ten (10) days before the scheduled hearing.
2. Mailing. Notice shall be mailed or delivered at least ten (10) days before the scheduled hearing to all of the following:
  - a. Property Owners. All owners of property affected by the amendment and owners of property located within a three hundred (300) foot radius, excluding intervening rights-of-way and waterways, of the exterior boundaries of the affected property, as shown on the last equalized assessment roll or, alternatively, from other records that contain more recent addresses. If the number of property owners to whom notice would be mailed in compliance with this subsection is more than one thousand (1,000), in lieu of mailed notice, the Director may choose to publish a one-eighth page display advertisement in a newspaper of general circulation within the City;
  - b. Local Agencies. Each local agency expected to provide schools, water, or other essential facilities or services as a result of the amendment, whose ability to provide the facilities and services may be significantly affected; and
  - c. Persons Requesting Notice. A person who has filed a written request for notice with the Director and has paid the required fee for the notice.
3. Failure to Receive Notice. The failure of any person or entity to receive notice given in compliance with this section shall not invalidate the actions of the applicable review authority.
4. Additional Notice. The Director may choose to provide additional notice of the hearing in any other manner deemed necessary.

C. Hearing.

1. The applicable review authority shall conduct one or more public hearings regarding the amendment.
2. The public hearings shall be conducted in compliance with Chapter 20.62 (Public Hearings).