



NEWPORT BEACH

City Council Staff Report

July 28, 2020
Agenda Item No. 14

TO: HONORABLE MAYOR AND MEMBERS OF THE CITY COUNCIL

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TITLE: Ordinance No. 2020-17: Zoning Code and LCP Amendments Related to Corrections, Clarifications, and Inconsistencies (PA2019-055)

ABSTRACT

For the City Council's consideration are amendments to Title 20 (Planning and Zoning Code) and Title 21 (Local Coastal Program Implementation Plan) of the Newport Beach Municipal Code (NBMC) to provide code clarification and corrections, and to resolve inconsistencies between the Zoning Code and the Local Coastal Program Implementation Plan (LCP). The amendments relate to minimum lot size and dimensions, overlay zoning districts, public hearing notification requirements, and code amendment processing. The amendments were initiated by the City Council on April 23, 2019 and were recommended for approval by the Planning Commission on June 18, 2020.

RECOMMENDATION

- a) Conduct a public hearing;
- b) Find this project statutorily exempt from the California Environmental Quality Act (CEQA) pursuant to Section 21065 of CEQA and State CEQA Guidelines Sections 15060(c)(2), 15060(c)(3) and 15378. The proposed action is also exempt pursuant to State CEQA Guidelines Section 15061(b)(3) because it has no potential to have a significant effect on the environment;
- c) Waive reading, read by title only, introduce Ordinance No. 2020-17, *An Ordinance of the City Council of the City Newport Beach, California, Adopting 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)*, and pass to second reading on August 25, 2020; and
- d) Adopt Resolution No. 2020-72, *A Resolution of the City Council of the City of Newport Beach, California, Authorizing Submittal of Local Coastal Program Amendment No. LC2019-001 to the California Coastal Commission to Amend Title 21 (Local Coastal Program Implementation Plan) of the City of Newport Beach Municipal Code Correcting and Clarifying Provisions Related to Minimum Lot Size and Dimensions, Overlays and Public Hearing Notice Requirements (PA2019-055)*.

FUNDING REQUIREMENTS

There is no fiscal impact related to this item.

DISCUSSION

Introduction

Zoning Code Section 20.66.020 (Initiation of Amendment) provides that a Title 20 code amendment may be initiated by the City Council, with or without a recommendation from the Planning Commission. City Council Policy K-1 (General Plan and Local Coastal Program) provides that a City-sponsored amendment to the certified LCP shall be initiated by the City Council. The subject amendments were initiated by the City Council on April 23, 2019 under City Council Resolution No. 2019-41 (Attachment C).

Proposed Amendments

The proposed amendments are considered minor clean-up items and affect different sections of the City's Planning and Zoning Code (Title 20) and Local Coastal Program Implementation Plan (Title 21). Table 1 below provides an overview of the proposed amendments, including which title of the City's Municipal Code is affected. Title 20 regulations are applicable citywide, whereas Title 21 amendments are only applicable in the coastal zone areas of the City and intended to implement the goals, objectives, and policies of the City's Coastal Land Use Plan. Generally, where the two codes regulate the same standard, it's the City's desire to maintain consistency between the two codes to minimize the potential for errors in implementation. See Attachment D for redline/strikeout revisions of the Title 20 amendments and Attachment E for redline/strikeout revisions of the Title 21 amendments.

Table 1- Summary of Proposed Amendments			
Component of Amendment	Title 20 Zoning Code	Title 21 Implementation Plan of LCP	Purpose
Minimum lot size exception		X	Provide consistency with Title 20
Overlay districts	X	X	Clarify overlay districts that may be less restrictive than base zone
Notice of public hearing	X	X	Clarify noticing requirements when large number of properties affected is consistent with State law.
Code amendment processing	X		Clarify procedural requirements for processing Zoning Code amendments

- 1. Minimum lot size exception** – NBMC Section 21.18.030 (Residential Coastal Zoning Districts General Development Standards)

Both Title 20 and 21 include minimum lot size standards for newly created residential lots. These minimum lot sizes are intended for new residential subdivision projects. However, many of the lots in the older communities in the City (e.g., Balboa Peninsula, Corona del Mar, Balboa Island, etc.) were developed in the early and mid-1900's prior to the City adopting a Subdivision Code. As a result, many of the lots are substandard to current minimum lot sizes and dimensions that have been in effect for many decades. Over time, some lots have been combined or reconfigured from their original subdivision pattern.

It is common for property owners and developers to re-subdivide previously combined or reconfigured lots within these older established communities, reverting back to a lot size consistent with the original subdivision pattern of the neighborhood. Title 20 currently includes an exception that allows residential lots to be subdivided with smaller sizes and dimensions than required by that zone, provided the lot size and dimensions are not less than the original underlying lots on the same block face and in the same zoning district. This exception is supported by General Plan Policy LU 4.2, which prohibits new residential subdivisions that result in additional dwelling units without a General Plan amendment, unless the lots were legally merged, in which case they can be re-subdivided to the original underlying legal lots. Unfortunately, this provision was inadvertently left out of the Title 21 development standards applicable to residential coastal zoning districts. This amendment would correct the oversight by adding the same exception already allowed in Title 20 to Title 21 through a footnote applicable to the lot size standards in Tables 21.18-2, 21.18-3, and 21.18-4.

2. Overlay Zoning Districts – NBMC Sections 20.28.010 and 21.28.010 (Purposes of Overlay Zoning Districts)

Overlay zoning districts are a common tool to modify a base zoning district for a specific area. The existing codes inadvertently state that the more restrictive standard of the base zone or applicable overlay apply; however, overlays can be used to specify a different standard that might be less restrictive than the base 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 amendments to Title 20 and 21 will clarify that in cases where standards conflict between base zone and an overlay district, the standards of the overlay district will control.

3. Notice of Public Hearing – NBMC Sections 20.62.020 and 21.62.020 (Notice of Public Hearing)

The City's noticing procedures are contained in Sections 20.62.020 and 21.62.020 of the NBMC and follow State law noticing requirements (GC. Sections 65090 and 65091-Attachment F), including: publication in a newspaper of general circulation; and mailing to affected property owners, local agencies, nearby property owners and residents, and persons requesting notice. In addition to the minimum State law noticing requirements, City noticing procedures also require notice to be posted on or close to the subject property in a prominent location.

If the number of property owners to whom notice would be mailed or delivered is greater than 1,000, NBMC Subsections 20.62.020(B)(4) and 21.62.020(B)(4) authorize the Director to choose alternative notice specified by State law. To eliminate ambiguity and provide clarification of the alternative afforded by State law, the proposed 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. The *Daily Pilot* or the *Orange County Register* are currently newspapers of general circulation. In addition, the amendments will make it clear that the Community Development Director may choose to provide additional notice of a hearing in any other manner deemed necessary or desirable.

4. Code Amendment Processing – NBMC Section 20.66.030 (Processing, Notice, and Hearing)

NBMC Chapter 20.66 establishes the procedures for amendments to Title 20. 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. As discussed above, NBMC Chapter 20.62 is drafted with a focus to provide noticing proximate to a specific property.

For amendments initiated by the Planning Commission or City Council, the current code is ambiguous as it relates to how notice should be provided for code amendments that might affect a large number of properties, a neighborhood, an entire zoning district, or citywide. Staff utilizes NBMC Chapter 20.62 as a guide; however, most amendments affect multiple properties where mailing each affected property owner and posting on each site is infeasible.

Government Code Section 65854 (Attachment G) regulates minimum noticing requirements for code amendments and generally only requires publication of a notice in a newspaper of general circulation; however, if an amendment affects the permitted uses of real property, then additional notice shall be provided in compliance with Government Code Section 65091 as described above, including mailings to affected and surrounding property owners. For mailed notices in excess of 1,000, the Director may choose to publish the alternative one-eighth page newspaper advertisement.

Therefore, an amendment to NBMC Section 20.66.030 is needed to provide clear standards for public hearing noticing related to City-initiated amendments not affiliated with a specific project site, consistent with State law requirements.

Planning Commission Recommendation

On June 18, 2020, the Planning Commission unanimously voted to adopt Resolution Nos. PC2020-024 and PC2020-025 (Attachments H and I), recommending approval of Code Amendment No. CA2019-001 to the City Council and recommending the City Council to authorize submittal of Local Coastal Program Amendment No. LC2019-001 to the California Coastal Commission. The Planning Commission hearing minutes are included as Attachment J.

California Coastal Commission Review

Any amendments to the LCP must be reviewed and approved by the City Council, with a recommendation from the Planning Commission, prior to submitting the amendment request to the California Coastal Commission. The Coastal Commission is the final decision-making authority on amendments to the certified LCP; however, the City retains the ability to reject an LCP amendment in its entirety if the Coastal Commission includes suggested modifications. Once the City obtains Coastal Commission approval, staff will return to the City Council with a final ordinance to amend Title 21.

ENVIRONMENTAL REVIEW

The action proposed herein is not a project subject to CEQA in accordance with Section 21065 of CEQA and State CEQA Guidelines Sections 15060(c)(2), 15060(c)(3) and 15378. The proposed action is also exempt pursuant to State CEQA Guidelines Section 15061(b)(3) because it has no potential to have a significant effect on the environment. Lastly, pursuant to CEQA Guidelines Section 15265(a)(1), local governments are exempt from the requirements of CEQA in connection with the adoption of a Local Coastal Program. The Amendments themselves do not authorize development that would directly result in physical change to the environment.

NOTICING

The agenda item has been noticed according to the Brown Act (72 hours in advance of the meeting at which the City Council considers the item).

Pursuant to Section 13515 of the California Code of Regulations, a review draft of the LCP Amendment was made available and a Notice of Availability was distributed on May 7, 2020, to all persons and agencies on the Notice of Availability mailing list.

In addition, notice of this amendment was published in the *Daily Pilot* as an eighth-page advertisement, consistent with the provisions of the Municipal Code and State law. The item also appeared on the agenda for this meeting, which was posted at City Hall and on the City website.

ATTACHMENTS

- Attachment A – Ordinance No. 2020-17
- Attachment B – Resolution No. 2020-72
- Attachment C – Resolution No. 2019-41 (Initiation)
- Attachment D – Redline/Strikeout Revisions of the Title 20 Amendments
- Attachment E – Redline/Strikeout Revisions of the Title 21 Amendments
- Attachment F – Government Code Sections 65090 and 65091
- Attachment G – Government Code Section 65854
- Attachment H – Planning Commission Resolution No. PC2020-24
- Attachment I – Planning Commission Resolution No. PC2020-25
- Attachment J – Planning Commission Minutes